

## **General Terms and Conditions of SMARTments Ges. m.b.H.**

### **Austria**

This applies to *SMARTments Ges. m.b.H.*

#### **1. Scope of application**

1.1 These Terms and Conditions shall apply to contracts for the rental of serviced flats for accommodation purposes as well as all other services and deliveries provided by the accommodation provider to the guest. 1.2 The subletting or sub-subletting of apartments as well as their use for purposes other than accommodation shall require the prior written consent of the accommodation provider.

1.2 Subletting and re-letting of the provided flats as well as their use for purposes other than accommodation shall require the prior written consent of the accommodation provider, whereby the granting of consent shall be at the discretion of the accommodation provider and the refusal of consent shall not entitle the customer to premature termination of the contract.

1.3 Terms and conditions of the Client and/or the Guest shall only apply if expressly agreed in writing in advance.

#### **2. Conclusion of contract, contracting parties, limitation period**

2.1 The accommodation contract is concluded by the acceptance of the customer's application by the accommodation provider. The accommodation provider is free to confirm the flat booking in writing. By doing so, the terms and conditions and house rules are acknowledged and confirmed at the latest with the signature of the registration form.

2.2 The contracting parties are the accommodation provider and the customer. If a third party has ordered on behalf of the customer, he/she shall be liable to the accommodation provider together with the guest as joint and several debtors for all obligations arising from the accommodation contract, provided that the accommodation provider has received a corresponding declaration from the third party. The third party then becomes the contracting party.

2.3 All claims against the accommodation provider are generally subject to a limitation period of one year from the beginning of the statutory limitation period. Claims for damages shall become statute-barred within one year from the time when the damage and the person causing the damage became known to the injured party, in five years irrespective of knowledge. The reductions in the statute of limitations shall not apply to claims based on an intentional or grossly negligent breach of duty or unjustified withdrawal by the accommodation provider. The statutory warranty regulations apply to consumers.

#### **3. Services, prices, payment, offsetting**

3.1 The accommodation provider is obliged to keep available the flats booked by the customer or equivalent substitutes and to provide the agreed services. In this context, the accommodation provider is free to define customary restrictions such as minimum stays, advance payments and booking guarantees for certain dates.

3.2 The customer is obliged to pay the applicable or agreed prices of the accommodation provider for the letting of the flat and the other services used by him. This shall also apply to services and expenses of the accommodating establishment to third parties arranged by the guest.

3.3 The agreed prices include the respective legally valid value added tax. If the period between conclusion and fulfilment of the contract exceeds four months and if the price generally charged by the accommodation provider for such services increases, the accommodation provider may increase the contractually agreed price by a reasonable amount, but by no more than 10%. Not included and therefore charged separately are any applicable local taxes such as city tax and visitor's tax.

3.4 The prices may also be changed by the accommodation provider if the guest subsequently requests changes in the number of flats booked, the services provided by the accommodation provider or the length of stay of the guests and the accommodation provider agrees to this.

3.5 Invoices of the accommodating establishment without due date are payable immediately upon receipt of the invoice without deduction. The accommodating establishment shall be entitled to call in accrued claims at any time and to demand immediate payment. In the event of late payment, the accommodation provider is entitled to charge the statutory interest on arrears applicable at the time. The accommodation provider reserves the right to prove a higher damage.

3.6 The accommodation provider is entitled to demand a reasonable advance payment and security deposit upon conclusion of the contract or thereafter. The amount of the advance payment and the payment dates can be agreed in writing in the contract. Furthermore, the accommodation provider is free to immediately check the validity of the credit cards provided and to carry out a pre-authorisation.

3.7 The customer may only offset, retain or reduce a claim of the accommodation provider with an undisputed or legally binding claim.

#### **4. Withdrawal of the customer (cancellation), non-utilisation of the services of the accommodation facility**

4.1 A withdrawal of the customer from the contract concluded with the accommodation provider requires the written consent of the accommodation provider. If this is not given, the agreed price from the contract shall also be paid if the guest does not make use of contractual services. This shall not apply in the event of a breach of the obligation of the accommodation provider to show consideration for the rights, legal assets and interests of the guest if the guest can no longer reasonably be expected to adhere to the contract as a result or is entitled to any other statutory or contractual right of withdrawal. 4.2.

4.2 If a date for the cost-free withdrawal from the contract has been agreed in writing between the accommodation provider and the customer, the guest may withdraw from the contract until then without triggering payment and damage claims of the accommodation provider. The right of withdrawal shall expire if he does not exercise his right of withdrawal in writing vis-à-vis the accommodation provider by the agreed date, unless there is a case of withdrawal by the guest pursuant to section IV no. 1 sentence 3.

4.3 In the case of flats not used by the customer, the accommodation company shall credit the income from the subletting of the flats as well as the saved expenses.

4.4 If the stay is shortened, the accommodation provider reserves the right to adjust the rate according to the number of nights actually used. Possible additional costs shall be paid in addition to the agreed cancellation fee.

4.5 The accommodation provider is free to demand the contractually agreed remuneration and to make a flat-rate deduction for saved expenses. The customer is then obliged to pay 90% of the

contractually agreed price for the rental of the flats. However, the customer is entitled to prove that the accommodation provider has not incurred any damage or that the damage is significantly lower.

## **5. Withdrawal of the accommodation provider**

5.1 Insofar as the customer's right to withdraw free of charge within a certain period of time has been agreed in writing, the accommodation company shall be entitled for its part to withdraw from the contract within this period of time if there are requests from other guests for the contractually booked rooms and the guest does not waive his right to withdraw upon inquiry by the accommodation company.

5.2 If an agreed advance payment or an advance payment demanded above in accordance with point III no. 5 and/or 6 is not made even after the expiry of a reasonable grace period set by the accommodation provider, the accommodation provider is also entitled to withdraw from or terminate the contract.

5.3 Furthermore, the accommodation provider is entitled to withdraw from the contract extraordinarily for an objectively justified reason, for example if

- force majeure or other circumstances for which the accommodation provider is not responsible make it impossible to fulfil the contract,
- Flats are booked under misleading or false statements of material facts, e.g. in the person of the guest or the purpose,
- the accommodation provider has reasonable grounds to assume that the use of the accommodation service may jeopardise the smooth running of the business, the safety or the reputation of the accommodation provider in public, without this being attributable to the control and organisational area of the accommodation provider,
- there is a breach of clause I no. 2 above.

5.4 The accommodation provider shall immediately inform the customer and the guest of the exercise of the right of withdrawal/cancellation.

5.5 In the event of a justified withdrawal by the accommodation provider, the customer and the guest shall have no claim for damages.

## **6. Flat provision, handover, return**

6.1 The guest does not acquire any claim to the provision of certain flats.

6.2 Booked flats are available to the guest from 4.00 p.m. on the agreed day of arrival. The guest has no right to earlier availability.

6.3 On the agreed day of departure, the flats must be vacated and made available to the accommodation provider by 10.00 a.m. at the latest. Thereafter, the accommodation provider may charge 50% of the full accommodation price (list price) due to the late vacating of the flat for its use exceeding the contract until 6.00 p.m., from 6.00 p.m. 100%. Contractual claims of the guest are not justified by this. The guest is at liberty to prove that the accommodation provider has not incurred any or a significantly lower claim to a usage fee. If a key or key card issued is lost or not handed in on departure, this may be charged with a fee of 40.00€. If the loss of the key or the key card or the locking out of the room makes the deployment of the security service necessary, the company reserves the right to charge the contract partner with flat-rate costs of 50.00€ per deployment.

6.4 Smoking is not permitted in the entire building, including the flats. In case of violation, the guest will be charged a lump sum of 250,00€.

6.5 The guest is obliged to provide all relevant personal data in accordance with the Federal Registration Act truthfully online in advance, but at the latest upon arrival in the form of a registration form, and to provide proof of this upon request.

## **7. Liability of the accommodation provider**

7.1 The accommodation provider shall be liable for its obligations under the contract with the due care of a prudent businessman. Claims of the guest for damages are excluded. This does not apply to damages resulting from injury to life, body or health if the accommodation provider is responsible for the breach of duty. Likewise, other damages based on an intentional or grossly intentional breach of duty by the accommodation provider and damages based on an intentional or negligent breach of duties typical for the contract by the accommodation provider. A breach of duty on the part of the accommodation provider shall be deemed equivalent to a breach of duty on the part of a legal representative or fulfilment.

7.2 The accommodation provider shall be liable to the guest for items brought into the accommodation in accordance with the statutory provisions. Money and valuables up to a maximum value of EUR 5,000.00 can be kept in the safe at the reception. The accommodation provider recommends making use of this possibility. Liability claims shall expire if the guest does not notify the accommodation provider immediately after becoming aware of the loss, destruction or damage of the stored goods (§ 970 b ABGB). For further liability of the accommodating establishment, the above number 1 sentences 2 and 3 shall apply accordingly.

7.3 Insofar as a parking space is made available to the guest in an on-site car park, also against payment, this shall not constitute a safekeeping contract. In the event of loss of or damage to motor vehicles and bicycles parked or manoeuvred on the property and their contents, the accommodating establishment shall not be liable, except in the case of intent or gross negligence. Number 1 sentences 2 to 4 above shall apply accordingly.

7.4 The customer is liable for all damages culpably caused by the guest himself, his employees or his visitors in the accommodation establishment or to the inventory itself. Corresponding damages must be reported to the establishment immediately, whereby the establishment is free to charge a flat rate for damages.

7.5 No liability is accepted for lost property. They will only be returned on request against payment. The accommodation provider undertakes to keep them for 6 months.

7.6 Insofar as the accommodation provider procures external services, technical or other equipment from third parties for the customer, the latter acts on behalf and for the account of the guest; the guest is liable for the careful treatment and proper return of the equipment and indemnifies the accommodation provider against all claims of third parties arising from the provision of this equipment.

7.7 With the reservation of a flat, the guest may use the designated public areas, such as the lobby, cleaning room, etc., free of charge. The accommodation provider reserves the right to close these public areas at short notice without prior notice. In the event of the unavailability of a public area, the guest shall not be entitled to partial or full reimbursement of his/her costs for the accommodation service. Consequently, the public areas are not considered part of the scope of services.

## **8. Final provision**

8.1 Amendments and supplements to the contract, the acceptance of the application or the General Terms and Conditions for Accommodation Accommodation must be made in writing. This also applies to the cancellation of this written form clause. Unilateral amendments or supplements by the guest or booker shall be invalid.

8.2 The place of performance and payment shall be the registered office of the accommodating establishment.

8.3 The accommodation provider reserves the right to expel guests or visitors. This applies in particular if the instructions of the employees of the accommodation provider are not followed, if discriminatory comments are made, if other guests and visitors are harassed or endangered.

8.4 The exclusive place of jurisdiction - also for disputes regarding cheques and bills of exchange - in dealings between entrepreneurs shall be the registered office of the accommodating establishment.

8.5 Austrian law shall apply. The application of the UN Convention on Contracts for the International Sale of Goods and the conflict of laws is excluded.

8.6 Should individual provisions of these General Terms and Conditions for Accommodation be or become invalid or void, this shall not affect the validity of the remaining provisions. Otherwise, the statutory provisions shall apply.

*Status January 2022 - Please note: The English version is a courtesy translation only. Only the German version is binding.*