

# GENERAL TERMS AND CONDITIONS FOR THE HOTEL INDUSTRY 2006

**(AGBH 2006)**

version dated **11/15/2006**

## Table of Contents

§ 1	Scope.....	2
§ 2	Definition of terms .....	2
§ 3	Conclusion of contract – down payment .....	3
§ 4	Beginning and end of accommodation .....	3
§ 5	Withdrawal from the accommodation contract – cancellation fee .....	4
§ 6	Provision of alternative accommodation .....	5
§ 7	Rights of the contractual partner .....	5
§ 8 <sup>th</sup>	Obligations of the contractual partner .....	6
§ 9	Rights of the accommodation provider .....	6
§ 10	Obligations of the accommodation provider.....	7
§ 11	Liability of the accommodation provider for damage to items brought in .....	7
§ 12	Limitations of liability .....	8 <sup>th</sup>
§ 13	Livestock farming .....	8 <sup>th</sup>
§ 14	Extension of accommodation .....	9
§ 15	Termination of the accommodation contract – premature termination .....	9
§ 16	Illness or death of the guest in the accommodation contract.....	10
§ 17	Place of performance, place of jurisdiction and choice of law .....	11
§ 18	Miscellaneous.....	12

## **§ 1 scope**

- 1.1 These general terms and conditions for the hotel industry (hereinafter "AGBH 2006") replace the previous ÖHVB in the version of September 23, 1981.
- 1.2 The AGBH 2006 do not exclude special agreements. The AGBH 2006 are subsidiary to individual agreements.

## **§ 2 definitions of terms**

### 2.1 Definition of terms:

"Accommodator":	Is a natural or legal person who accommodates guests for a fee.
"Guest":	Is a natural person who uses accommodation. The guest is usually also the contractual partner. Those persons who arrive with the contractual partner (e.g. family members, friends, etc.) are also considered guests.
"Contractual partner":	Is a natural or legal person in Germany or abroad who concludes an accommodation contract as a guest or for a guest.
"consumer" and "Entrepreneur":	The terms are to be understood in the sense of the Consumer Protection Act 1979 as amended.
"accommodation contract":	Is the contract concluded between the accommodation provider and the contractual partner, the content of which is regulated in more detail below.

### **§ 3 Conclusion of the contract – deposit**

- 3.1 The accommodation contract is concluded when the accommodation provider accepts the contracting party's order. Electronic declarations are deemed to have been received if the party for whom they are intended can access them under normal circumstances and access is granted during the business hours of the accommodation provider.
- 3.2 The accommodation provider is entitled to conclude the accommodation contract under the condition that the contractual partner makes a down payment. In this case, the accommodation provider is obliged to inform the contractual partner of the required deposit before accepting the written or verbal order of the contractual partner. If the contractual partner agrees to the down payment (in writing or verbally), the accommodation contract comes into effect upon receipt of the declaration of consent for the contractual partner to pay the down payment by the accommodation provider.
- 3.3 The contractual partner is obliged to pay the deposit no later than 7 days (receipt) before the accommodation. The contractual partner bears the costs for the money transaction (e.g. transfer fees). The terms and conditions of the card companies apply to credit and debit cards.
- 3.4 The deposit is a partial payment of the agreed fee.

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

- 4.1 Unless the accommodation provider offers a different reference time, the contractual partner has the right to move into the rented rooms from 4:00 p.m. on the agreed day ("arrival day").
- 4.2 If a room is occupied for the first time before 6:00 a.m., the previous night counts as the first overnight stay.
- 4.3 The rented rooms are reserved by the contractual partner on the day of departure to be vacated at 12:00 p.m. The accommodation provider is entitled to charge for an additional day if the rented rooms are not vacated in a timely manner.

## **§ 5      Withdrawal from the accommodation contract - cancellation fee**

### **Cancellation by the accommodation provider**

- 5.1 If the accommodation contract provides for a down payment and if the down payment was not made by the contractual partner on time, the accommodation provider can withdraw from the accommodation contract without a grace period.
- 5.2 If the guest does not appear by 6:00 p.m. on the agreed day of arrival, there is no obligation to provide accommodation unless a later time of arrival has been agreed.
- 5.3 If the contractual partner has made a down payment (see 3.3), the premises shall remain reserved until 12:00 p.m. on the day following the agreed arrival date at the latest. If more than four days are paid in advance, the obligation to stay ends at 6 p.m. on the fourth day, with the day of arrival being counted as the first day, unless the guest announces a later day of arrival.
- 5.4 The accommodation provider can terminate the accommodation contract for objectively justifiable reasons by a unilateral declaration no later than 3 months before the agreed arrival date of the contractual partner, unless something else has been agreed.

### **Withdrawal by the contractual partner - cancellation fee**

- 5.5 Up to 3 months before the agreed arrival date of the guest, the accommodation contract can be canceled without paying a cancellation fee by means of a unilateral declaration by the contractual partner.
- 5.6 Outside of the period specified in § 5.5. specified period of time, withdrawal by unilateral declaration by the contractual partner is only possible with payment of the following cancellation fees:
- up to 1 month before the day of arrival 40% of the total package price;
  - up to 1 week before the day of arrival 70% of the total package price;
  - in the last week before the day of arrival 90% of the total package price.

<b>up to 3 months</b>	<b>3 months to 1 Month</b>	<b>1 month to 1 Week</b>	<b>In the last Week</b>
no cancellation charge	40%	70%	90%

## **impediments to arrival**

5.7 If the contracting party is unable to appear at the accommodation facility on the day of arrival because unforeseeable, exceptional circumstances (e.g. extreme snowfall, flooding, etc.) make all travel options impossible, the contracting party is not obliged to pay the agreed fee for the days of arrival.

5.8 The obligation to pay the fee for the booked stay is revived once arrival is possible if arrival becomes possible again within three days.

## **§ 6 Provision of alternative accommodation**

6.1 The accommodation provider can provide the contractual partner or the guests with adequate replacement accommodation (of the same quality) if this is reasonable for the contractual partner, especially if the deviation is minor and objectively justified.

6.2 A factual justification is given, for example, if the room(s) has (have) become unusable, guests who have already been accommodated extend their stay, there is an overbooking or other important operational measures require this step.

6.3 Any additional expenses for the replacement accommodation are at the expense of the accommodation provider.

## **§ 7 rights of the contractual partner**

7.1 By concluding an accommodation contract, the contractual partner acquires the right to the usual use of the rented rooms, the facilities of the accommodation facility, which are accessible to the guests for use in the usual way and without special conditions, and to the usual service. The contractual partner must exercise their rights in accordance with any hotel and/or guest guidelines (house rules).

§ 8th **obligations of the contractual partner**

- 8.1 The contractual partner is obliged to pay the agreed fee plus any additional amounts that have arisen due to the separate use of services by him and/or the guests accompanying him, plus statutory sales tax, at the latest at the time of departure.
- 8.2 The accommodation provider is not obliged to accept foreign currencies. If the accommodation provider accepts foreign currencies, these will be accepted as payment at the daily exchange rate if possible. If the accommodation provider accepts foreign currencies or cashless means of payment, the contractual partner bears all associated costs, such as inquiries with credit card companies, telegrams, etc.
- 8.3 The contractual partner is liable to the accommodation provider for any damage caused by him or the guest or other persons who accept services from the accommodation provider with the knowledge or will of the contractual partner.

**§ 9** **Rights of the accommodation provider**

- 9.1 If the contractual partner refuses to pay the stipulated fee or is in arrears with it, the accommodation provider has the statutory right of retention in accordance with Section 970c ABGB and the statutory right of lien in accordance with Section 1101 ABGB on the items brought in by the contractual partner or the guest. The accommodation provider is also entitled to this right of retention or lien to secure his claims from the accommodation contract, in particular for meals, other expenses made for the contractual partner and for any claims for compensation of any kind.
- 9.2 If the service is requested in the contractual partner's room or at unusual times of the day (after 8:00 p.m. and before 6:00 a.m.), the accommodation provider is entitled to demand a special fee for this. However, this special fee must be indicated on the room price table. The accommodation provider can also refuse these services for operational reasons.
- 9.3 The accommodation provider has the right to billing or interim billing for its services at any time.

## **§ 10**      **Obligations of the accommodation provider**

10.1 The accommodation provider is obliged to provide the agreed services to an extent that corresponds to his standard.

10.2 Examples of special services provided by the accommodation provider that are not included in the accommodation fee are:

- a) Special accommodation services that can be invoiced separately, such as the provision of lounges, saunas, indoor pools, swimming pools, solarium, garages, etc.;
- b) a reduced price will be charged for the provision of extra beds or children's beds.

## **§ 11**      **Liability of the accommodation provider for damage to items brought in**

11.1 The accommodation provider is liable in accordance with §§ 970 ff ABGB for the items brought in by the contractual partner. The proprietor is only liable if the items have been handed over to the proprietor or persons authorized by the proprietor or have been brought to a location specified or designated by them. If the accommodation provider does not succeed in providing evidence, the accommodation provider is liable for his own fault or the fault of his people as well as the outgoing and incoming persons. According to § 970 paragraph 1 ABGB, the accommodation provider is liable up to a maximum of the amount specified in the federal law of November 16, 1921 on the liability of innkeepers and other entrepreneurs in the currently applicable version. If the contractual partner or the guest accepts the request of the accommodation provider, If you do not immediately deposit your belongings in a special storage location, the accommodation provider is released from any liability. The amount of any liability of the accommodation provider is limited to a maximum of the liability insurance sum of the respective accommodation provider. Any fault on the part of the contractual partner or guest must be taken into account.

11.2 The liability of the accommodation provider is excluded for slight negligence. If the contractual partner is an entrepreneur, liability is also excluded for gross negligence. In this case, the contractual partner bears the burden of proof for the existence of fault. Consequential damages or indirect damages as well as lost profits will not be compensated under any circumstances.

11.3 The accommodation provider is only liable for valuables, money and securities up to an amount of currently €550.00. The accommodation provider is only liable for further damage if he has accepted these items for safekeeping with knowledge of their condition or if he or one of his people is responsible for the damage. The limitation of liability according to 12.1 and 12.2 applies accordingly.

11.4 The accommodation provider may refuse to keep valuables, money and securities in custody if the items in question are significantly more valuable than the guests of the accommodation facility in question usually leave in custody.

11.5 In any case of assumed storage, liability is excluded if the contractual partner and/or guest does not immediately notify the accommodation provider of the damage that has occurred. In addition, these claims must be asserted in court within three years of knowledge or possible knowledge by the contractual partner or guest; otherwise the right has expired.

## **§ 12 Limitations of Liability**

12.1 If the contractual partner is a consumer, the accommodation provider's liability for slight negligence, with the exception of personal injury, is excluded.

12.2 If the contractual partner is an entrepreneur, the accommodation provider's liability for slight and gross negligence is excluded. In this case, the contractual partner bears the burden of proof for the existence of fault. Consequential damages, immaterial damages or indirect damages as well as lost profits will not be compensated. In any case, the damage to be compensated is limited to the level of trust.

## **§ 13** livestock farming

13.1 Animals may only be brought into the accommodation facility with the prior consent of the accommodation provider and, if necessary, for a special fee.

13.2 The contractual partner who takes an animal with him is obliged to keep or supervise this animal properly during his stay or to have it kept or supervised by suitable third parties at his own expense.

13.3 The contractual partner or guest who takes an animal with him must have appropriate animal liability insurance or private liability insurance, which also covers possible damage caused by animals. Proof of the relevant insurance must be provided at the request of the accommodation provider.

13.4 The contractual partner or his insurer are jointly and severally liable to the accommodation provider for the damage caused by animals brought along. The damage also includes in particular those compensation services by the accommodation provider which the accommodation provider has to provide to third parties.

13.5 Animals are not allowed in the salons, social and restaurant rooms and wellness areas.

## **§ 14 extension of accommodation**

14.1 The contractual partner is not entitled to have his stay extended. If the contractual partner announces his wish to extend the stay in good time, the accommodation provider can agree to the extension of the accommodation contract. The accommodation provider is under no obligation to do so.

14.2 If the contractual partner cannot leave the accommodation facility on the day of departure because all departure options are blocked or unusable due to unforeseeable, extraordinary circumstances (e.g. extreme snowfall, flooding, etc.), the accommodation contract will be automatically extended for the duration of the impossibility of departure. A reduction in the fee for this period is only possible if the contractual partner cannot fully use the services offered by the accommodation provider due to the unusual weather conditions. The accommodation provider is entitled to request at least the fee that corresponds to the price usually charged in the low season.

## **§ 15 Termination of the Accommodation Agreement - Premature Termination**

15.1 If the accommodation contract was concluded for a specific period of time, it ends when the period has expired.

15.2 If the contractual partner leaves early, the accommodation provider is entitled to demand the full agreed fee. The accommodation provider will deduct what he saved as a result of not using his range of services or what he received by renting the ordered rooms elsewhere. There is only a saving if the accommodation facility is fully booked at the time the guest does not use the room booked and the room can be rented to other guests due to the cancellation by the contractual partner. The contractual partner bears the burden of proof of the savings.

15.3 The contract with the accommodation provider ends with the death of a guest.

15.4 If the accommodation contract was concluded for an indefinite period, the contracting parties may terminate the contract by 10:00 a.m. on the third day before the intended end of the contract.

15.5 The accommodation provider is entitled to terminate the accommodation contract with immediate effect for good cause, especially if the contractual partner or the guest

a) makes a significantly disadvantageous use of the premises or, through his inconsiderate, offensive or otherwise grossly indecent behavior towards the other guests, the owner, his people or the third parties living in the accommodation facility, spoils the living together or commits a punishable offense towards these people guilty against property, morals or physical safety;

b) is affected by an infectious disease or an illness that goes beyond the duration of the accommodation or otherwise requires care;

c) the submitted invoices are not paid within a reasonable period of time (3 days) when they are due.

15.6 If the fulfillment of the contract becomes impossible due to an event to be considered force majeure (e.g. acts of God, strike, lockout, official orders, etc.), the accommodation provider can terminate the accommodation contract at any time without observing a period of notice, provided that the contract is not already considered terminated by law, or the accommodation provider is released from his accommodation obligation. Any claims for damages etc. by the contractual partner are excluded.

## **§ 16 illness or death of the guest**

16.1 If a guest falls ill during their stay in the accommodation facility, the accommodation provider will provide medical care at the guest's request. If there is imminent danger, the accommodation provider will also arrange for medical care without the guest's special request, especially if this is necessary and the guest is unable to do so himself.

16.2 As long as the Guest is unable to make decisions or the Guest's relatives cannot be contacted, the Accommodation Provider will provide medical treatment at the Guest's expense. However, the scope of these care measures ends at the point in time at which the guest can make decisions or the relatives have been informed of the illness.

16.3 The accommodation provider has claims for compensation against the contractual partner and the guest or, in the event of death, against their legal successor, in particular for the following costs:

- a) Outstanding medical expenses, costs for ambulance transport, medication and medical aids
- b) room disinfection that has become necessary,
- c) linen, bed linen and bed furnishings that have become unusable, otherwise for the disinfection or thorough cleaning of all these items,
- d) Restoration of walls, furnishings, carpets, etc., insofar as these were contaminated or damaged in connection with the illness or death,
- e) Room rent, insofar as the room was used by the guest, plus any days that the room cannot be used due to disinfection, clearance or similar,
- f) any other damage incurred by the accommodation provider.

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

17.1 The place of fulfillment is the place where the lodging establishment is located.

17.2 This contract is subject to Austrian formal and substantive law to the exclusion of the rules of international private law (in particular IPRG and EVÜ) and UN sales law.

17.3 The exclusive place of jurisdiction in bilateral entrepreneurial transactions is the seat of the accommodation provider, whereby the accommodation provider is also entitled to assert its rights at any other local and factually competent court.

17.4 If the accommodation contract was concluded with a contractual partner who is a consumer and has his domicile or habitual abode in Austria, lawsuits against the consumer can only be brought at the domicile, habitual abode or place of employment of the consumer.

17.5 If the accommodation contract was concluded with a contractual partner who is a consumer and has his place of residence in a member state of the European Union (with the exception of Austria), Iceland, Norway or Switzerland, this is local and factual for the consumer's place of residence for legal action against the consumer competent court has exclusive jurisdiction.

**§ 18**      **Miscellaneous**

18.1 Unless otherwise provided for in the above provisions, a period begins upon delivery of the document ordering the period to the contractual partner who is responsible for observing the period. When calculating a period, which is determined by days, the day in which the point in time or the event falls, on which the beginning of the period should be based, is not counted. Deadlines determined by weeks or months refer to that day of the week or month which, by its name or number, corresponds to the day from which the deadline is to be counted. If this day is missing in the month, the last day in this month is decisive.

18.2 Declarations must be received by the other contractual partner on the last day of the period (24 hours).

18.3 The accommodation provider is entitled to offset claims of the contractual partner with its own claims. The contractual partner is not entitled to offset its own claims against claims of the accommodation provider, unless the accommodation provider is insolvent or the claim of the contractual partner has been determined by a court or recognized by the accommodation provider.

18.4 In the event of loopholes, the relevant statutory provisions shall apply.