

GENERAL TERMS AND CONDITIONS OF AUSTRIAN HOTEL CONTRACTS (TCAHC)

**(as agreed at the 93rd Committee Meeting of the
Austrian Professional Hoteliers Association on 23 September 1981)**

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§ 1 General

The (general) terms and conditions of Austrian hotel contracts provide the content for the accommodation contracts which Austrian accommodation providers normally conclude with their guests.

The terms and conditions of Austrian hotel contracts do not rule out special agreements being concluded.

§ 2 Contractual partner

(1) In the event of doubt, the contractual partner of the accommodation provider will be taken to be the party placing the order, even if he has ordered or jointly ordered on behalf of other persons identified by name.

(2) The persons making use of the accommodation are guests in accordance with the terms and conditions of contracts.

§ 3 Conclusion of contract, down payment

(1) The accommodation contract generally comes into force through the written or verbal acceptance of the guest's order by the accommodation provider.

(2) It can be agreed that the guest will make a down payment.

(3) The accommodation provider can also request advance payment of the entire payment amount agreed.

§ 4 Start and end of the accommodation period

- (1) The guest has the right to occupy the hired rooms from 14.00 on the agreed date.
- (2) If the guest does not appear by 18.00 on the agreed arrival date, the accommodation provider has the right to withdraw from the contract unless a later arrival time has been agreed.
- (3) However, if the guest has made a down payment, then the room(s) will remain reserved until 12.00 the following day at the latest.
- (4) If a room is occupied for the first time before 06.00, then the previous night will count as the first overnight stay.
- (5) The hired rooms must be vacated by the guest by 12.00 on the day of departure.

§ 5 Withdrawal from the accommodation contract

- (1) Up to three months before the agreed arrival date of the guest at the latest, the accommodation contract can be dissolved by both parties by means of a unilateral statement without the payment of a cancellation fee.
The statement of cancellation must be in the hands of the contractual partner by three months before the agreed arrival date of the guest at the latest.
- (2) Up to one month before the agreed arrival date of the guest at the latest, the accommodation contract can be dissolved by both parties by means of a unilateral statement, however a cancellation fee amounting to the price of the room for three days is payable.
The statement of cancellation must be in the hands of the contractual partner by one month before the agreed arrival date of the guest at the latest.
- (3) If the guest does not appear by 18.00 on the agreed arrival date, the accommodation provider has the right to withdraw from the contract unless a later arrival time has been agreed.
- (4) However, if the guest has made a down payment, then the room(s) will remain reserved until 12.00 the following day at the latest.
- (5) Even if the guest does not use the rooms he has ordered or the services of the establishment, he is still obliged to pay the accommodation provider the agreed amount. However, the accommodation provider must deduct the amount he has saved due to the services he has offered not being used or the amount he has received through letting the ordered rooms to other guests.
Experience has shown that in most cases the savings made by the establishment as a result of the service not being provided come to 20 percent of the room price and 30 percent of the price of meals.
- (6) It is incumbent upon the accommodation provider to make every effort to let the unused rooms to other guests depending on the circumstances (§ 1107 ABGB [*Austrian Civil Code*]).

The cancellation terms referred to in Points 1, 2 and 5 above are **non-binding recommendations** by the Association in accordance with §§ 31ff of the Kartellgesetz [Cartel Law], as announced in 26 Kt 79/03 by the Higher Regional Court of Vienna acting as the cartel court.

§ 6 Provision of alternative accommodation

(1) The accommodation provider may provide the guest with alternative accommodation, in particular where the difference is minor and objectively justifiable.

(2) Objective justification exists for example if the room(s) has (have) become unusable, the guests already occupying them extend their stay, or any other business activities make this step necessary.

(3) Any additional costs incurred through the use of the alternative accommodation will be at the expense of the accommodation provider.

§ 7 The guest's rights

(1) By concluding an accommodation contract the guest acquires the right to the normal use of the hired room(s), the facilities which are normally accessible for use by guests of the establishment providing the accommodation without any special terms being applied, and the usual service.

(2) The guest has the right to occupy the hired rooms from 14.00 on the agreed date.

(3) If full or half board has been agreed, then if the guest does not make use of meals, he has the right to request an appropriate substitute catering provision (a packed lunch) or a voucher provided he has notified the accommodation provider of this in good time, namely by 18.00 the previous day.

(4) Otherwise the guest has no claim to compensation if he does not make use of the agreed meals within the normal periods of time and in the rooms specified for this despite the fact that the accommodation provider is willing to provide such services.

§ 8 The guest's obligations

(1) When the accommodation contract ends, the agreed amount must be paid. Foreign currency will be accepted in payment by the accommodation provider where this is feasible and at that day's exchange rate.
The accommodation provider is not obliged to accept non-cash payment methods such as cheques, credit cards, vouchers, coupons etc.
All costs incurred in accepting these instruments, such as for sending telegrams, making inquiries etc, will be at the expense of the guest.

(2) Where food or drinks are available in the accommodation establishment, but are brought into it from outside and consumed in public rooms, then the accommodation provider is entitled to charge for appropriate compensation (so-called corkage charge).

3) If guests bring electrical equipment with them which does not form part of the normal travel requirements, then the agreement of the accommodation provider must be obtained before using them.

(4) The provisions of the law on compensation will apply to any damages caused by the guest. The guest is consequently liable for any damage and disadvantage which the accommodation provider or third parties suffer through his fault or through the fault of people accompanying him or other persons for which he is responsible, even when the injured party is entitled to claim compensation directly from the accommodation provider.

§ 9 The accommodation provider's rights

(1) If the guest refuses to pay the due amount or if he is in arrears, then the owner of the accommodation establishment has the right to retain the articles the guest has brought with him as security for his claim from the accommodation and board and his expenditure on the guest's behalf.

(§ 970 c ABGB – statutory right of retention)

(2) In order to guarantee his right to the agreed amount, the accommodation provider has the right of lien over the items the guest has brought with him.

(§ 1101 ABGB – statutory right of lien of the accommodation provider)

(3) If service is requested in the guest's room or at unusual times of day, the accommodation provider is entitled to request a special fee for this; however this special fee must be displayed on the board showing the room prices. He can decline to provide these services for operational reasons.

§ 10 The accommodation provider's duties

(1) The accommodation provider is obliged to provide the agreed services in accordance with the appropriate standard.

(2) Special services from the accommodation provider which must be displayed and are not included in the amount payable for the accommodation are:

- a) Special accommodation services which can be invoiced separately, such as the provision of lounges, sauna, indoor or swimming pool, solarium, garaging etc.
- b) A reduced price will be charged for providing additional or children's beds.

(3) The prices displayed must be inclusive prices.

§ 11 The accommodation provider's liability for damages

(1) The accommodation provider is liable for damages suffered by a guest if the damages have occurred in the context of the business and he or his employees are to blame.

(2) Liability for items the guest has brought with him. In addition as the safe-keeper of the items the guests he has accepted have brought with them, the accommodation provider is liable up to a maximum of Euro 1,100 unless he can prove that the damage was not caused by him or his employees, or by people going in and out of the premises.

Under these circumstances the accommodation provider is liable for valuable items, money and financial instruments up to a maximum of Euro 550, unless he has taken these items into his keeping in the full knowledge of their nature or he himself or his employees were to blame for the damage and he therefore bears unlimited liability. A refusal to accept liability by displaying a notice has no legal effect.

The keeping of valuable items, money and financial instruments may be declined if these items are substantially more valuable than those normally handed over for safe keeping by guests at the establishment concerned. Agreements by which liability is reduced to below the levels stated in the above paragraphs are ineffective. Items count as having been handed over if they have been accepted by a person in the employment of the accommodation establishment or have been put in a place intended for this which has been pointed out by such a person. (in particular §§ 970 ff. ABGB)

§ 12 Keeping animals

(1) Animals may only be brought into the accommodation establishment with advance agreement and in any event in return for a special payment for this.

Animals may not be taken into the lounges, public rooms or restaurant areas.

(2) The guest is liable for damages caused by the animals he has brought with him, in accordance with the statutory provisions which apply to animal owners (§ 1320 ABGB).

§ 13 Extending the accommodation period

Any extension to the stay by the guest requires the agreement of the accommodation provider.

§ 14 Ending the accommodation period

(1) If the accommodation contract has been agreed for a specified period, then it ends when this period expires. If the guest leaves early, then the accommodation provider is entitled to request the full amount which has been agreed.

It is however incumbent upon the accommodation provider to make every effort to let the unused rooms to other guests depending on the circumstances.

Otherwise the rules in § 5 (5) apply analogously (percentage deductions).

(2) In the event of the death of a guest, the contract with the accommodation provider will end.

(3) If the accommodation contract has been concluded for an unspecified period, then the contractual partners can dissolve the contract at any time subject to a three day notice period. The notice of termination must reach the contractual partner before 10.00, otherwise this day will not count as the first day of the termination period, but only the subsequent day.

(4) If the guest does not vacate his room by 12.00, the accommodation provider is entitled to invoice the price of the room for a further day.

(5) The accommodation provider is entitled to dissolve the accommodation contract with immediate effect if the guest

- a) makes substantially detrimental use of the rooms, or through his inconsiderate, objectionable or otherwise grossly inappropriate behaviour spoils the stay of his fellow guests, or is guilty of an act which is subject to punishment against the property, the morals or the physical safety of the accommodation provider and his staff or another person staying in the accommodation establishment;
- b) catches or requires care for an infectious disease or one which extends beyond the duration of the accommodation period;
- c) does not pay the invoice which is presented to him when asked after a reasonable period of time has been set.

(6) If it becomes impossible to fulfil the contract due to an event which can be ascribed to force majeure, the contract will be dissolved.

The accommodation provider is however obliged to reimburse the payment he has already received on a proportionate basis so that he does not derive any profit from the event. (§ 1447 ABGB)

§ 15 Illness or death of a guest in the accommodation establishment

(1) If a guest becomes ill during his stay at the accommodation establishment, then it is the duty of the accommodation provider to ensure that medical care is provided if this is necessary and the guest himself is not in a position to do this.

The accommodation provider has a claim against the guest, or in the event of his death against his legal successor, for the reimbursement of the following costs:

- a) the payment of any medical costs which have not yet been settled by the guest;
- b) for the necessary disinfection of the room if this is ordered by the public health official;
- c) any reimbursement due for any linen, bed linen and bed fixtures which have become unusable, in return for these items having been handed over to the legal successor, or otherwise for the disinfection or thorough cleaning of all these items;
- d) for the reinstatement of walls, furnishings, carpets etc. insofar as these have been soiled or damaged in connection with the illness or death;
- e) for the room rent, if this has not been received due to the rooms being temporarily unusable in connection with the illness (a minimum of three and a maximum of seven days).

§ 16 Place of fulfilment and place of jurisdiction

(1) The place of fulfilment is the place in which the accommodation establishment is situated.

(2) For all disputes from the accommodation contract it is agreed that the local court with jurisdiction for the accommodation establishment will be competent, except when:

- a) the guest as a consumer has a place of business or place of residence within Austria; in this case it is agreed that the place of jurisdiction will be the place which was identified by the guest when he registered;
- b) the guest as a consumer has only one place of business within Austria; in this case this will be agreed as the place of jurisdiction.