

Terms of Use

1. Scope of application and subject of the Contract

- (1) Ferienhausmiete.de is a travel agent portal accessible on the Internet at www.ferienhausmiete.de (hereinafter Platform) from resido GmbH, Wichertstraße 14a, 10439 Berlin, Germany, (hereinafter the Provider). The Platform is used to arrange holiday houses and holiday flats. These Terms of Use apply for the use of the Platform as a “Holidaymaker” or as a “Lessor” (hereinafter also referred to jointly as Contracting Parties).
- (2) The Platform is used exclusively on the basis of these Terms of Use, unless another agreement has been expressly made in writing between the Provider and the Contracting Parties. Any conflicting, supplementary, or differing provisions from the Contracting Parties are not part of the Contract, unless this has been expressly agreed in writing between the Parties.
- (3) The subject of these Terms of Use is the use of the Platform as a Holidaymaker or a Lessor. The Provider appears here as a mere operator of the Platform and enables Lessors to publish their own offers, and for Holidaymakers to see these offers and possibly make contact with a Lessor. The Provider provides various features for this. It is not a travel agent, and is not a party to a rental agreement on holiday homes or holiday flats.
- (4) The current Terms of Use are accessible on the Platform's website at <https://www.tourist-paradise.com/pdfs/documents/agb?lang=2> and can be printed out.
- (5) The renting or letting of holiday houses or holiday flats is not the subject of these Terms of Use.

2. Conclusion of contracts and registration

- (1) The presentation of features of the Platform on the Internet or on other media by the Provider does not constitute a binding offer from the Provider. This only gives the Contracting Parties the option to make a binding offer themselves to conclude a contract on use of the Platform. The Provider is not obligated to accept this offer.
- (2) In order to be able to use the Platform as a Lessor, it is first necessary to register on the Platform online. A contract on use of the Platform **as a Lessor** comes into being by completing the registration process and the Provider activating a user account. It is necessary to post an initial offer on the Platform for activation (hereinafter Advert).

- (3) Sending the registration and Advert request hereby constitutes a legally-binding offer to the Provider to conclude a contract on the use of the Platform as a Lessor. A confirmation message will be sent automatically by email after receipt of the registration request. This does not constitute acceptance of the offer by the Provider. The offer is only accepted by the Provider activating a user account for the Lessor. The Lessor shall receive a corresponding notification by email concerning this.
- (4) Travellers can register free of charge online and have the provider set up a user account for them to help them to manage the properties they are interested in, etc. In this case, an agreement covering use of the platform as a registered traveller is created at the end of the registration process. Sending the registration enquiry constitutes a legally binding offer vis-à-vis the provider to enter into the agreement on the use of the platform as a registered user. This is accepted through the activation of the user account.
- (5) With conclusion of the Contract, the Provider, as operator of the Platform, enables use of the Platform according to the features offered as a Holidaymaker or Lessor. There are no further obligations beyond use of the Platform for the Provider. In particular, the Provider does not let or rent any properties.
- (6) The Contracting Parties may not register for a user account multiple times. It is permissible to register as a Lessor and Holidaymaker.
- (7) The transmission of the renter's personal contact details is mandatory for making contact with the owner and for the booking process. Once the booking enquiry has been sent the renter registers free of charge at Ferienhausmiete.de. The renter agrees to a free user account being set up automatically on sending an enquiry. This account makes it easier for the renter to manage their enquiries.

3. Use of the Platform as a Lessor

- (1) On conclusion of the Contract, the Lessor can use the Platform within the features offered. This particularly includes administration of its own user account and publishing Adverts. Its user account is accessed via a login process.
- (2) In managing its user account, the Lessor can publish and process information for itself and manage its Adverts.
- (3) In publishing Adverts, the Lessor can, in accordance with the features offered, publish its own content on the Internet via the Platform.
- (4) The Lessor recognises that contracts on the use of the holiday properties it offers always come into being directly with the Holidaymaker.
- (5) The Lessor shall only use the enquiring Holidaymaker's contact details for the offer of the holiday property requested, unless the Holiday has consented to further use.

4. Use of the Platform as a Holidaymaker

- (1) The Holidaymaker can make contact with Lessors via the Platform and make booking requests for their offers.
- (2) The Provider aims to reflect the offers listed by the Lessors as faithfully as possible in the offers, particularly the photographs sent as data files or printouts. The Holidaymaker is nonetheless aware that scanning non-digital photos, and the settings of the particular monitor can lead to differences from the original picture.

5. Data protection

- (1) Use of the Platform makes the collection, processing, and use of personal data by the Provider unavoidable. The Provider will handle all saved data carefully, and process and use it exclusively within the scope of any consent from the Contracting Parties necessary under data protection law. The Provider shall only process and use personal data beyond this insofar as permitted by law
- (2) The Provider will inform the customer in more detail on the nature and scope of data use in a Privacy Policy, which will be kept permanently available on the Internet at <http://www.tourist-paradise.com/datenschutz.php> in its most up-to-date version.

6. Communication

- (1) The Provider provides an enquiry form which the Holidaymakers and the Lessors can use to make contact. The Provider shall pass on all requests sent to it via the enquiry form to the Lessor of the particular holiday accommodation. The Provider strives to make the system safe. However, the Holidaymaker is aware that, due to the state of technology, the possibility of a third party abusing this system and being able to read or intercept messages not intended for it cannot be excluded.
- (2) The Provider enables further direct communication between the Lessor and the Holidaymaker via an enquiry via its own email server system. This makes it possible to have partially anonymised booking enquiries, in which the email address is filtered out.
- (3) The Provider's employees can see this communication if necessary, but only insofar as necessary in order to guarantee security between the Contracting Parties and to offer a proper agency service. This is the case, for example, if Contracting Parties need to be protected against criminal offences carried out via phishing or the sending of false emails. For security reasons, email addresses in communication via the Platform are replaced by [Mail_removed]. Further details can be found in the Privacy Policy.
- (4) The Provider's communication system may only be used for serious booking enquiries.

7. Ratings

- (1) The Provider is entitled to publish customer ratings and opinions on holidays with individual Lessors on the Platform. There is no entitlement to publish.
- (2) Lessors are entitled to comment on ratings which concern them personally, or to publish a reply.

- (3) Holidaymakers may only give ratings if they have full legal capacity. For each rating, a valid email address must be given by the Holidaymaker giving the rating, which is verified. The person giving the rating must, if required, be able to prove that they stayed in the holiday accommodation being reviewed.
- (4) Any holiday properties offered on the Platform can be rated, regardless of the method of booking. The rating can be given by each individual user of the holiday accommodation. However, each Holidaymaker can only give a rating once.
- (5) Lessors are prohibited from rating their own holiday properties either directly or indirectly.

8. General duties for use of the Platform

- (1) The Contracting Party is obligated not to use any content on the Platform and in its profile which breaches current law or the rights of third parties.
- (2) The Contracting Party is obligated not to use the Platform or information acquired via the Platform in order to send messages with advertising content to another Contracting Party or a third party, without their express prior consent.
- (3) The Contracting Party is obligated not to register for a user account or have an account registered for it after extraordinary termination by the Provider or locking of its user account.
- (4) The Contracting Party is obligated to give true and complete information in its user account and its profile. It is obligated to update any change in its user account and profile data immediately.
- (5) The Contracting Party is obligated to ensure that the email address it has given is accessible from the time of entry, and that the email account is not unable to receive messages due to forwarding, closure, or being over-full.
- (6) The Contracting Party is obligated to check links to third-party sites and not to refer to sites with illegal or rights-infringing content.
- (7) The Contracting Party is obligated not to use the data and content it has obtained from enquiries and use of the Platform or which has been made accessible on the Platform either fully, partially, or in extracts to develop its own database, for commercial use, for the provision of information, or other commercial use.
- (8) The Contracting Party is obligated only to use the search functions offered on the Platform. It is not permissible to search using automated search algorithms which access the Provider's databases.
- (9) Insofar as Contracting Parties rate other Contracting Parties on the Platform, the ratings must be true and based on facts. Subjective or disparaging comments in particular are prohibited. The structure and formulation of the rating mechanism is the sole responsibility of the Provider.

- (10) The Contracting Party is obligated not to disclose its login-details to third parties. It shall ensure that these are not made accessible to third parties, and take appropriate security measures to prevent improper use. Where there is suspicion that third parties know the login-details, or merely could know them, or use the Contracting Party's user account, the Provider shall be informed of this immediately, and the Contracting Party must change its login-details. Any contractual partners of the Contracting Party who act in the name of and on behalf of the Contracting Party on the Platform are not considered to be third parties, if the third party has committed to the Contracting Party to comply with the Platform's terms, and is notified to the Provider as activity from a representative third party. The Provider is entitled to demand appropriate proof.
- (11) The Contracting Party is obligated to protect all data which it uses in connection with the Platform itself to the necessary extent.
- (12) (12) The Contracting Party is obligated to inform the Provider immediately in the event of a disruption of the Platform or specific features. This applies accordingly if it becomes aware that another Contracting Party obviously contravenes the applicable law, the rights of third parties, or these Terms, particularly **Clause 8** and **Clause 9**.

9. Special provisions for Lessors

- (1) On registration, the Lessor is obligated to enter truthful information as to its personal identity, the properties offered, and the payment details, and only to offer properties for which it has power of disposal.
- (2) The forms provided by the Provider may only be used as intended. In particular, the Lessor is not allowed to advertise multiple accommodation places in an offer, or to change the offer so that other holiday accommodation can be offered under it.
- (3) The Lessor undertakes to represent all offer details, particularly all information concerning the holiday accommodation, fully and accurately.
- (4) For this reason, the Lessor is obligated to ensure that its calendar is always kept up-to-date.
- (5) The Lessor undertakes to comply with existing statutory information obligations (e.g. provider identification).
- (6) The Lessor shall independently observe the legal provisions on the collection, storage, and use of personal data, and comply with the corresponding duty to provide information.
- (7) The Lessor is not entitled to replace a holiday residence in an Advert with another holiday residence.
- (8) If the Provider offers commission-based Adverts, the Lessor shall not use any external communications or payment capabilities which could mean that a commission is not calculated correctly.

10. Payment obligations and payment terms

- (1) Holidaymakers can use the Platform free of charge. However, there is no obligation for the Provider to maintain the Platform and specific features permanently (without charge). The Provider therefore reserves the right to introduce fee-based features or introduce a payment obligation for specific existing features.
- (2) Lessors have the option to register to use the Platform free of charge. Paragraph 1 applies accordingly.
- (3) The Lessor is obligated to pay an agreed payment to publish booked Adverts. The payment is to be made in advance for the period booked. The value of the payment is calculated from the prices published on the Platform plus the respective statutory VAT.
- (4) If the Provider offers commission-based Adverts, the payment obligation under Paragraph 3 does not apply. In this case, the Lessor is obligated to pay commission from the rent.

11. Granting of usage rights

- (1) The Contracting Party grants the Provider a simple, irrevocable, free, and unrestricted right of use to the content posted, without territorial restriction, which is transferable to third parties and can be sub-licensed, for the duration of the contractual relationship on the use of the Platform. The Provider is entitled to use and exploit the content at any time, in whole or in part, in fulfilling its services under this Contract.
- (2) In particular, the Provider is at any time entitled to represent and publish on the Platform the content posted by the Contracting Party. This also includes the right to reproduce, the right to distribute, the right to publicly display, the right to make publicly accessible, and a right to carry out necessary adjustments and edits. This also applies for any trademarks or other labels contained therein.
- (3) The Contracting Party warrants that it is the holder of the rights necessary to post content on the Platform, and that it is entitled, without restriction, to effectively grant the Provider rights. The Contracting Party also warrants that the content is free from third party rights which could obstruct the granting of rights and use under the Contract. The Contracting Party warrants that the contractual use of the content as part of this Contract will not breach any rights, particularly any personality rights of third parties, and in particular, that any persons depicted agree to the contractual use of the contents.
- (4) The Provider is entitled to use a Lessor's commercial name, including any trademarks, as a reference for its own marketing. This particularly includes use in reference customer lists.
- (5) The Provider is entitled to pass on the content provided by a Lessor to present and advertise the Advert on the Internet, particularly by so-called affiliate marketing to third parties.
- (6) The Provider is entitled to use all information it comes to know via the Platform for its own purposes, and to aggregate, analyse, interpret information, and publish it in anonymised format. If personal data are involved, the data are only processed in pseudonymised or anonymised form.

12. Property rights

- (1) All rights to the Platform remain with the Provider. The Contracting Party is obligated to take this into consideration. It is obligated not to personally use - privately or commercially - the Platform's sites or other content on the Platform, of whatever type (e.g. text, graphics, photos, or designs) beyond the options granted to it as part of using the Platform.
- (2) This particularly means that the Contracting Party may not reproduce, distribute, and/or publish data and content which becomes known to it via the Platform, unless these terms and conditions expressly allow this. In particular, the use of such information for advertising, unsolicited emails, or other impermissible purposes is forbidden.
- (3) The Contracting Party is allowed to download, represent, or print individual sites to document conclusion of the Contract and the contract terms. The mark "© 2004 - %%year%% Ferienhausmiete.de" is to be affixed to and clearly legible on the respective data file or printout.

13. Right to block

- (1) If the Contracting Party does not comply with its obligations under **Clause 8** or **Clause 9**, or for other serious breaches of duty, and where there are substantial, justifiable grounds to suspect a culpable breach of duty, the Provider is entitled, at its discretion, to block the Contracting Party's user account or specific content.
- (2) If possible, the Contracting Party is to be consulted before blocking under (1), otherwise it is to be notified immediately after the blocking.
- (3) Where blocking occurs under (1), the Contracting Party is not entitled to open another user account or to publish the blocked content on the Platform again.
- (4) If the Provider discovers that third parties are improperly using the Contracting Party's user account, the Provider is entitled to block the user account in order to prevent improper use by the third party. The Provider is entitled to do this at the stage where there are justifiable grounds to suspect improper use by a third party. Improper use by a third party is understood to include mere access to the Contracting Party's user account by a third party. The Provider shall inform the Contracting Party of such blocking and at the same time give it the opportunity to unlock the user account by choosing new login details. However, the Provider will only unblock a blocked user account if it can be shown that there is no longer a risk of improper use by third parties. In case of doubt, the Contracting Party is to ensure this itself.

14. Right to delete

- (1) If the Contracting Party does not show, within a reasonable period - normally two weeks - of a blocking under **Clause 13 (1)** and at the Provider's request, that there is not a breach of duty warranting blocking, the Provider is entitled to conclusively delete any infringing content. In contract, the conclusive deletion of a user account after a blocking requires a termination under **Clause 15**.

- (2) The Provider is entitled to irrevocably delete a Contracting Party's user account along with all associated content, if the Contracting Party has not logged into its user account in at least a year, and has not responded to a reminder email from the Provider within two weeks, or is no longer accessible at the given email address. This does not apply where the Contracting Party is a Lessor, as long as Adverts are published for it.

15. **Contract term, termination, and deletion of the user account**

- (1) The Contract with a Contracting Party on the use of the Platform is concluded indefinitely, and can be terminated by either side at any time at the end of the month, without complying with a termination period, and without giving reasons.
- (2) Where the Contracting Party is a Lessor, its Adverts are published for a period firmly booked in advance, but not for longer than 12 months. Termination before expiry of the booked period is excluded. Once the period for Adverts has expired, this is not automatically extended. Extension only occurs via a corresponding instruction from the Lessor via its user account.
- (3) If the Contracting Party as Lessor has selected fee-based additional options for Adverts and a fixed term has been agreed for these additional options, this term is valid for additional options regardless of the agreed term for the respective Advert. However if the Advert expires beforehand, the Lessor has the possibility to transfer the additional option to another Advert. Pursuant to paragraph 1 a cancellation of the booked additional option is not possible before expiration of the term.
- (4) (4) The Provider particularly has good cause for extraordinary termination, when
- a. the Contracting Party persistently breaches its obligations under **Clause 8** or **Clause 9** or for other serious breaches of duty;
 - b. the Contracting Party uses the Platform in breach of the Provider's property rights **Clause 12**);
 - c. the Contracting Party continues or repeats less serious breaches of duty despite a warning about the behaviour complained of, or does not immediately remedy the consequences of such breaches of duty where these have already occurred;
 - d. the Contracting Party is in default for two consecutive deadlines with a due payment, or with a not insignificant part of a due payment.
- (5) Extraordinary terminations must be in writing. An email with a PDF document is sufficient to comply with the written form requirement. However, the receiving Party is entitled to be sent the original.
- (6) Where the Contract is terminated, the Contracting Party no longer has access to its user account and any content posted. Lessors can no longer place Adverts.

- (7) Where the Contract is terminated, Lessors can ask the Provider to provide its content temporarily by remote data transmission, but at most for two weeks. Any rights of retention are not affected. Once four weeks have elapsed after the end of the Contract, the Provider is entitled to delete the Contracting Party's content without further warning.
- (8) If, at the time of extraordinary termination by the Provider - including after the date of the Contract's end - the period for previously booked Adverts has not yet elapsed, the Provider is not obligated to continue to publish the Adverts beyond the time the Contract ends. However, the Lessor is obligated to continue to provide the payment owed.
- (9) The termination and ending of the contractual relationship between the Provider and the Contracting Party does not affect any agreements between the Contracting Parties.
- (10) In the event of an extraordinary termination, the Contracting Party is not entitled to register again for a user account with the Provider.

16. Warranty

- (1) The Provider will endeavour to ensure undisturbed operation of the Platform. This is naturally limited to services over which the Provider has an influence. However, the Contracting Party recognises that completely uninterrupted availability for the Platform is not technically feasible. The Provider shall nevertheless endeavour to keep the Platform available uninterrupted as much as possible. There is, however, no entitlement to this.
- (2) The Provider remains at liberty to partially or fully, temporarily or permanently restrict access to the Platform due to maintenance works, capacity concerns, and due to events outside of the Provider's sphere of influence.
- (3) The Contracting Party has no entitlement to maintenance of individual features of the Platform, or the use of specific available features of the Platform.
- (4) The Provider does not review the content and offers posted on the Platform in advance. The Provider therefore cannot be responsible for the correctness, accuracy, reliability, timeliness, suitability and/or completeness of the information and offers available on the Platform.

17. The Provider's liability

- (1) The Provider is liable for intent and gross negligence, and under the Product Liability Act [ProdHaftG]. In cases of simple negligence, the Provider is liable for losses due to injury to the life, limb, or health of persons.

- (2) For simple negligence, the Provider is only otherwise liable for a breach of an essential contractual duty, the fulfilment of which is a prerequisite for the proper fulfilment of the Contract, and which the Contracting Party can normally rely on being fulfilled (cardinal duty). The liability is restricted to the losses typical for the Contract, as foreseeable when the Contract was concluded.
- (3) This limitation of liability also applies in favour of the Provider's vicarious agents.
- (4) The Provider is not liable for the loss of data insofar as the loss is based on the Contracting Party having omitted to sufficiently back-up data and thereby ensure that the lost data can be restored at reasonable expense. If the Contracting Party is responsible for a loss of data, the Provider is therefore only liable for the costs to duplicate the data from the back-up copies to be created by the Contracting Party, and to restore the data which would also have been lost had the data been properly backed-up.

18. Indemnification of the Provider

- (1) The Contracting Party indemnifies the Provider and its employees or representatives against all claims made by third parties at first request, where the third party brings the claim due to alleged or actual infringements and/or breaches of third-party rights in connection with the Contracting Party's use of the Platform.
- (2) The Contracting Party undertakes to compensate all costs the Provider incurs due to claims from third parties. The recoverable costs also include the costs of reasonably asserting or defending rights, where incurred by the Provider to defend against claims from third parties.
- (3) The Contracting Party is to inform the Provider immediately on discovering a claim has been made by a third party in connection with the use of the Platform. The Provider is entitled to take suitable measures itself to defend against claims from third parties, or to assert its rights. Measures taken by the Contracting Party are to be agreed in advance with the Provider.

19. Amendments to the terms and conditions

- (1) The Provider is entitled to amend or supplement provisions of these terms and conditions at any time and without giving reasons, with effect for the future e.g. with technical changes, expanded, modified, or restricted functions.
- (2) The Provider shall inform the Contracting Party in text format of changes or additions to these terms at least 30 days before they come into effect, whereby it is not necessary for the detail of the altered or supplemented terms or the whole new version of the terms to be sent or otherwise notified; it is sufficient to inform of the fact of the change or addition as such. When giving information on changes and additions, the Provider shall provide a link whereby the new version of the General Terms and Conditions can be seen as a whole.

- (3) If the Contracting Party does not object to changes and additions within 14 days of being notified in text format, this is deemed to be consent to the change or addition; the Provider shall make reference to this separately in the notification of change.

20. Assignment and transfer of contract

- (1) Written consent is required from the Provider for the Contracting Party to assign rights and obligations under this Contract, or to transfer this Contract as a whole or in part to a third party. The provision in Section 354a of the German Commercial Code [HGB] is not affected.
- (2) The Provider is entitled to transfer this Contract, including all additional agreements, with all rights and obligations to a company of its choice. In the event of a transfer of this Contract to a company which is not a company associated with the Provider (Section 15 of the German Stock Corporation Act [AktG]), the Contracting Party has a special right to terminate, which must be asserted in writing within 14 days of notification from the Provider. The Provider shall make reference to this separately in the notification.

21. Formal requirements

- (1) Ancillary agreements to these terms must be in text format to be valid. This shall also apply for changes to this requirement for text format.
- (2) Unless otherwise specified, contractual notifications and declarations must at least be in text format.
- (3) If text format is agreed for the contractual relationship between the Parties as a whole or for individual aspects thereof (Section 126b of the German Civil Code [BGB]), it is sufficient for the declaration to be sent by email or fax, where the declaring person is named.

22. Final provisions

- (1) Should one or more provisions of these Terms of Use be or become wholly or partially invalid, this does not affect the validity of the terms and conditions in general.
- (2) German law applies exclusively to the present terms and conditions, to the exclusion of UN sales law.
- (3) If the Contracting Party is a businessman under the terms of the German Commercial Code, a legal person under public law, or a special fund under public law, the place of jurisdiction for all disputes arising from or in connection with these terms and conditions is Berlin.
- (4) The EU Commission has provided a platform for out-of-court dispute settlement since 15 February 2016. For Holidaymakers who are consumers, this provides an option to resolve disputes in connection with the use of the Platform without initially involving a court. The dispute settlement platform can be found via the external link <http://ec.europa.eu/consumers/odr/>. residu GmbH is neither liable nor willing to attend a dispute settlement procedure at a consumer arbitration board.