

# **2006 GENERAL TERMS AND CONDITIONS FOR THE HOTEL INDUSTRY**

**(AGBH 2006)**

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## **§ 1 Scope of application**

1.1 These General Terms and Conditions for the Hotel Industry (hereinafter referred to as “AGBH 2006”) shall replace the previous ÖHVB [Austrian Hotel Contract Conditions] as amended on 23 September 1981.

1.2 The AGBH 2006 shall not exclude special agreements. Agreements made on an individual basis shall take precedence over the AGBH 2006.

## **§ 2 Definitions**

2.1 Definitions:

“Proprietor”: means an individual or juridical person who accommodates guests against remuneration.

“Guest”: means an individual who makes use of accommodation. Usually the guest is also the contracting party. Guests also include those persons who are accommodated together with such Party (e.g. family members, friends etc.).

“Party”: means an Austrian or foreign individual or juridical person who enters into an Accommodation Agreement as a Guest or for a Guest.

“Consumer” and “Entrepreneur”: these terms shall be construed as defined by the 1979 Consumer Protection Act (Konsumentenschutzgesetz) as amended.

“Accommodation Agreement”: means the agreement made between the Proprietor and the Party, the contents of which are specified below.

## **§ 3 Conclusion of the agreement – Down payment**

3.1 The Accommodation Agreement shall be deemed entered into upon the acceptance of the Party’s order by the Proprietor. Electronic statements shall be deemed received if they can be accessed by the party to whom they are addressed under normal circumstances provided that they are received during the published business hours of the Proprietor.

3.2 Before entering into the Accommodation Agreement, the Proprietor shall be entitled to request that the Party makes a down payment. In such event, the Proprietor shall be obliged to inform the Party of the required down payment before accepting the written or oral order of the Party. If the Party agrees to the down payment (in writing or orally), the Accommodation Agreement shall be deemed entered into upon receipt by the Proprietor of the Party’s declaration of consent to the down payment.

3.3 The Party shall be obliged to make the down payment so that it is received no later than 7 days before provision of accommodation. Any costs incurred by the financial transaction (e.g. cost of bank transfer) shall be paid by the Party. Credit and debit cards shall be subject to the terms and conditions of the issuing company.

3.4 The down payment shall be deemed an instalment of the agreed remuneration.

## **§ 4 Start and end of accommodation**

4.1 Unless the Proprietor offers any other time of occupancy, the Party shall be entitled to move into the rented rooms as of 4.00 p.m. on the agreed date (“date of arrival”).

4.2 If a room is occupied for the first time before 6.00 a.m., the preceding night shall be deemed the first night of accommodation.

4.3 The rented rooms shall be vacated by the Party by 12.00 noon on the date of departure. The Proprietor shall be entitled to charge another day if the rented rooms are not vacated in time.

### **§ 5 Rescission of the Accommodation Agreement – Cancellation fee**

#### Rescission by the Proprietor

5.1 If the Accommodation Agreement requires a down payment and such down payment has not been made by the Party in due time, the Proprietor may rescind the Accommodation Agreement without granting any grace period.

5.2 If the Guest fails to arrive by 6.00 p.m. on the agreed date of arrival, the Proprietor shall not be obliged to guarantee the accommodation, unless a later time of arrival has been agreed upon.

5.3 If the Party has made a down payment (see 3.3), the rooms shall be deemed reserved until 12.00 noon on the day following the date of arrival at the latest. If a down payment to the amount of more than four days has been made, the obligation to accommodate the Guest shall end at 6.00 p.m. on the fourth day, the date of arrival being deemed the first day, unless the Guest informs the Proprietor of a later date of arrival.

5.4 Unless otherwise agreed, if the Proprietor has objectively justifiable reasons, he may rescind the Accommodation Agreement by unilateral notification, up to 3 months before the agreed date of arrival of the Party. Unless otherwise agreed upon, the Proprietor may rescind the Accommodation Agreement for objectively justified reasons by means of a unilateral declaration by 3 months before the agreed date of arrival of the Party.

#### Rescission by the Party – Cancellation fee

5.5 The Party may rescind the Accommodation Agreement by means of a unilateral declaration, 3 months before the agreed date of arrival of the Guest without a cancellation fee being liable.

5.6 Outside the period specified in § 5.5., the Party may only rescind the Accommodation Agreement by means of a unilateral declaration subject to the following cancellation fees:

- 40% of the total agreed price up to 1 month before the date of arrival;
- 70% of the total agreed price up to 1 week before the date of arrival;
- 90% of the total agreed price within the last week preceding the date of arrival.

3 months or more	3 months to 1 month	1 month to 1 week	during last week
no cancellation fee	40%	70%	90%

#### Prevention from arrival

5.7 If the Party is prevented from arriving at the accommodation on the date of arrival due to unforeseen extraordinary events (e.g. extreme snowfall, floods etc.), the Party shall not be obliged to pay the agreed remuneration for the date of arrival.

5.8 The obligation to pay the remuneration for the booked stay shall come back into force as soon as the arrival becomes possible, provided that this is within three days.

### **§ 6 Provision of substitute accommodation**

6.1 The Proprietor may provide the Party or the Guests with adequate substitute accommodation (of the same quality) provided that this is reasonably acceptable for the Party, particularly if the difference is insignificant and objectively justified.

6.2 An objective justification shall, for example, be deemed given if the room(s) has (have) become uninhabitable, already resident guests extend their stay, the establishment is overbooked or it becomes necessary for internal reasons.

6.3 Any additional costs arising from such substitute accommodation shall be paid by the Proprietor.

### **§ 7 Rights of the Party**

7.1 By entering into an Accommodation Agreement, the Party shall acquire the right to make normal use of the rented rooms and the accommodation facilities that are usually accessible to the guests for use without any special conditions and of the usual service. The Party shall exercise their rights in accordance with any applicable hotel and/or guest regulations (rules of the house).

### **§ 8 Obligations of the Party**

8.1 The Party shall be obliged to pay the agreed remuneration, in addition to any supplementary charges that have arisen from the use of special services by the Party and/or the accompanying Guests as well as any applicable VAT, by the date of departure at the latest.

8.2 The Proprietor shall not be obliged to accept foreign currency. If the Proprietor accepts foreign currency, such shall be accepted at the current rate whenever possible. If the Proprietor accepts foreign currency or cashless means of payment, the Party shall pay any associated costs, e.g. for inquiries to credit card companies, telegrams etc.

8.3 The Party shall be liable to the Proprietor for any damage caused by himself or the Guest or any other persons who make use of the Proprietor's services with the knowledge and volition of the Party.

### **§ 9 Rights of the Proprietor**

9.1 If the Party refuses to pay or is in arrears with the agreed remuneration, the Proprietor shall be entitled to make use of his legal right of retention in accordance with Article 970c of ABGB [Austrian Civil Code] and the legal right of lien in accordance with Article 1101 of ABGB with respect to the personal effects belonging to the Party or the Guest. The proprietor's legal right of lien and right of retention shall furthermore serve as security against any claims for compensation under the Accommodation Agreement, particularly for catering and any outlay made on behalf of the Party or damage incurred by the Party.

9.2 If services are requested in the Party's room or outside normal hours (after 8.00 p.m. and before 6.00 a.m.), the Proprietor shall be entitled to charge extra for such services. However, such extra charges must be indicated on the price list in the room. The Proprietor reserves the right to refuse such services for internal reasons.

9.3 The Proprietor is entitled to issue invoices or interim invoices for services rendered at any time.

## **§ 10 Obligations of the Proprietor**

10.1 The Proprietor is obliged to provide the agreed services in keeping with the standards of the establishment.

10.2 Extra services on the part of the Proprietor, which are not included in the accommodation remuneration, must be listed separately and may comprise for example:

- a) Additional accommodation services that may be invoiced separately, such as the provision of lounges, sauna, indoor and/or outdoor swimming pools, solarium, garages etc.
- b) A reduced price shall be charged for the provision of additional beds or cots.

## **§ 11 Liability of the Proprietor for damage to items belonging to guests**

11.1 The Proprietor is liable for the items belonging to the Party in accordance with Article 970 ss of ABGB. The Proprietor shall only be liable if the items have been handed over to the Proprietor or to persons authorised by the Proprietor or deposited in a place assigned by such or intended for such purpose. Unless the Proprietor can provide evidence to the contrary, he shall be liable for his own negligence, or that of his agents or. In accordance with Article 970 sec. 1 of ABGB, the Proprietor shall only be liable up to the amount specified in the applicable version of Austrian law on the liability of landlords and other entrepreneurs of 16 November 1921 (Bundesgesetz über die Haftung der Gastwirte und anderer Unternehmer). If the Party or the Guest fails to comply immediately with the Proprietor's request to deposit their items in a specific place, the Proprietor shall be discharged from all liability. The amount of any liability of the Proprietor shall be limited to a maximum of the sum insured under the third-party liability insurance of such Proprietor. Any fault of the Party or Guest shall be taken into account.

11.2 The Proprietor may not be held liable for slight negligence. If the Party is an Entrepreneur, the Proprietor may not be held liable for gross negligence either. In such event, the burden of proof shall lie with the Party. No consequential or indirect damage and no loss of profit shall be reimbursed.

11.3 The Proprietor shall only be liable for valuables, money and securities up to an amount of currently €550.00. The Proprietor shall only be liable for any damage exceeding this amount in the event that he was aware of the value of the items at the time of their deposit or if he or any of his agents was responsible for the damage. The limitation of liability in accordance with 12.1 and 12.2 shall apply accordingly.

11.4 The Proprietor reserves the right to refuse the deposit of valuables, money and securities if the items are significantly more valuable than those usually deposited by guests of the accommodation establishment.

11.5 Liability shall be excluded for any deposit, if the Party and/or Guest fails to notify the Proprietor immediately on becoming aware of the damage incurred. Furthermore, such claims must be asserted in court within three years of the Party and/or Guest becoming aware or possibly becoming aware of the damage; otherwise, the right shall expire.

## **§ 12 Limitations of liability**

12.1 If the Party is a Consumer, the Proprietor may not be held liable for slight negligence, except in the event of physical injury.

12.2 If the Party is an Entrepreneur, the Proprietor may not be held liable for slight or gross negligence. In such event, the burden of proof shall lie with the Party. No consequential, non-material or indirect damage and no loss of profit shall be reimbursed. The damage to be reimbursed shall in any case be limited to the amount of the damage incurred because the Party has relied on the validity of the agreement. (Vertrauensinteresse).

### **§ 13 Animals**

13.1 Animals may only be brought into the accommodation with the prior consent of the Proprietor and against additional remuneration.

13.2 Any Party bringing an animal shall be obliged to take proper care of and/or supervise such animal during their stay or to have it taken care of and/or supervised by a qualified third party at their own expense.

13.3 Any Party and/or Guest bringing an animal must have appropriate animal liability insurance and/or personal liability insurance that covers any potential damage caused by animals. Evidence of such insurance shall be provided to the Proprietor upon request.

13.4 The Party and/or their insurance company shall be jointly and severally liable towards the Proprietor for any damage incurred by the animals brought along. This includes in particular any compensation which becomes payable by the Proprietor to third parties.

13.5 Animals are not permitted to enter the lounges, saloons, restaurants and wellness areas.

### **§ 14 Prolongation of the accommodation**

14.1 The Party has no right to demand that the stay be prolonged. If the Party informs the Proprietor in due time that he wishes prolong his stay, the Proprietor may consent to an extension of the Accommodation Agreement. However, the Proprietor is under no obligation to do so.

14.2 If the Party is prevented from leaving the accommodation establishment on the date of departure because all means of travel are blocked or unusable due to unforeseen exceptional circumstances (e.g. extreme snowfall, floods etc.), the Accommodation Agreement shall be automatically renewed for the duration of such hindrance to departure. The remuneration to be paid for this period may only be reduced if the Party is unable to make full use of the services offered by the accommodation establishment due to the exceptional weather conditions. As a minimum, the Proprietor shall be entitled to charge the remuneration corresponding to the price usually charged in the off season.

### **§ 15 Termination of the Accommodation Agreement – Early cancellation**

15.1 If the Accommodation Agreement has been made for a definite term, it shall end upon the expiry of such term.

15.2 If the Party leaves prematurely, the Proprietor shall be entitled to charge the total agreed remuneration. The Proprietor shall deduct any amount saved due to the Party not using the full scope of services or received by letting the booked rooms to other guests. Such savings shall only be deemed to exist if the establishment is booked to capacity for the period of non-use and the room can be let to other guests after cancellation by the Party. The burden of proof to show that savings have been made shall lie with the Party.

15.3 The Agreement with the Proprietor expires on the death of the Guest.

15.4 If the Accommodation Agreement has been made for an indefinite term, the Parties may terminate the Agreement by 10.00 a.m., three days prior to departure.

15.5 The Proprietor shall be entitled to terminate the Accommodation Agreement with immediate effect for good reason, particularly if the Party and/or the Guest

a) makes extremely inappropriate use of the rooms or makes coexistence intolerable for other guests, the owner, his staff or third parties staying at the accommodating establishment, due to inconsiderate, offensive or otherwise highly improper conduct or commits a punishable offence with regard to property, morality or physical safety of these persons; b) suffers from a contagious disease or a disease which will outlast the agreed period of accommodation or is otherwise in need of care; c) fails to settle invoices when they become payable within a reasonably set period (3 days).

15.6 If the performance of the Agreement becomes impossible due to circumstances beyond the Proprietor's control (e.g. natural disasters, strike, lockout, official orders etc.), the Proprietor may terminate the Accommodation Agreement at any time without giving prior notice unless the Agreement is already deemed terminated under the law or the Proprietor is absolved of his obligation to accommodate the Party. Any claims for damages etc. by the Party shall be excluded.

### **§ 16 Sickness or death of the Guest**

16.1 If a Guest falls ill during his stay at the accommodating establishment, the Proprietor shall arrange for medical care at the request of the Guest. If immediate action is called for, the Proprietor can arrange for medical care even if the Guest does not specifically request it, particularly if this is necessary and the Guest is incapable of doing it himself.

16.2 As long as the Guest is unable to make decisions or it is not possible to contact the family of the Guest, the Proprietor shall arrange for medical care at the expense of the Guest. However, such ministrations will only continue until the Guest is able to make his own decisions or his family has been notified of the Guest's sickness.

16.3 The Proprietor shall be entitled to compensation from the Party or the Guest or, in the event of his death, from his legal successors for the following expenses in particular:

a) unsettled medical costs, ambulance transport costs, medication and therapeutic aids b) room disinfection that becomes necessary, c) the replacement of linen, bed sheets and bed furnishing that have become unusable, or otherwise the disinfection or thorough cleaning of all of these items, d) restoration of walls, furniture, carpets etc. to their original state if such have been soiled or damaged in connection with the sickness or death, e) rent for the room, provided that it has been occupied by the Guest, plus any days during which the rooms are unusable due to disinfection, clearance etc., f) any other damage to the detriment of the Proprietor.

### **§ 17 Place of performance, place of jurisdiction and applicable law**

17.1 The place of performance shall be the place where the accommodating establishment is located.

17.2 This agreement shall be governed by Austrian procedural and substantive law under exclusion of the provisions of international private law (particularly IPRG [Austrian act on international private law] and the Rome Convention of 1980) and the UN Sales Convention.

17.3 If the Party is an Entrepreneur, the exclusive place of jurisdiction shall be the domicile of the Proprietor; however, the Proprietor shall be entitled to assert his rights before any other local and competent court.

17.4 If the Accommodation Agreement has been made with a Party who is a Consumer domiciled or ordinarily resident in Austria, actions against the Consumer may only be filed at the domicile, ordinary residence or place of work of such Consumer.

17.5 If the Accommodation Agreement has been made with a Party who is a Consumer domiciled in a member state of the European Union (except for Austria), Iceland, Norway or Switzerland, the local court that is competent for the domicile of the shall have exclusive jurisdiction for legal action against the Consumer.

### **§ 18 Miscellaneous**

18.1 Unless otherwise specified in the above provisions, any time limits shall commence on delivery of the document containing such time limit to the Party who should comply with the time limit. When calculating a time limit based on days, the day of the moment or event to which the start of the time limit refers shall not be included in the calculation. Time limits based on weeks or months shall refer to the day of the week or month that corresponds to the day starting from which the time limit is to be counted according to its name or number. If the relevant month lacks such day, it shall be replaced with the last day of such month.

18.2 Any declarations shall be received by the other party by the last day of the time limit (12.00 midnight).

18.3 The Proprietor shall be entitled to offset any of his claims against claims of the Party. The Party shall not be entitled to offset any of his claims against claims of the Proprietor unless the Proprietor is insolvent or the Party's claim has been established by a court or acknowledged by the Proprietor.

18.4 Should there be any omissions in the provisions of the Agreement, the relevant statutory regulations shall apply.