

General Terms and Conditions of SMARTments business Betriebsgesellschaft mbH

I. Scope of validity

1. These Terms and Conditions apply to contracts for the rental of serviced apartments for accommodation and all the services and deliveries provided for the guest of the accommodation facility.
2. Any subletting of the apartment provided to the guest and its use for purposes other than accommodation requires the prior written consent of the accommodation provider; § 540 para. 1 sentence 2 of the BGB (German Civil Code) shall be waived.
3. Terms and Conditions of the ordering party and/or guest shall apply only if these had been expressly agreed upon in advance in writing.

II. Conclusion of Contract, Contract Partners, Limitation

1. The accommodation contract is concluded by the acceptance of the application of the guest on the part of the accommodation provider. The accommodation provider is at liberty to confirm the apartment booking in writing.
2. Contracting partners are the accommodation provider and the guest. If a third party has booked the apartment for the guest, he is jointly and severally liable to the accommodation provider together with the guest and for all obligations arising from the accommodation contract, as far as the accommodation provider has received an appropriate statement of the third party. The third party shall then become contracting partner.
3. Any claims against the accommodation provider shall expire one year after the commencement of the regular statute of limitations irrespective of any awareness of § 199 para. 1 of the BGB (German Civil Code). Damage claims shall, irrespective of any awareness, elapse in five years. The limitation periods shall not apply for claims which are based on an intentional or grossly negligent breach of duty or on a justified withdrawal by the accommodation provider.

III. Services, prices, payments, offsets

1. The accommodation provider is obliged to make available the booked apartments to the guest or provide an adequate replacement together with the agreed services.
2. The guest is obligated to pay the prices applicable or agreed for the rental of the apartment and for any other services he has ordered in the accommodation facility. This also applies to the services and expenditures the guest may have arranged for a third party.
3. The agreed prices include the applicable VAT. If the period between contract conclusion and contract fulfilment exceeds four months, and if the price generally charged by the accommodation provider for such services is increased, then the contractually agreed price may be raised accordingly, however, not more than by 10%.
4. Prices may also be changed by the accommodation provider, if the guest subsequently requests a change of the number of booked apartments, of the scope of performances of the accommodation facility or the duration of the stay of the guests to which the accommodation provider agrees.
5. Bills issued by the accommodation provider without a due date are payable immediately upon receipt of invoice without any deductions. The accommodation provider is entitled to call in accrued claims at any time and to demand immediate payment. In case of default, the accommodation provider is entitled to claim the respective applicable statutory default interest in the amount of currently 8%, or, in the case of legal transactions in which the client is involved, in the amount of 5% above the base rate. The accommodation provider is entitled to prove a higher damage.
6. The accommodation provider is entitled to demand at contract conclusion or thereafter a reasonable advance payment or security deposit. The amount of the advance payment and payment due dates may be agreed in writing in the contract.
7. The guest may set off, withhold or reduce a claim against the accommodation provider only on the basis of an indisputable or legally binding claim.

IV. Withdrawal of the guest (cancellation), failure to make use of the services of the accommodation provider ("No Show")

1. Cancellation by the guest of the contract concluded with the accommodation provider requires the written consent of the accommodation provider. If this is refused, then the price agreed in the contract must also be paid if the guest does not make use of the contractual services. This does not apply in the case of the accommodation provider failing in his obligation to secure the rights and legally protected interests of the guest, and consequently, an adherence to the contract is no longer reasonable for guest or if he is entitled to exercise another statutory or contractual cancellation right.
2. Insofar as the accommodation provider and the guest have agreed in writing a deadline for a cost-free cancellation of the contract, the guest may withdraw from the contract without incurring payment or damage claims on the part of the accommodation provider. The right of withdrawal expires if the guest does not exercise his cancellation right in writing vis-à-vis the accommodation provider by the agreed date, unless a case of withdrawal of the guest in accordance with section IV numeral 1, sentence 3, occurs.
3. In the case of apartments not been used by the guest, the accommodation provider must credit the revenue from subletting the apartments on his part and for saved expenses.
4. The accommodation provider is free to demand the contractually agreed remuneration and to account the deduction for saved expenses on lump-sum basis. The guest is then obliged to pay 90% of the contractually agreed price for the rental of the apartments. However, the guest is free to prove that no damages or significantly lesser damages have actually been caused to the accommodation provider.

5. Cancellation policy:
14 days' notice of cancellation is required prior to check-in for all lengths of stay in order to avoid charges. Notice given within 14 days will result in a charge equal to 14 nights minus the number of days' notice given. For example, if check in is on 8th August and notice given to cancel is on 3rd August, then 5 days' notice has been given and a charge of 9 nights will therefore apply (14 days – 5 days' notice given = 9 night charge)
This policy also applies to in-house guests should a stay need to be shortened.
6. The guest is at liberty to prove that the claim mentioned above did not arise or did not arise in the amount demanded.

V. Withdrawal of the accommodation provider

1. If a cost-free right of withdrawal of the guest within a specified period has been agreed in writing, the accommodation provider is also entitled for its part to cancel the contract within this period if inquiries from other guests for the contractually booked rooms are made and the guest upon inquiry of the accommodation provider does not waive his right of withdrawal.
2. If an advance payment agreed or demanded under Section III, numerals 5 and /or 6, is not forthcoming even after a reasonable grace period set by the accommodation provider, then the accommodation provider shall also be entitled to withdraw from the contract.
3. The accommodation provider is also entitled to exceptionally withdraw from the contract for justified reason, for example, if force majeure or other circumstances not imputable to the accommodation provider render impossible the fulfilment of the contract; apartments are booked stating misleading or false information, such as an incorrect identity of the guest or the purpose under which the apartment was booked; the accommodation provider has reasonable grounds to assume that the use of the accommodation services might impair business operations, the safety or the public reputation of the accommodation provider without this being attributable to the management and organisation of the accommodation provider; a breach has occurred of the above Section I numeral 2.
4. The accommodation provider must inform the guest of the exercise of the right to cancellation / termination without delay.
5. In the case of a justified cancellation by the accommodation provider, the guest may not claim any compensation.

VI. Apartment allocation, handover, return

1. The guest will have no right to claim allocation of specific apartments.
2. Booked apartments are available to the guest from 2 p.m. on the agreed arrival day. The guest has no right to earlier availability of the apartment.
3. On the agreed departure day, the apartments must be vacated and made available to the accommodation provider no later than 11 a. m. From that time of day onwards, the accommodation provider due to the delayed vacating of the apartments may invoice for exceeding the contractual use until 6 p.m. 50% of the full accommodation rate (list price), and 100% from 6 p.m. This shall not give rise to any contractual claims of the guest. The client is at liberty to prove that no or significantly lesser claims have arisen to the accommodation provider for user charge. If a key issued to the guest is lost or not returned upon departure, then this will be charged with EUR 40.00.

VII. Liability of the accommodation provider

1. The accommodation provider fulfils his contractual obligations with the due care of a prudent businessman. Claims of the guest for damages are excluded. This provision has its exception in damage arising from injuries to life, limb or health in cases where the accommodation provider is responsible as well as any other damages arising from an intentional or grossly intentional breach of duty of the accommodation provider, and damages caused by an intentional or negligent breach of typical contractual obligations of the accommodation provider. A breach of duty by the accommodation provider is equal to that of a legal representative or agent.
2. For property brought into the accommodation facility, the provider is liable to the guest according to the statutory provisions, i.e. up to the hundredfold of the apartment price, EUR 3,500.00 maximum; money and valuables up to EUR 800.00. Money and valuables may be kept in the safe at the reception with coverage up to the maximum amount offered by the insurance of the respective accommodation provider. The accommodation provider recommends to make use of this possibility. Any liability claims expire unless the guest immediately reports to the accommodation provider after gaining knowledge of the loss, destruction or damage (§ 703 of the German Civil Code/BGB). For any further liability of the accommodation provider, the above numeral 1, sentences 2 to 4, apply accordingly.

3. If the guest has been provided with a parking space in a car park belonging to the accommodation provider, even if rented for a fee, then this does not establish a contract of secure custody. The accommodation provider is not liable for the loss or damage of motor vehicles or bicycles parked on the property, or their contents, except in cases of willful misconduct or gross negligence. The above numeral 1, sentences 2 to 4, shall apply accordingly.
4. Messages, mail and delivered packages for the guests will be handled with care. The accommodation contract will facilitate the delivery, storage and - upon request – the forwarding of such items for a fee; the above numeral 1, sentences 2 to 4, shall apply accordingly. A custody agreement is not provided through this.
5. The guest is liable for all damages caused culpably by him, his staff, his guests or visitors in the accommodation facility or to the inventory itself.
6. No liability is assumed for items left behind. They will be returned only upon request for a fee. The accommodation provider undertakes to store items left behind for 6 months.
7. As far as the accommodation provider procures for the guest any services, technical or other equipment from third parties, he acts on behalf and for the account of the guest; the guest is liable for the careful handling and proper return of the object(s); he must indemnify and hold the accommodation provider fully harmless from all claims of third parties arising from the provision of these object(s).

VIII. Final provisions

1. Any changes and supplements to the contract, to the application acceptance or to these General Terms and Conditions for providing the accommodation must be in writing. This also applies to the repeal of this written-form clause. Unilateral amendments and supplements by the guest or the ordering party are ineffective. Verbal agreements have not been made.
2. Place of performance and payment is the registered place of the accommodation provider.
3. The exclusive place of jurisdiction in business dealings – even concerning disputes on cheques and bills of exchange - is the registered place of business of the accommodation provider. Should a contracting partner fulfil the preconditions of § 38, para. 2 of the ZPO (German Code of Civil Procedure) and not have a general place of jurisdiction in Germany, the courts at the location of the registered office of the accommodation provider shall have jurisdiction.
4. Application of the UN Convention on the International Sale of Goods and of the conflict laws is excluded.
5. If any provision of these General Terms and Conditions be void or become invalid for accommodation of guests, then this shall not affect the validity of the remaining provisions. In all other respects, the statutory provisions apply.

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