2006 GENERAL TERMS AND CONDITIONS FOR THE HOTEL INDUSTRY

(AGBH 2006)

as of **15 November 2006**

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§ 1 Scope of application

1.1 These General Terms and Conditions for the Hotel Industry (hereinafter referred to as "AGBH 2006") shall replace the previous ÖHVB [Austrian Hotel Contract Conditions] as amended on 23 September 1981.

1.2 The AGBH 2006 shall not exclude special agreements. The AGBH 2006 shall be subsidiary to agreements made on an individual basis.

§ 2 Definitions

2.1 Definitions:

"Proprietor":	means an individual or entity that accommodates guests against remuneration.
"Guest":	means an individual that uses accommodation. Usually the guest is also the Party. Guests also include those persons that are accommodated together with such Party (e.g. family members, friends etc.).
"Party":	means a domestic or foreign individual or entity that enters into an Accommodation Agreement as a Guest or for a Guest.
"Consumer" and "Entrepreneur":	these terms shall be construed as defined by the 1979 Consumer Protection Act (*Konsumentenschutzgesetz*) as amended.
"Accommodation Agreement":	means the agreement made between the Proprietor and the Party, the contents of which are specified below.

§ 3 Execution of the agreement – Down payment

3.1 The Accommodation Agreement shall be deemed entered into upon the acceptance of the Party's order by the Proprietor. Electronic declarations shall be deemed received when they can be collected by the party to which they are addressed under normal circumstances provided that they are received during the published business hours of the Proprietor.

3.2 The Proprietor shall be entitled to enter into the Accommodation Agreement under the condition that the Party makes a down payment. In such event, the Proprietor shall be obliged to inform the Party of the required down payment before accepting the written or oral order of the Party. If the Party agrees to the down payment (in writing or orally), the Accommodation Agreement shall be deemed entered into upon the receipt of the Party's declaration of consent on the down payment by the Proprietor.

3.3 The Party shall be obliged to make the down payment no later than 7 days (receipt) before the accommodation. The costs for the financial transaction (e.g. remittance fee) shall be paid by the Party. Credit and debit cards shall be subject to the terms and conditions of the issuing company.

3.4 The down payment shall be deemed an instalment of the agreed remuneration.

§ 4 Start and end of accommodation

4.1 Unless the Proprietor offers any other time of occupancy, the Party shall be entitled to move into the rented rooms from 4.00 p.m. on the agreed date ("date of arrival").

4.2 If a room is occupied for the first time before 6.00 a.m., the preceding night shall be deemed the first night of accommodation.

4.3 The rented rooms shall be vacated by the Party by 12.00 noon on the date of departure. The Proprietor shall be entitled to charge another day if the rented rooms are not vacated in time.

§ 5 Rescission of the Accommodation Agreement – Cancellation fee

Rescission by the Proprietor

5.1 If the Accommodation Agreement provides for a down payment and such down payment has not been made by the Party in time, the Proprietor may rescind the Accommodation Agreement without granting any grace period.

5.2 If the Guest fails to arrive by 6.00 p.m. on the agreed date of arrival, the Proprietor shall not be obliged to accommodate them unless a later time of arrival has been agreed upon.

5.3 If the Party has made a down payment (see 3.3), the rooms shall be deemed reserved until 12.00 noon on the day following the date of arrival at the latest. If a down payment to the amount of more than four days has been made, the obligation to accommodate the Guest shall end on 6.00 p.m. on the fourth day, the date of arrival being deemed the first day, unless the Guest informs the Proprietor of a later date of arrival.

5.4 Unless otherwise agreed upon, the Proprietor may rescind the Accommodation Agreement for objectively justified reasons by means of a unilateral declaration by 3 months before the agreed date of arrival of the Party.

Rescission by the Party – Cancellation fee

5.5 The Party may rescind the Accommodation Agreement by means of a unilateral declaration by 3 months before the agreed date of arrival of the Guest without being liable to pay a cancellation fee.

5.6 Outside the period specified in § 5.5., the Party may only rescind the Accommodation Agreement by means of a unilateral declaration subject to the following cancellation fees:

- 14 to 7 days before arrival: 30% of the total package price

- 6 to 4 days before arrival: 50% of the total package price

- 4 to 0 days before arrival: 90% of the total package price.

Up to 2 weeks	1–2 weeks before arrival	4–7 days before arrival	0–4 days before arrival
no cancellation fee	30%	50%	90%

Prevention from arrival

5.7 If the Party is prevented from arriving at the accommodating establishment on the date of arrival since this is impossible due to unforeseeable extraordinary events (e.g. extreme snowfall, floods etc.), the Party shall not be obliged to pay the agreed remuneration for the date of arrival.

5.8 The obligation to pay the remuneration for the booked stay shall revive as soon as the arrival becomes possible again provided that it becomes possible within three days.

§ 6 Provision of substitute accommodation

6.1 The Proprietor may provide the Party or the guests with adequate substitute accommodation (of the same quality) provided that this is reasonable for the Party, particularly if the difference is insignificant and objectively justified.

6.2 An objective justification shall, for example, be deemed given if the room(s) has (have) become unusable, guests that have already been accommodated prolong their stay, the establishment is overbooked or this becomes necessary due to other important operational activities.

6.3 Any extra expenses arising from such substitute accommodation shall be paid by the Proprietor.

§ 7 Rights of the Party

7.1 By entering into an Accommodation Agreement, the Party shall acquire the right to make normal use of the rented rooms and the facilities of the accommodating establishment that are usually accessible to the guests for use without any special conditions and of the usual service. The Party shall exercise their rights in accordance with any applicable hotel and/or guest regulations (rules of the house).

§ 8 Obligations of the Party

8.1 The Party shall be obliged to pay the agreed remuneration plus any extra amounts that have arisen from the use of special services by the Party and/or the accompanying guests plus any applicable VAT by the date of departure at the latest.

8.2 The Proprietor shall not be obliged to accept foreign currencies. If the Proprietor accepts foreign currencies, such shall be accepted at the current price if possible. If the Proprietor accepts foreign currencies or cashless means of payment, the Party shall pay any associated costs, e.g. for inquiries with credit card companies, telegrams etc.

8.3 The Party shall be liable towards the Proprietor for any damage caused by themselves or the Guest or any other persons that receive services of the Proprietor with the knowledge or in accordance with the intention of the Party.

§ 9 Rights of the Proprietor

9.1 If the Party refuses to pay or is in arrears with the agreed remuneration, the Proprietor shall be entitled to make use of the legal right of retention in accordance with § 970c of ABGB [Austrian Civil Code] and the legal right of lien in accordance with § 1101 of ABGB with respect to the items brought along by the Party or the Guest. Furthermore, the Proprietor shall be entitled to make use of this right of retention or lien in order to secure its claims under the Accommodation Agreement, particularly for catering, other expenses made for the Party and for any kind of damage claims.

9.2 If services are requested in the room of the Party or during unusual times of the day (after 8.00 p.m. and before 6.00 a.m.), the Proprietor shall be entitled to charge an extra remuneration. However, such extra remuneration shall be indicated on the price board for the room. The Proprietor may also refuse such services for operational reasons.

9.3 The Proprietor shall be entitled to issue invoices or interim invoices for its services at any time.

§ 10 Obligations of the Proprietor

10.1 The Proprietor shall be obliged to provide the agreed services to an extent that complies with its standards.

10.2 Extra services of the Proprietor that must be indicated accordingly since they are not included in the accommodation remuneration shall, by way of example, include:

a) Extra accommodation services that may be invoiced separately, such as the provision of lounges, sauna, indoor and/or outdoor swimming pool, solarium, garages etc.;
b) A reduced price shall be charged for the provision of additional beds or cribs.

§ 11 Liability of the Proprietor for damage to items of guests

11.1 The Proprietor shall be liable for the items brought along by the Party in accordance with §§ 970 ss of ABGB. The Proprietor shall only be liable if the items have been handed over to the Proprietor or the persons authorised by the Proprietor or deposited in a place assigned by such or intended for such purpose. Unless the Proprietor provides other evidence, the Proprietor shall be liable for its own fault or the fault of its vicarious agents and visitors. In accordance with § 970 sec. 1 of ABGB, the Proprietor shall only be liable up to the amount specified in the Austrian law on the liability of landlords and other entrepreneurs of 16 November 1921 (*Bundesgesetz über die Haftung der Gastwirte und anderer Unternehmer*) as amended. If the Party or the Guest fails to immediately comply with the Proprietor's request to deposit their items in a special deposit, the Proprietor shall be released from any liability. The amount of any liability of the Proprietor shall be limited to a maximum of the sum insured under the third-party liability insurance of such Proprietor. Any fault of the Party or Guest shall be taken into account.

11.2 The Proprietor may not be held liable for slight negligence. If the Party is an Entrepreneur, the Proprietor may neither be held liable for gross negligence. In such event, the burden of proof to show the fault shall lie with the Party. No consequential or indirect damage and no loss of profit shall be reimbursed.

11.3 The Proprietor shall only be liable for valuables, money and securities up to an amount of currently €550.--. The Proprietor shall only be liable for any exceeding damage in the event it has accepted such items for deposition knowing their quality or in the event the damage has been caused by itself or its vicarious agents. The limitation of liability in accordance with 12.1 and 12.2 shall apply accordingly.

11.4 The Proprietor may refuse to deposit valuables, money and securities if the items are significantly more valuable than those usually handed over for deposition by the guests of the accommodating establishment.

11.5 In each event of deposition, liability shall be excluded if the Party and/or Guest fails to immediately notify the Proprietor of the occurred damage. Furthermore, such claims shall be asserted in court within three years from their knowledge or possible knowledge to the Party and/or Guest; otherwise, the right shall become extinct.

§ 12 Limitations of liability

12.1 If the Party is a Consumer, the Proprietor may not be held liable for slight negligence, except for bodily injury.

12.2 If the Party is an Entrepreneur, the Proprietor may not be held liable for slight or gross negligence. In such event, the burden of proof to show the fault shall lie with the Party. No consequential, non-material or indirect damage and no loss of profit shall be reimbursed. The damage to be reimbursed shall at any case be limited to the amount of the damage incurred because the Party has relied on the validity of the agreement (*Vertrauensinteresse*).

§ 13 Animals

13.1 Animals may only be brought to the accommodating establishment with the prior consent of the Proprietor and against extra remuneration.

13.2 The Party bringing along an animal shall be obliged to properly keep and/or supervise such animal during their stay or to have it kept and/or supervised by a qualified third party at their own expense.

13.3 The Party and/or Guest bringing along an animal shall have an according animal liability insurance and/or personal liability insurance that covers any potential damage caused by animals. Evidence of such insurance shall be provided to the Proprietor upon request.

13.4 The Party and/or their insurance company shall be jointly and severally liable towards the Proprietor for any damage caused by the animals brought along. Such damage shall particularly also include any compensation to be paid by the Proprietor to third parties.

13.5 Animals shall not be permitted to enter the lounges, saloons, restaurants and wellness zones.

§ 14 Prolongation of the accommodation

14.1 The Party may not claim for a prolongation of their stay. If the Party informs the Proprietor in time that they intend to prolong their stay, the Proprietor may consent to a renewal of the Accommodation Agreement. However, the Proprietor shall not be obliged to do so.

14.2 If the Party is prevented from leaving the accommodating establishment on the date of departure since all ways of travel are blocked or unusable due to unforeseeable extraordinary events (e.g. extreme snowfall, floods etc.), the Accommodation Agreement shall automatically be renewed for the duration of such prevention from departure. The remuneration to be paid for this period may only be reduced if the Party is unable to fully use the offered services of the accommodating establishment due to the extraordinary weather conditions. The Proprietor shall be entitled to charge as a minimum the remuneration corresponding to the price usually charged in the low season.

§ 15 Termination of the Accommodation Agreement – Early cancellation

15.1 If the Accommodation Agreement has been made for a definite term, it shall end upon the expiry of such term.

15.2 If the Party leaves prematurely, the Proprietor shall be entitled to charge the total agreed remuneration. The Proprietor shall deduct anything saved due to the failure to use its scope of services or maintained by letting the booked rooms to other guests. Such savings shall only be deemed to exist if the capacities of the accommodating establishment are fully used upon the Guest's failure to use the booked rooms and the room can be let to other guests due to the cancellation by the Party. The burden of proof to show that savings have been made shall lie with the Party.

15.3 Upon the death of a Guest, the Agreement with the Proprietor shall become extinct.

15.4 If the Accommodation Agreement has been made for an indefinite term, the Parties may terminate the Agreement by 10.00 a.m. of the third day preceding the intended end of the Agreement.

15.5 The Proprietor shall be entitled to terminate the Accommodation Agreement with immediate effect for important reasons, particularly if the Party and/or the Guest

a) makes significantly adverse use of the rooms or makes their stay intolerable for the other guests, the owner, its vicarious agents or the third parties staying at the accommodating establishment due to ruthless, offensive or other-

wise highly improper conduct or commits an act against property, morality or physical safety towards these persons that is subject to penalty;

b) suffers of a contagious disease or a disease the duration of which exceeds the term of accommodation or otherwise is in need of care;

c) fails to settle the presented invoices when they become payable within a reasonably set period (3 days).

15.6 If the performance of the Agreement becomes impossible due to circumstances to be deemed events of force majeure (e.g. acts of God, strike, lockout, official orders etc.), the Proprietor may terminate the Accommodation Agreement at any time without giving prior notice unless the Agreement is already deemed terminated under the law or the Proprietor is released of its obligation to accommodate the Party. Any claims for damages etc. by the Party shall be excluded.

§ 16 Sickness or death of the Guest

16.1 If a Guest gets sick during their stay at the accommodating establishment, the Proprietor shall arrange for medical care at the request of the Guest. In the event of imminent danger, the Proprietor shall arrange for medical care even without the special request of the Guest, particularly if this is necessary and the Guest is unable to do so themselves.

16.2 As long as the Guest is unable to make decisions or it is not possible to contact the family of the Guest, the Proprietor shall arrange for medical care at the expense of the Guest. However, the extent of such care shall end as soon as the Guest is able to make decisions or their family has been informed about the sickness.

16.3 The Proprietor shall particularly be entitled to damages from the Party or the Guest or, in the event of their death, their successors for the following expenses:

a) unsettled medical costs, costs for ambulance transports, drugs and medical aids

b) room disinfections that have become necessary,

c) linen, bed sheets and bed furnishing that have become unusable, or otherwise the disinfection of thorough cleaning of all of these items,

d) restoration of walls, furniture, carpets etc. if such have been contaminated or damaged in relation with the sickness or death,

e) rent for the room, provided that it has been occupied by the Guest, plus any days during which the rooms are unusable due to disinfection, vacation etc.,

f) any other damage incurred by the Proprietor.

§ 17 Place of performance, place of jurisdiction and applicable law

17.1 The place of performance shall be the place where the accommodating establishment is situated.

17.2 These Terms and Conditions shall be governed by Austrian adjective and substantial law under exclusion of the provisions of international private law (particularly IPRG [Austrian act on international private law] and the Rome Convention of 1980) and the UN Sales Convention.

17.3 If the Party is an Entrepreneur, the exclusive place of jurisdiction shall be the domicile of the Proprietor; however, the Proprietor shall also be entitled to assert its rights before any other court that is competent for the location and matter.

17.4 If the Accommodation Agreement has been made with a Party that is a Consumer who has their domicile or ordinary residence in Austria, actions against the Consumer may exclusively be filed at the domicile, ordinary residence or place of work of such Consumer.

17.5 If the Accommodation Agreement has been made with a Party that is a Consumer who has their domicile in a member state of the European Union (except for Austria), Iceland, Norway or Switzerland, the court that is competent for the domicile of the Consumer in the event of actions against the Consumer in the relevant matter shall have exclusive jurisdiction.

§ 18 Miscellaneous

18.1 Unless otherwise specified in the above provisions, any time limits shall start upon the document by which such time limit is instructed being delivered to the Party that must comply with the time limit. When calculating a time limit based on days, the day of the moment or event to which the start of the time limit refers shall not be included in the calculation. Time limits based on weeks or months shall refer to the day of the week or month that corresponds to the day starting from which the time limit is to be counted according to its name or number. If the relevant month lacks such day, it shall be replaced with the last day of such month.

18.2 Any declarations shall be received by the other party by the last day of the time limit (12.00 midnight).

18.3 The Proprietor shall be entitled to offset any of its claims against claims of the Party. The Party shall not be entitled to offset any of its claims against claims of the Proprietor unless the Proprietor is insolvent or the Party's claim has been established by a court or acknowledged by the Proprietor.

18.4 If any gaps arise in relation with the Agreement, the applicable legal provisions shall apply.