DERAG

LIVING HOTELS®

General Terms and Conditions of Living Hotel Das Viktualienmarkt GbR

I. Scope of application

1. The following General Terms and Conditions shall apply to all contracts which comply with the characteristics of the law on general terms and conditions (AGB-Gesetz). These General Terms and Conditions are clearly and generally visible on display in the Hotel (particularly in the reception area) and will be separately handed out to the guest or client when entering into an agreement.
2. These Terms and Conditions particularly apply to contracts regarding the rental provision of hotel rooms and apartments for accommodation purposes as well as any other services and deliveries rendered by the hotel to the customer.
3. Subletting or re-letting as well as the use for any purpose other than the agreed one require prior written approval.
4. Terms and Conditions of the customer will only be applicable if this was priorly agreed in writing.
5. These Terms and Conditions apply to both consumers and businesses, insofar as it has not been defined in a specific clause. Concerning these Terms and Conditions, a consumer is a natural person who concludes a legal transaction, which cannot be attributed to a commercial or independent professional purpose (§ 13 BGB).

II. Conclusion of contract; contracting party; liability; statutes of limitation

1. The contract shall be established on acceptance of the customer's request by the Hotel. It is up to the Hotel to confirm the hotel reservation in writing.
2. Contracting parties are the Hotel and the customer. If a third party makes the reservation as an agent on behalf of the customer, this third party together with the customer shall be liable towards the Hotel as joint debtor for all obligations arising out of the hotel accommodation contract.

III. Services, prices, payment, offsetting

1. The agreed prices include the respective legal value-added tax. If the period between conclusion of contract and implementation of contract exceeds 4 months and if the price charged by the Hotel for such services has increased, the Hotel will be entitled to increase the price agreed by contract appropriately, at most by 15%.
2. Invoices by the Hotel are immediately payable without deduction. The Hotel shall be, at any time, entitled to call due accumulated accounts receivable. The delay occurs latest if the customer has not settled the claim within 14 days of maturity, having access to a corresponding bill; this is only valid in respect to a customer, if stated so clearly in the bill. On delay of payment, the Hotel shall be entitled to charge the statutory interests and to terminate the contract. Should the customer have booked via a third party booking portal, it is possible that the billing procedure will be conducted through the operator of said booking portal.
3. Assertion of further damage caused by delay on the part of the Hotel remains reserved.
4. On conclusion of the contract or afterwards, the Hotel shall be entitled to demand an appropriate advance or security payment. The amount of the advance payment and dates of payment may be stipulated in the contract in writing.
5. The customer may only offset or reduce a claim by the hotel with a claim which is undisputed or legally valid.

IV. Withdrawal of the customer (counter-order, cancellation) / non-utilization of the Hotel's service

1. If there is neither a right of rescission under contract nor under law in favour of the customer, the Hotel will still have a claim to the agreed compensation although the service has not been used.
2. If rooms have not been used by the customer, the Hotel has to set-off the receipts from the renting of the rooms to other parties as well as the saved expenses.
3. In case of a reservation up to max. 3 apartments and should there be no other cancellation policies agreed upon with the customer, the Hotel shall be entitled to a lump-sum compensation for damage as follows: On cancellation by the customer 1-7 days before arrival or in case of a no-show, the customer will pay 100% of the price agreed for the reserved duration of stay as lump-sum damages, for max. 28 nights; should breakfast be included in the booking, the lump sum is reduced to 80%.
4. In case of an early departure, the minimum length of stay cannot fall below 14 or 28 nights.
5. If rooms have not been used by the customer, the Hotel has to set-off the receipts from the renting of the rooms to other parties as well as the saved expenses. The customer is free to furnish evidence that the damage mentioned has not been caused or has not been caused to the amount claimed. The Hotel is free to furnish evidence of a larger damage, as well.

V. Withdrawal of the Hotel

1. As far as a right of rescission within a certain period has been agreed in favour of the customer in writing, the Hotel will also be entitled to withdraw from the contract within this period if other customers have asked for the rooms booked by contract and if the customer on inquiry by the Hotel does not waive his right of rescission.
2. If an agreed advance payment is not paid in due time, the Hotel will be entitled to withdraw from the contract, as well.
3. Furthermore, the Hotel shall be entitled to an extraordinary withdrawal from the contract for practically justified reasons, for example
   - In case of force majeure or other circumstances for which the Hotel is not responsible making it impossible to fulfil the contract;
   - If rooms are booked under misleading or false information with regard to relevant facts, e.g. regarding the customer details or their purpose of stay;
   - If there are reasonable justifications for the Hotel to believe that the utilization of the service rendered by the Hotel may impair the smooth operation of business, whereas this risk cannot be attributed to the Hotel's control or organisation;
   - If a violation against Paragraph I section 3 of these General Terms and Conditions occurs.
4. The customer commits to unsolicitedly - informing the Hotel immediately upon conclusion of the contract at the latest, that the conditions of the service and/or event, whether due to its political, religious or other nature, could attract public interest or affect the Hotel's interests adversely. Newspaper advertisements, other advertising efforts and publications which include any reference to the Hotel always require written approval by the Hotel. If the customer violates this duty of discovery or if publication is effected without such approval, the Hotel shall be entitled to cancel the event.

VI. Provision of rooms, checking in and out

1. The customer shall not be entitled to the provision of specific rooms.
2. Booked rooms are available to the customer from 3 pm of the agreed day of arrival. The customer shall not be entitled to claim earlier provision.
3. On the agreed day of departure, the rooms have to be vacated and made available to the Hotel by 11 am at the latest. Afterwards, in addition to the damage caused by this, the Hotel may charge for the additional use of the room 50% of the full lodging price (list price) until 6 pm and 100% from 6 pm onwards. The customer is free to furnish evidence that no damage or a considerably smaller damage has been caused to the Hotel.
4. In case of extension of the duration of stay with regard to apartment bookings, a new reservation has to be made up to 7 days before expiration of the contract. Tacit extension of reservation shall be excluded. If the customer does not leave the room in due time, this constitutes the fact of illegitimate interference. The Hotel shall therefore be entitled to exercise the right of self-redress, to resume possession of the apartment and to temporarily place the items left in the room by the guest in a storage room at the expense and risk of the guest by exercising a right of lien.
5. The Hotel is entitled to enter the rooms and apartments at customary times of the day during the customer's stay for the purpose of cleaning and maintenance of the spaces.
6. The customer has to verify if his or her stay in an apartment entails the obligation to register at the resident registration office. The customer recognizes that – should he or she register for the duration of the stay – possible fees, especially broadcasting fees for the apartment, have to be paid accordingly.

VII. Guest Registration, Statutory Registration Requirements and Data Protection

1. The guest is required to provide the hotel with the information necessary for the conclusion, performance and administration of the accommodation contract. This includes, in particular, the guest's first and last name, billing address, as well as booking, stay and payment details, insofar as such information is necessary for the performance of the specific contract.
2. Foreign nationals staying at the hotel must comply with the special statutory registration requirements pursuant to Sections 29 and 30 of the German Federal Registration Act (Bundesmeldegesetz – BMG). In particular, they must provide the information required by law on the special registration form on the day of arrival and present a recognised and valid passport or passport substitute as proof of identity.
3. The hotel is entitled to collect and process personal data relating to domestic guests insofar as such data is necessary for the performance and administration of the accommodation contract. Additional personal data will only be collected where a separate statutory basis exists or where such information is provided voluntarily.
4. The legal basis for processing personal data necessary for the performance and administration of the accommodation contract is Article 6(1)(b) of the General Data Protection Regulation (GDPR). Where the hotel is required to collect or process personal data in order to comply with statutory obligations, in particular pursuant to Sections 29 and 30 BMG or applicable state or municipal regulations concerning tourism and spa levies, such processing is based on Article 6(1)(c) GDPR.
5. Registration data collected pursuant to Sections 29 and 30 BMG may only be processed to the extent permitted by law and for the purposes prescribed by law. Special registration forms must be retained for one year from the date of departure and destroyed within three months following the expiry of this retention period (Section 30(4) BMG).
6. Contractual, booking, billing and payment data will be deleted as soon as they are no longer required for their respective processing purposes, unless statutory retention or evidentiary obligations require a longer retention period.
7. Full information regarding the processing of personal data, including the data controllers, purposes of processing, legal bases, recipients of personal data, retention periods and the rights of data subjects, is provided in the hotel's separate Privacy Notice.

8. Information that is not necessary for the performance of the accommodation contract or compliance with statutory obligations will only be collected on a voluntary basis. Refusal to provide such information, or subsequent withdrawal of voluntarily provided information, will not affect the performance of the accommodation contract, unless, in exceptional cases, the information concerned is actually necessary for that purpose. Where information necessary for the performance of the specific accommodation contract is not provided, the contract cannot be concluded or the stay cannot take place.

VIII. Liability of the Hotel

1. The Hotel is fully liable for intent and gross negligence. The Hotel is partially liable solely for the contractually typical foreseeable damage for simple negligence, as long as a duty necessary for the proper fulfillment of the contract and which a client can expect regularly (cardinal obligation), has been breached.
2. In case of initial impossibility, the Hotel is only liable if it knows about the impediment beforehand or the lack of awareness is due to gross negligence.
3. The preceding limitations and exclusions of liability do not apply to malicious non-disclosure of a defect, from assumption of a warranty and from damages due to an injury to life, body or health.
4. Insofar as the Hotel's liability is excluded or limited, this also applies to the personal liability to its employees, representatives and vicarious agents.
5. Liability claims by the customer lapse within 12 months. For injuries to life, body or health, gross negligent or intentional conduct, the culpable breach of the cardinal obligation according to point VIII. 1, as well as breach of warranties, the legal statutes of limitation.
6. The beginning of the limitation period is determined by the legal provisions. For items brought in, the Hotel is liable towards the customer according to the legal provisions. In case of money, securities and other valuables no more than EUR 800.00. Money and objects of value may be deposited in the Hotel's safe. Liability claims become extinct if the customer does not report the loss, destruction or damage to the Hotel immediately after it came to the customer's knowledge (§ 703 BGB).
7. If the customer is provided with a parking space in the Hotel's garage or on the Hotel's car park – whether against payment or not – this does not constitute a custody agreement. If vehicles that have been parked or shunted on the hotel premises or if contents of such vehicles get lost or are damaged, the Hotel will not be liable with the exception of intent or gross negligence. This shall also apply to vicarious agents of the Hotel.
8. Wake-up services are performed by the Hotel with utmost care. Claims for damages shall be excluded with the exception of gross negligence and intent.
9. Messages, post and shipments for the guests are treated with care. The Hotel takes care of sending, depositing and – on request – forwarding them for a fee. Claims for damages shall be excluded with the exception of gross negligence and intent.
10. Objections against telephone invoices may only be raised within one month after receipt.

IX. Information on online dispute resolution between consumers and businesses

1. We are neither obliged nor willing to participate in dispute resolution proceedings before a consumer arbitration board under the German Consumer Dispute Resolution Act (VSBG).

X. Final provisions

1. Modifications of or supplements to this contract or the acceptance of application require to be made in writing. A change of the form requires to be in writing, as well. Unilateral changes or supplements by the customer shall be ineffective.
2. Place of performance is the registered seat of the Hotel.
3. Solely the law of the Federal Republic of Germany is valid with the exclusion of the UN purchase right. The legal provisions to the limitation of choice of law and the applicability of mandatory provisions of the specific country, in which the customer has his or her habitual residence, remains untouched.
4. Exclusive place of jurisdiction is the registered seat of the Hotel, if the customer is a merchant, legal person and public law or separate funds under public law.
5. Should individual provisions of these General Terms and Conditions be or become ineffective or void, the effectiveness of the remaining provisions shall not be affected by this.