

# **General Terms and Conditions of Business Hotel Felben Scharler GmbH & CoKG**

**As of 01.02.2008**

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## **§ 1 Areas of Application**

- 1.1. These general Terms and Conditions of Business for the **Children's Hotel (Felben)** replace the general terms and conditions of business for the hotel industry.
- 1.2. These Terms and Conditions of Business do not rule out special agreements. The Terms and Conditions of Business are subsidiary to any individually made agreements.

## **§ 2 Definition of Terms**

The terms used in this contract are thus defined:

The "accommodation provider": is the legal body Hotel Felben Scharler GmbH & CoKG which accommodates guests in return for payment.

The "guest": is an individual person who makes use of the accommodation. The guest is usually the contractual partner. A "guest" is also any person who stays in the accommodation together with the contractual partner (e.g. member of the family, friend etc.)

The "contractual partner": is an individual person or legal body from inland or a foreign country who/which enters an accommodation contract as a guest or for a guest.

The "consumer" and "business": these terms refer to individual persons or legal bodies according to the Consumer Protection Laws 1979 idgF.

The "accommodation contract": is the contract made between the accommodation provider and the contractual partner, the contents of which are regulated in detail as follows.

## **§ 3 Closing of Contract – Deposit**

- 3.1. The accommodation contract is entered into when the hotel accepts the contractual partner's booking. Electronic declarations are considered accepted when the party, for which it is intended, can access the declaration in a normal manner and when the advertised opening hours of the accommodation provider (daily 7:30 a.m. to 9:00 p.m.) are effected.
- 3.2. The contractual partner is obliged to pay the deposit (1/3 of the accommodation price) 3 months (already credited to the account) prior to arrival at the latest. For bookings made less than 3 months prior to the date of arrival, the deposit should be paid (already credited to the account) within 14 days after the booking date at the latest. The costs for bank transaction (e.g. transfer fees) are to be paid by the contractual partner. For credit card transaction the conditions of the relevant credit card company apply.
- 3.3. The deposit is a part payment of the total agreed price.

## **§ 4 Commencement and Cessation of Use of Accommodation**

- 4.1. The contract partner has the right to move into the booked room from 2 p.m. onwards on the agreed date (day of arrival), unless an alternative time is stated by the accommodation provider.
- 4.2. should the room be used for the first time before 6 a.m., the previous night is then considered the first night's stay.
- 4.3. The rooms booked by the contract partner should be vacated on the day of departure by 10 a.m. The accommodation provider is entitled to charge for an additional day if the rooms are not vacated on time.

## **§ 5 Withdrawal From the Accommodation Contract – Cancellation Fee**

### **Withdrawal by the accommodation provider**

- 5.1. Should the accommodation provider stipulate a deposit payment, and this deposit payment is not received by the due date, the accommodation provider is then entitled to withdraw from the contract without offering any additional respite.
- 5.2. Should the guest fail to arrive before 6 p.m. on the agreed arrival date, the accommodation provider is not obliged to provide accommodation, unless a later arrival was agreed upon in advance.
- 5.3. If the contractual partner makes a deposit payment (see 3.3), then the reserved rooms will held available for the guest until midday on the day after the agreed arrangement. If the rooms have been booked for more than four days and paid for in advance, then the obligation to provide accommodation ends at 6 p.m. on the fourth day, whereby the arrival day is considered the first day unless the guest stipulates an alternative arrival date.
- 5.4. The accommodation contract can be cancelled by the accommodation provider for realistically justifiable reasons by means of a unilateral declaration, up to 3 months prior to the agreed arrival day of the contractual partner, unless otherwise agreed upon.

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

- 5.5. The contractual partner can cancel the contract by means of a unilateral declaration up to 3 months prior to the guests' agreed arrival day without incurring any cancellation fees.
- 5.6. After the period stated in § 5.5. should the contractual partner cancel the contract by means of a unilateral declaration the following cancellation fees will be charged:
  - 3 months to 1 month prior to the arrival day 40 % of the total holiday price;
  - 1 month to 1 week prior to the arrival day 70 % of the total holiday price;
  - in the week prior to the arrival day 90 % of the holiday price .

up to 3 months prior to day of arrival	3 months to 1 month prior to day of arrival	1 month to 1 week prior to day of arrival	In the week prior to day of arrival
No cancellation fee	40%	70%	90%

### **Hindrances on the journey to the accommodation**

- 5.7. Should the contractual partner not arrive at the accommodation on the agreed day of arrival because of unexpected and extraordinary circumstances (e.g. extreme snowfall, floods etc.) which make travelling and an arrival impossible by any means, then the contract partner is not obliged to pay the agreed sum for the day of arrival.
- 5.8. The duty of payment for the duration of the stay booked commences when the possibility to travel and arrive is reinstated. Arrival within three days is possible.

## **§ 6 Providing alternative accommodation**

- 6.1. The accommodation provider can allocate the contractual partner alternative accommodation (same standard) when it is acceptable within reason to the contract partner, especially when the divergence/difference is minimal and realistically justifiable.
- 6.2. A realistic justification is given for example when the room (the rooms) has (have) become unusable, when guests already occupying the rooms (rooms) decide to extend their stay, when an over-booking occurs or other important company internal reasons which make these measures necessary.
- 6.3. Any additional costs incurred for the alternative accommodation are to be paid by the accommodation provider.

## **§ 7 Rights of the Contractual Partner**

- 7.1. By entering a accommodation contract the contractual partner acquires the right of normal use of the rented rooms, the facilities in the accommodation complex which are generally open for normal use by guests. The contract partner has the right to act within any hotel or guest regulations (house rules).

## **§ 8 Obligations of the Contractual Partner**

- 8.1. The contractual partner is obliged to pay the agreed sum, plus any additional logistic amounts incurred by him and/or the guests accompanying him, plus the statutory value added tax at the time of his departure at the latest.
- 8.2. The accommodation provider is not obliged to accept foreign currency. Should the accommodation provider accept foreign currency, then at the daily exchange rates for the transaction insofar as these are available. Should the accommodation provider accept foreign currency or non-cash payment, any transaction costs, such as credit card verification queries, telegrams etc., are to be borne by the contractual partner.
- 8.3. The contractual partner is liable for any damages caused by himself, his accompanying guests or any other persons who use the accommodation facilities and services with the contractual partner's knowledge or consent.

## **§ 9 Rights of the Accommodation Provider**

- 9.1. Should the contractual partner refuse to pay the agreed/required sum or should he be in arrears with the payment, the accommodation provider is entitled to make use of the "retention of goods" laws in accordance with the Austrian Civil Code § 970c ABGB and lien on movable objects laws in accordance with the Austrian Civil Code § 1101 ABGB with respect to the belongings brought to the accommodation by the contractual partner or the guest. The accommodation provider is entitled to make use of these retention of goods or lien on movable objects rights in order to secure his outstanding payment demands from the accommodation contract, particularly with regard to board and catering, other expenses incurred by the accommodation provider for the contractual partner and for any other compensation claims of any kind.
- 9.2. Should room service be ordered by the contractual partner or ordered at unusual times of the day (after 8 p.m. and before 6 am.), the accommodation provider is entitled to charge a special rate for these services. These special rates should be displayed on the price board in each room. The accommodation provider can also refuse to carry out these services for organisational reasons.
- 9.3. The accommodation provider is entitled to ask the contractual partner to settle his account, or to ask for part payment for the services consumed at any time.

## **§ 10 Obligations of the Accommodation Provider**

- 10.1. The accommodation provider is obliged to provide the agreed service at the appropriate standard and to the appropriate extent.
- 10.2. The accommodation provider is obliged to display additional services that are not included in the accommodation price such as:
  - a) Additional services offered by the accommodation provider that are charged as extras such as the use of a solarium, massages, cosmetic treatments, garage space etc.
  - b) A reduced charge will be made for providing extra beds and cots.

## **§ 11 The Accommodation Provider's Liability for Property Brought to the Accommodation by Guests**

- 11.1. The accommodation provider is liable for property brought to the accommodation by the contractual partner in accordance with the Austrian Civil Code §§ 970 ff ABGB. The accommodation provider is only liable for property which has been handed over to the accommodation provider or authorised representatives of the accommodation provider, or when the property is brought to a certain location designated for the purpose or determined by the accommodation provider or authorized representatives thereof. If the accommodation owner cannot prove otherwise, he is liable for own default or the default of his staff or persons with access to the accommodation.  
In accordance with the Austrian Civil Code § 970 Abs 1 ABGB the accommodation provider is liable to a maximum amount stipulated by the relevant version of the Austrian Federal Law from 16th November 1921 concerning the liability of innkeepers and other businesses. Should the contractual partner not follow the accommodation provider's request immediately to deposit certain belongings at the specifically designated place, the accommodation provider is freed of any liability. The amount for which the accommodation provider is liable is limited to the maximum amount covered by the said accommodation provider's general liability insurance. Default on the part of the contractual partner should be taken into account
- 11.2. The liability of the accommodation provider excludes slight negligence. If the contractual partner is a company, then the liability of the accommodation owner also excludes gross negligence. In this case, the burden of proof of the existence of default lies with the contractual partner. Consequential damages and indirect damages will not be compensated in any way.
- 11.3. In the case of valuables; money and securities, the accommodation provider is only liable up to the amount of € 550,-- at this point in time. The accommodation provider is only liable for damages above and beyond this amount when the accommodation provider agreed to look after the valuables in the knowledge of their value. Liability limitations apply according to points 12.1 and 12.2.
- 11.4. The safekeeping of valuables, money and securities can be refused by the accommodation provider, should the valuables be of a considerably higher value than the property usually deposited by guests.
- 11.5. In any case, liability for the deposited items is excluded, should the contractual partner / guest fail to press charges for the suffered damages against the accommodation provider immediately. In addition these claims must be brought to bear by the contractual partner within three years of knowledge or possible knowledge of the suffered damage, otherwise their right to do so lapses.

## **§ 12 Liability Limitations**

- 12.1. Should the contractual partner be a consumer, then the liability of the accommodation provider excludes slight negligence with the exception of injury to persons.
- 12.2. Should the contractual partner be a business, then the liability of the accommodation owner excludes slight and gross negligence. In this case, the burden of proof of the existence of default lies with the contractual partner. Consequential damages, personal or moral injury and indirect damages will not be compensated in any way. The damages claimed are limited, in any case, to breach of faith.

## **§ 13 Pets**

- 13.1. No animals of any kind are allowed in the hotel interior or outdoor facilities.

## **§ 14 Extension of Stay at the Accommodation**

- 14.1. The contractual partner does not have the right to demand an extension of stay. Should the contractual partner give timely notice of his desire to extend his stay, the accommodation provider can then agree to the extension of the accommodation contract. The accommodation provider is however, not obliged to extend the contract.
- 14.2. Should the contractual partner be unable to vacate the accommodation on the agreed day of departure due to unforeseen, extraordinary circumstances (e.g. extreme snowfall, flooding) that make all methods of departure impossible, the extension of the contract will be automatically extended until departure is once again possible. A reduction in payment during this time is at best possible only when the contractual partner is not able to take full advantage of the facilities and services offered by the accommodation provider due to the extraordinary circumstances. The accommodation provider is entitled to request payment equivalent to the rates usually charged in low season.

## **§ 15 Cessation of the Accommodation Contract – Premature Termination**

- 15.1. Should the closed accommodation contract determine the duration of stay, then the contract ceases at the end of this duration.
- 15.2. Should the contractual partner depart prematurely, the accommodation provider is entitled to charge the full amount agreed upon. The accommodation provider will deduct the value of the savings resulting from the contractual partner's non-consumption or the re-rental of the booked room(s). A saving only exists when the accommodation is completely fully booked at the time of the non-consumption of the booked rooms by the contractual partner and when the rooms can be re-rented to other guests due to the cancellation/premature departure. Burden of proof of a saving lies with the contractual partner.
- 15.3. The contract ends in the event of a guest's death.
- 15.4. Should the accommodation contract have been made for an indefinite period, the contractual partner can end the contract by giving notification of termination by 10 a.m. at least three days prior to the planned termination.
- 15.5. The accommodation provider is entitled to end the contract with immediate effect for valid reasons, in particular when the contractual partner or guest
  - a) uses or handles the accommodation in a seriously detrimental manner; spoils or makes cohabitation impossible for other guests, the owners and/or their staff or any other third parties staying in the accommodation due to his inconsiderate, objectionable or otherwise grossly unseemly behaviour; or when he acts in a criminal manner towards these persons and by so doing threatens their property, morals or personal safety.
  - b) is afflicted with a contagious illness or an illness that lasts longer than the duration of the stay in the accommodation or becomes otherwise in need of medical care.
  - c) fails to pay the issued bill when due within a reasonably allocated period (3 days)
- 15.6. Should the fulfilment of contract be made impossible due to events considered an act of nature beyond control (e.g.: natural events/acts of God, strikes, lock-outs, official decrees etc.), the accommodation provider is entitled to cancel the contract at any time without adherence to a cancellation period, provided the contract is not already considered terminated by law, or when the accommodation provider has already been freed of his obligation to provide accommodation. Compensation claims by the contractual partner are impossible.

## **§ 16 Illness or Death of a Guest**

- 16.1. Should a guest become ill during his stay in the accommodation, the accommodation provider is to take care of the guests wishes with regard to medical assistance. In the face of imminent danger, the accommodation provider can arrange medical assistance without receiving an explicit request from the guest, in particular when this is deemed necessary and the guest is unable to do so himself.
- 16.2. As long as the guest is unable to make decisions for himself, and the guest's relatives cannot be contacted, the accommodation provider is responsible for organizing medical assistance at the guest's cost. This responsibility ends as soon as the guest is able to decide for himself or when relatives have been informed of the case of illness.
- 16.3. The accommodation provider is entitled to claim costs from the contractual partner and the guest or, in case of death, from the legal successor, in particular in the following cases:
  - a) outstanding doctors fees, costs for patient transportation, medication and treatment
  - b) any necessary room disinfecting/fumigation
  - c) the replacement costs of ruined laundry, linen, bedding material or for the disinfection costs of these items.
  - d) restoration or repair of walls, fixtures and furnishing, carpets etc. as far as these were soiled or damaged due to the case of illness or death.
  - e) room rental for the period of occupancy by the guest, plus any further days where the room was out of commission due to disinfection, clearance etc.
  - f) any other damages occurred by the accommodation provider.

## **§ 17 Place of fulfilment, jurisdiction and choice of law**

- 17.1. Place of fulfilment is the place in which the accommodation is located.
- 17.2. This contract is subject to the Austrian procedural and substantive law excluding the regulations for international Civil Law Regulations (in particular IPRG and EVÜ – agreement on applicable law) and the UN Convention of Contracts for the International Sale of Goods.
- 17.3. Exclusive jurisdiction is, in the case of bilateral business to business, the registered office/domicile of the accommodation provider, whereby the accommodation provider is entitled to assert his right in any other locally responsible court of law.
- 17.4. Should the accommodation contract be entered into with a contractual partner who is a consumer and an Austrian resident or whose main place of residence is Austria, law suites brought against the consumer can only be filed in the place of residence, the main place of residence or place of employment of the consumer.
- 17.5. Should the accommodation contract be entered into with a contractual partner who is a consumer and a resident of an EU country (excluding Austria), Iceland, Norway or Switzerland, then the exclusive place of jurisdiction is the local and responsible court of law for the place of residence of the consumer.

## **§ 18 Miscellaneous**

- 18.1. Provided that the above mentioned terms state nothing specifically to the contrary, the course of a time limit begins with the delivery of the document in which the time limit is set to the contractual partner by whom the time limit has to observe. For time limits calculated in days, the day on which the point in time or event takes place which appropriates the commencement of the time limit is not included in the time limit. When time limits are calculated in weeks or months, the named day or date is equivalent to the commencement of the time limit. The last day of the month in which the day falls is definitive.
- 18.2. Explanatory statements must reach the respective contract partner by the last day of the time limit (12 o'clock midnight).
- 18.3. The accommodation provider is entitled to offset claims made by the contractual partner with a contra-claim. The contractual partner is not entitled to offset claims made by the accommodation provider with contra-claims unless the accommodation is insolvent or the claims of the contractual partner have been established by a court of law, or have been accepted by the accommodation provider
- 18.4. In the case of loopholes, the legal regulations apply.

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