

# **General Business Terms of xenios Apartments AP Hotel ( -betriebs ) GmbH**

## **§ 1 Definitions**

- I. The Customer is the natural or legal entity in whose name the reservation is being made.
- II. The Guest is the party using the apartment being provided.

## **§ 2 Scope of Application**

- I. The present business terms apply to the contract on the temporary rental of apartments for residential purposes and to all goods and services provided to the guest or customer by Knippelius GmbH, hereinafter referred to as xenios Apartments.
- II. Subleasing of the premises and use thereof for purposes other than accommodation and hosting of events will require the prior written consent of xenios Apartments.
- III. Business terms by the guests and customers will only apply where this was agreed on beforehand in writing.

## **§3 Conclusion of the Contract**

- I. The contract (accommodation contract) will be formed through acceptance by xenios Apartments of the reservation inquiry by the customer. xenios Apartments then has the option of confirming the reservation in writing. Group reservations or other events will only become binding upon written confirmation of the reservation by xenios Apartments.
- II. The parties to the accommodation contract are xenios Apartments and the Customer. Where the Customer has made reservations for a third party (guest) the Customer will be liable toward xenios Apartments together with the guest as joint and several debtors for all duties arising from the present contract.

## **§4 Services, Prices, Payments and Set-Off**

- I. xenios Apartments will be obligated to provide the apartments that were reserved, or an equivalent replacement, and to render all other services agreed on.
- II. The Customer will be obligated to pay the applicable or agreed prices by xenios Apartments for rental of the apartments or other rooms and the additional services used. This will also apply to services and expenditures by xenios Apartments to third parties which are attributable to the customer or guest.
- III. The applicable or negotiated prices include value added tax at the applicable statutory rate.

IV. Where the amount of time between conclusion of and performance of the contract is more than 4 months and the general price for such services increases for xenios Apartments, xenios Apartments may increase the agreed price by an adequate amount, but at maximum by 10%. Prices may be changed by xenios Apartments where the Customer subsequently requests changes in the number of apartments booked, the services by xenios Apartments or the guests' length of stay and xenios Apartments approves these.

V. Invoices by xenios Apartments without a deadline are payable to the full amount upon receipt of the invoice. xenios Apartments has the right to demand immediate payment of accumulated debts at any time.

VI. In the case of delayed payment, xenios Apartments has the right to charge interest for the current year of 8 per cent above the respective basic interest rate by the German Federal Bank, 5 per cent in the case of legal transactions in which the consumer is involved. xenios Apartments explicitly has the right to claim a greater amount of default damage.

VII. Upon the conclusion of the contract or thereafter, xenios Apartments has the right to demand an adequate advance payment or deposit. The amount of the advance payments and the dates or other deadlines may be agreed on in writing in the contract. The Customer may only set off, withhold or reduce an uncontested claim or claim that is res judicata against a claim by xenios Apartments.

#### **§5 Rescission by the Customer/Cancellation**

I. A rescission by the Customer of the contract concluded with xenios Apartments will require the written consent of xenios Apartments. Where consent is not given, the agreed price in the contract must still be paid even if the Customer does not use the contractual services. This will not apply to cases of delayed services by xenios Apartments or to an infeasibility of the rendering of the services attributable to xenios Apartments.

II. Where a deadline was agreed on in writing between xenios Apartments and the Customer for rescission of the contract the Customer may rescind the contract by then without incurring payment or damage compensation claims by xenios Apartments. The right of rescission will be extinguished where the Customer fails to exercise his right of rescission in writing against xenios Apartments by the agreed date unless there is a case of delayed provision of services by xenios Apartments or the rendering of services is infeasible due to reasons attributable to xenios Apartments.

III. The Customer will be entitled to cancellation without incurring payment- and damage compensation claims by xenios Apartments as follows:

1. in the case of more than 50 overnight stays

- a) 6 months before arrival: 100 % of the reservations
- b) 4 months before arrival: 60 % of the reservations
- c) 9 weeks before arrival: 40 % of the reservations
- d) 6 weeks before arrival: 20 % of the reservations
- e) 3 weeks before arrival: 10 % of the reservations

2. in the case of 21 to 50 overnight stays

- a) 4 months before arrival: 100 % of the reservations
- b) 9 weeks before arrival: 60 % of the reservations
- c) 6 weeks before arrival: 40 % of the reservations
- d) 3 weeks before arrival: 20 % of the reservations

3. in the case of 5 to 20 overnight stays

- a) 9 weeks before arrival: 100 % of the reservations
- b) 6 weeks before arrival: 60 % of the reservations
- c) 3 weeks before arrival: 40 % of the reservations
- d) 1 week before arrival: 10 % of the reservations

4. in the case of 1 - 4 overnight stays

- a) 3 weeks before arrival: 100 % of the reservations
- b) 1 week prior to arrival: 60 % of the reservations
- c) 3 days before arrival: 40 % of the reservations

However, the Customer may prove that no or significantly less damage was incurred to xenios Apartments.

IV. The Customer has the right to book other rooms without incurring payment- and damage compensation claims by xenios Apartments for up to four weeks before the agreed date of the event. However, the Customer must prove that no or significantly less damage was incurred to xenios Apartments.

V. xenios Apartments must deduct what it earns through rental of the apartments or event premises elsewhere, as well as any expenses saved.

VI. xenios Apartments has the option of charging a flat rate for the damage incurred after lapse of the rescission deadlines and to be compensated by the Customer. The Customer will then be obligated to pay 90 % of the contractually agreed price for the rental of the apartment and other premises. However the Customer has the right to prove that no or significantly less damage was incurred to xenios Apartments.

VII. The contract will not be binding in the case of a breach of duty by xenios Apartments with regard to rights, legally protected interests and interests of the Customer, where continuation of the contract is no longer reasonable or there is another statutory or contractual right of rescission.

## **§6 Rescission/Cancellation by xenios Apartments**

I. Where a right of rescission by the Customer was agreed on in writing within a specific period of time, xenios Apartments will have the right to rescind the contract during this period where there are requests by other customers for the contractually reserved apartments and other premises and upon inquiry by xenios Apartments the Customer does not waive his right of rescission.

II. Where an agreed advance payment is not effected even after lapse of the adequate period of grace and warning by xenios Apartments, xenios Apartments will likewise be entitled to rescission.

III. Moreover, xenios Apartments will have the right to rescind or terminate the contract on relevant grounds.

There are relevant grounds in particular where

- force majeure or circumstances for which xenios Apartments is otherwise not liable render performance of the contract impossible;
- apartments or other premises are reserved under misleading or misrepresentational essential facts such as regarding the customer's identity or purpose of the rental;
- xenios Apartments has legitimate grounds to assume that use of the service would jeopardize the security of other guests or associates or the public reputation of xenios Apartments without this being attributable to the domain or control of xenios Apartments.

IV. Before exercise of the right of rescission/cancellation xenios Apartments must inform the Customer immediately.

V. In the case of legitimate rescission/cancellation by xenios Apartments there will be no entitlement to damage compensation.

### **§7 Provision of Apartment, Handover and Return**

I. The Customer does not have any definite claim to provision of a specific apartment/rooms.

II. The apartments being reserved will be available to the customer or guest from 4 p.m. on the agreed day of arrival. Other premises reserved will not be available to the customer before the agreed time (day, time). The Customer will not be entitled to earlier provision thereof.

III. On the agreed date of departure the apartments are to be vacated and provided to xenios Apartments by the latest by 11.00 a.m. Thereafter, xenios Apartments may charge 50% of the full accommodation price (price list) for the damage incurred to it for the additional use of the apartment until 6 p.m., 100% after 6 p.m. The Customer may prove to xenios Apartments that no or significantly less damage was incurred to it.

IV. In the case of rental of other rooms the Customer will be obligated to immediately return the rooms after the end of the event.

### **§8 Liability by xenios Apartments**

I. xenios Apartments will be liable with the duty of care of a prudent businessman for the duties arising from the contract. Damage compensation claims by the Customer are excluded. An exception to this is damage arising from injury to life, limb or health, freedom and sexual

independence where xenios Apartments is liable for the breach of duty, moreover other damage based on a willful or gross negligent breach of duty by xenios Apartments and damage based on the willful or gross negligent breach of typical contractual duties (cardinal or core duties) by xenios Apartments. Liability in accordance with the Product Liability Act arising from a guarantee assumed by xenios Apartments will remain unaffected. A breach of duty by a legal representative or vicarious agent of xenios Apartments will be equivalent to a breach of duty by xenios Apartments.

Where there are impairments or defects in the services of xenios Apartments, xenios Apartments will make every effort to rectify it upon detection or an immediate complaint by the customer /guest. The customer/guest will be obligated to do everything reasonably expected of him to rectify the trouble and to keep the damage as low as possible

II. xenios Apartments will be liable toward the Customer in accordance with the statutory provisions for items brought on to the property, i.e., up to a hundredfold of the apartment price, but maximum 3,500 €, and up to 800 € for money and valuables. Money and valuables may be kept in the apartment safe (where available) up to a maximum value of 800 € (insurance amount) or in a safe in the manager's office, depending on availability. xenios Apartments advises that the customer or guest take advantage of this possibility. The liability claims will expire where the Customer fails to file a report with xenios Apartments immediately after detection of loss, destruction of damage (§703 BGB).

III. The statutory provisions will apply to the unrestricted liability of xenios Apartments.

IV. Where the Customer is provided with a parking space for a motor vehicle in the garage, basement garage or apartment building parking lot, even for a fee, this will not constitute the formation of a safekeeping agreement. In the case of loss or damage of parked vehicles and of their contents xenios Apartments will only be liable in the case of willfulness or gross negligence unless the damage arises from injury to body or to health.

V. Messages, mail and consignments for the guests will be handled with care. No contract for safekeeping of the former is being formed through these actions.

VI. The customer/guest will be liable for all damage caused culpably to xenios Apartments or the furnishings by him, his associates, guests or visitors.

VII. The expiration of the damage compensation claims will be subject to the statute of limitations. Departing from § 199 III Nr. 1 BGB, damage compensation claims will expire within five years after they arise without regard to knowledge or gross negligent ignorance. This will not apply to claims based on a willful or gross negligent breach of duty by xenios Apartments. Liability on grounds of culpable injury to life, limb, health, freedom or sexual independence will remain unaffected; statutory liability in accordance with the Product Liability Act will likewise remain unaffected. Claims other than damage compensation claims will expire within one year as from the start of the regular statute of limitations which is not dependent on knowledge thereof; in the case of claims on the basis of defects of an item the limitation period will commence upon handover.

## **§9 Decorations Contributed by the Customer/Guest**

Affixation of decoration material in the apartments of xenios Apartments is only permitted with the prior consent of xenios Apartments. The customer/guest will be liable for the

admissibility of the decoration. The customer/guest will bear the sole liability for the decorations being contributed and is indemnifying xenios Apartments from third party claims.

## **§10 Final Provisions**

I. Amendments of and addenda to the present contract, acceptance of the order or the present business terms for acceptance must be in writing. Unilateral amendments or addenda by the client are invalid.

II. The place of performance and payment is the domicile of the respective place of business of xenios Apartments.

III. The exclusive place of jurisdiction- including for disputes regarding checks and bills of exchange- will be the domicile of xenios Apartments in business relations, including with customers who do not have a general place of jurisdiction in the country.

IV. The laws of the Federal Republic of Germany will apply.

V. Should individual terms of the present General Business Terms for Apartment Reservations be or become invalid or void this will not affect the validity of the remaining terms. In such a case, the contracting parties will be obligated to replace the invalid or void term with a valid term in line with the economic purpose of the invalid or void term. In other respects, the statutory provisions will apply.

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