

Terms and Conditions of Agency and Brokerage of FINCALLORCA GmbH

Dear customers, The following Terms and Conditions of Agency and Brokerage between you – hereinafter the “**customer**” – and **FINCALLORCA GMBH** – hereinafter “**FINCALLORCA**” – shall become part of the brokerage contract, given that these are effectively agreed upon as you make a booking for a holiday home/holiday apartment. “**Holiday apartments**” and “**holiday homes**” shall hereinafter be jointly referred to as a “**holiday property**”. The following Terms and Conditions of Agency and Brokerage at the same time govern the contractual relationship between you and the owner/lessor, with whom the contract on the brokerage by **FINCALLORCA** is concluded. The owner or lessor of the holiday property will hereinafter, for reasons of simplicity, be referred to as the “**lessor**”. **Therefore, please read through these terms and conditions carefully.**

1. Position and performances of FINCALLORCA, applicable legal provisions

1.1. On its websites, **FINCALLORCA** offers brokerage services for third-party performances, viz. contracts with lessors of holiday properties. **FINCALLORCA** merely assumes the position of a **mediator** between the **customer** and the lessor.

1.2. If **FINCALLORCA** brokers a composite performance by the lessor, consisting of the touristic main performance and ancillary performances (e.g. accommodation and transport) and if these ancillary performances of the lessor are an essential component of the main performance, **FINCALLORCA** merely assumes the position of a mediator for the contract between the customer and the lessor. The same applies if the ancillary performances of the mediated lessor do not make up a significant share of the overall value in the composition of the performance of the provider and neither represent an essential characteristic of the performance composition of the provider or **FINCALLORCA** itself, nor are they advertised as such.

1.3. As a mediator, **FINCALLORCA** assumes the position of a provider of associated travel services, given that the conditions to offer associated travel services under the legal provisions of § 651w BGB [German Civil Code] are met by **FINCALLORCA**.

1.4. Without prejudice to the obligations of **FINCALLORCA** as a provider of associated travel services (particularly the transfer of the legally prescribed form and the conclusion of customer deposit insurance in case of collection activity by **FINCALLORCA**) and the legal consequences in case these legal obligations are not met, **FINCALLORCA** is neither a travel organiser nor a contracting party to the rental contract over the holiday property concluded with a booking, also if the conditions specified in 1.2 or 1.3 are met. As such, the company is not liable for the information provided by the lessor on prices or performances, for the performance itself, or for any shortcomings in the performance. Any liability of **FINCALLORCA** resulting from the brokerage contract and legal provisions, particularly the mandatory provisions on teleservices and electronic business, shall remain unaffected.

1.5. **FINCALLORCA** may levy its own non-refundable service fee from the customer for this agency service, which will be specifically communicated to the customer in the offer in the respective amount and is a contractual component of the agency contract, insofar as the service was provided by **FINCALLORCA**; rights to defects and warranty rights arising from the agency contract remain unaffected.

1.6. If the following provisions contain regulations on the stay as well as the rights and obligations of the **customer** and the lessor, these regulations will be made by **FINCALLORCA** as a commercial agent **in the name of the lessor and with the authority to**

represent them; they shall become content of the contract which comes into being through the mediation by **FINCALLORCA**.

2. Booking process

2.1. For bookings made by telephone, in writing, or via e-mail or fax, the following applies:

a) With the booking, the customer offers the lessor the conclusion of a rental contract on the holiday property vis-à-vis **FINCALLORCA as its legal agent** in a **binding manner**.

b) The rental contract with the lessor enters into force with the receipt of the booking confirmation (declaration of acceptance), which is made by **FINCALLORCA** in the name of the lessor as its agent and representative. The booking confirmation does not require a certain form.

2.2. Bookings can be made without individual communication through an **online booking process (contract of electronic commerce)**. For the conclusion of the contract, the following applies:

a) The online booking process is explained to the **customer** through the relevant internet presence of **FINCALLORCA**. The customer has a relevant **correction option** available to **correct their entries and to delete or reset the entire online booking form**. The use of this option is explained. The **contract languages** offered to perform the online booking are indicated. If the **contract text** is **stored** by **FINCALLORCA** in the online booking system, the **customer** will be informed of said storage and the option to access the contract text at a later time.

b) By pressing the button "**Book now**", the customer offers the lessor the conclusion of a rental contract vis-à-vis **FINCALLORCA as its legal agent** in a **binding manner**. The receipt of booking will immediately be confirmed to the travelling party electronically.

c) The transfer of the offer to conclude a contract by pressing the button "Book now" **does not substantiate any claim of the customer to the conclusion of a rental contract in accordance with their booking details**. The lessor or, as its representative, **FINCALLORCA** are on the contrary free to accept or reject the contract offer of the **customer**.

d) The contract is concluded when the customer **receives the booking confirmation from FINCALLORCA**.

3. Information, references

3.1. When providing **references and information**, **FINCALLORCA** shall be liable, within the framework of legal regulations and contractual provisions, for the **proper selection of the source of said information and its correct transfer to the customer**. Information agreements containing a contractual primary obligation to provide information shall only be deemed concluded if done so expressly. In accordance with § 675 (2) BGB, **FINCALLORCA** shall not be liable for the **accuracy of the provided information**, except for those cases in which a special information agreement was concluded.

3.2. Without an express agreement, **FINCALLORCA** does **not assume any warranty** within the meaning of § 276(1) sentence 1 BGB for information on prices, performances, booking conditions, and other circumstances of the travel service provided, nor does it **guarantee delivery** concerning the **information provided about the availability** of the services mediated by **FINCALLORCA** within the meaning of this regulation.

3.3. **FINCALLORCA** shall only receive special requests to pass them on to the lessor to receive the brokerage services. Unless expressly agreed otherwise, **FINCALLORCA** is not obligated to fulfil said special requests. These additional>ly do not form a condition or contractual basis for the mediation order or for the booking declaration of the customer to be transferred from the

mediator to the lessor. It is pointed out to the customer that special requests usually **only** become a part of the contractual obligations of the service provider **if these are expressly confirmed by the service provider**.

4. Payment processing

4.1. The lessor has granted **FINCALLORCA** the power of commercial representation to collect all payments to the lessor, including cancellation fees and other payments to the lessor.

4.2. If **FINCALLORCA**, in its capacity as a mediator, assumes the function of a broker of associated travel services in accordance with § 651w BGB (see Clause 1.3), the following shall apply: **FINCALLORCA** may only request and accept payments of the customer for remuneration of travel services after ensuring that these will be reimbursed to the customer if these travel services are to be performed by **FINCALLORCA** itself or if the claims for remuneration of service providers who receive the brokerage are still to be performed, and in case of insolvency of **FINCALLORCA** as the mediator of associated travel services

a) travel services will be cancelled; or

b) the customer fulfils payment requests for performed travel services by service providers who receive brokerage services and were unsatisfied. **FINCALLORCA** shall provide this security when brokering associated travel services by taking out insolvency insurance in acc. with § 651w (3) BGB under specification of the name and contact information of the securer of the customers' money in a clear, comprehensible, and emphasised form and by transferring a relevant security certificate for all customer payments to the brokers of associated travel service, which results in these payments only becoming due after transfer of said security certificate for associated travel services.

4.3. Upon conclusion of the contract (receipt of the booking confirmation), the service fee according to section 1.5 and a deposit on the arranged holiday property are due. The amount of the deposit is 30% of the total price and must be paid to **FINCALLORCA** within 5 working days of receipt of the booking confirmation. The remaining balance is to be paid to **FINCALLORCA** 5 weeks prior to the start of the booking. The customer will also be informed about these payment conditions in the information about the availability of the holiday property before booking. The receipt of payment by **FINCALLORCA** is decisive.

4.4. If the service fee, the deposit payment and/or the final payment are not received by **FINCALLORCA** or the agreed payee within this period, although the holiday property is available in accordance with the contract and no contractual or statutory right of set-off or retention exists on the part of the customer, and if the customer is responsible for the delay in payment, **FINCALLORCA** is entitled, after issuing a reminder with a deadline and after expiry of the deadline, to declare its withdrawal from the contract in the name of and on behalf of the owner and to charge the customer, in the name of the owner, fixed withdrawal fees in accordance with section 6. 2.

4.5. If the lessor is willing and able to transfer the booked holiday property as contractually agreed and if the **customer** does not have any contractual or legal lien, no claim to occupy the property nor to any contractual performances exists without complete payment.

5. Deposit

5.1. If deposits are to be posted, this shall only substantiate a deposit relationship between the customer and the lessor of the holiday property. **FINCALLORCA** in no way assumes any obligation to either settle or repay deposits.

5.2. If the lessor demands a deposit, this will be specified in the description of the holiday property as well as in the order confirmation. If notice is made herein that the deposit must be

paid to **FINCALLORCA, FINCALLORCA**, as a commercial agent, merely assumes the position of the lessor's collection agent.

5.3. The deposit must in principle be posted in cash. In general, it is not possible to post a deposit using a cheque; deposits can only be posted using a credit card if this has been expressly agreed in individual cases.

5.4. The deposit serves as a security for the obligation of the customer to return the keys, to pay the consumption-dependent ancillary costs such as electricity, water, gas, and phone charges, to compensate for damages to the holiday property, as well as to compensate for damages incurred if the final cleaning is not performed in a proper manner.

5.5. The lessor or its representative is entitled to make appropriate deductions from the deposit.

5.6. If the lessor or its representatives do not compensate claims under Clause 5.4 from the deposit, it will be repaid on the last day of the booking, before the guest departs. Otherwise, the settlement and any repay**5.1.** If deposits are to be posted, this shall only substantiate a deposit relationship between the customer and the lessor of the holiday property. **FINCALLORCA** in no way assumes any obligation to either settle or repay deposits.

5.2. If the lessor demands a deposit, this will be specified in the description of the holiday property as well as in the order confirmation. If notice is made herein that the deposit must be paid to **FINCALLORCA, FINCALLORCA**, as a commercial agent, merely assumes the position of the lessor's collection agent.

5.3. The deposit is usually paid on the spot. It is generally not possible to pay the deposit by cheque. Payment of the deposit by credit card or by advance transfer to an account of the lessor is only possible if this has been expressly agreed in each case.

5.4. The deposit secures the fulfilment of the customer's obligations under the contract with the lessor (in particular the return of the keys, payment of consumption-related incidental costs (insofar as a separate settlement has been agreed), compensation for damage to the holiday property, cleaning costs (e.g. in the event that the final cleaning has not been carried out properly by the customer, if so agreed)).

5.5. The lessor or its representative is entitled to make appropriate deductions from the deposit.

5.6. If the lessor or its representatives do not compensate claims under Clause 5.4 from the deposit, it will be repaid on the last day of the booking, before the guest departs. Otherwise, the settlement and any repayments will be made at the latest 14 days after the end of the booking.ments will be made at the latest 14 days after the end of the booking.

6. Withdrawal by the customer before the beginning of the booking (arrival) / Cancellation costs

6.1. It is pointed out that no legal right of withdrawal exists for contracts on holiday properties vis-à-vis lessors, either domestic or foreign; furthermore, in accordance with § 312g (2) sentence 1 clause 9 BGB, no right of revocation exists for contracts on holiday properties concluded at a distance. However, a right of withdrawal does exist if the contract is concluded away from business premises. Nevertheless, the customer is granted a contractual right of revocation by the lessor for contracts mediated by **FINCALLORCA**, in accordance with the following provisions, unless the lessor has explicitly specified a deviating regulation in the offer. The declaration of revocation before the beginning of the booking should exclusively be directed towards **FINCALLORCA** as the lessor's commercial agent. It is strongly encouraged to declare revocation in the text form.

6.2. Lessors can – unless contractually agreed otherwise – charge the following lump sum revocation fees in case of revocation, to be collected by **FINCALLORCA** as the collection

representative. Their calculation takes into account saved expenses as well as a typically possible occupancy of the holiday property in another fashion. These lump-sum revocation fees are as follows:

- a) For revocations up to 90 days before the beginning of the booking, 30% of the rental price.
- b) From the 89th day up to and including the 60th day before the beginning of the booking, 50% of the rental price.
- c) From the 59th day up to and including the 30th day before the beginning of the booking, 75% of the rental price.
- d) From the 29th day up to and including the day on which the booking begins, and in case of non-arrival without a declaration of revocation, 90% of the rental price.

6.3. In case the lump sum revocation costs are asserted in accordance with the aforementioned provisions of Clause 6.2, the lessor is not obligated to provide proof of a different occupancy of the holiday property over the originally agreed contract period. Nevertheless, the customer expressly reserves the right to prove directly vis-à-vis the lessor or vis-à-vis **FINCALLORCA** that the lessor actually did not incur any damages or incurred significantly lower damages than the respectively asserted lump sum compensation. If such proof is provided, the customer shall only be obligated to pay the lower amount.

6.4. The lessor, or **FINCALLORCA** as its representative, reserve the right to, in the place of the lump sum compensation, assert compensation for the precise loss under consideration of income from another occupancy as well as expenses saved. In this case, the calculation must be proved to the customer with substantiation.

6.5. The customer expressly reserves the right to prove directly vis-à-vis the lessor or vis-à-vis **FINCALLORCA** that the lessor actually did not incur any damages or incurred significantly lower damages than the respectively asserted lump sum compensation. If such proof is provided, the customer shall only be obligated to pay the lower amount.

6.6. In each instance of a revocation, the customer is entitled to appoint a replacement person, pursuant to the booking contract, who enters into the contract concluded with the customer and takes on all rights and obligations. The lessor can either themselves or via **FINCALLORCA** as its representative object to the entry of the replacement person into the contract if said person or their fellow traveller(s) do not meet the contractual agreements or other contractually agreed essential circumstances necessary for the performance of the contract and the contractual use of the holiday property.

6.7. It is expressly recommended to take out travel cancellation insurance as well as insurance to cover repatriation costs in case of accidents or illness. Said insurance can be taken out via **FINCALLORCA**.

7. Termination for reasons of conduct

The lessor or its local authorised person or **FINCALLORCA** as its representative reserves the right to terminate the contract after the beginning of the booking if the **customer** and/or their fellow travellers sustainably disrupt the performance of the contract, ignoring a warning, or if their conduct is in breach of contract to such an extent that this justifies immediate termination of the contract. This particularly applies to instances of intentional or grossly negligent damages to the holiday property or its inventory as well as culpable infringements against the special obligations following Clause 10 of these terms and conditions. If the contract is terminated, the lessor still reserves the right to claim the rental price; however, the lessor must deduct the value of those benefits attained through a different occupation of the holiday property.

8. Unutilised service

8.1. If the **customer** does not, or not completely, use services of the lessor contractually provided to them, particularly attributable to late arrival and/or early departure because of illness or other reasons for which neither the lessor nor **FINCALLORCA** is responsible, they shall not have the right to claim pro rata reimbursement.

8.2. However, the lessor shall pay to the **customer** those amounts which they earn from a different occupancy of the property, as well as expenses saved

8.3. The **customer** reserves the right to prove to the lessor that they made earnings through a different rental of the property or that the relevant income and/or expenses saved exceeded those considered by the lessor.

8.4. It is pointed out to the **customer** that costs incurred by a termination of a stay through no fault of their own can only be covered by special travel cancellation insurance and not by ordinary travel cancellation insurance. Said special travel cancellation insurance is not included in the price for the holiday property; however, it is still recommended.

9. Obligations of the customer vis-à-vis FINCALLORCA and the lessor, termination by the customer

9.1. The **customer** shall immediately report any deficiencies by **FINCALLORCA** to the **mediation service** of **FINCALLORCA** and provide the opportunity to remedy the problem. If the **customer** fails to report through fault of its own, all claims of the **customer** resulting from the mediation contract shall lapse, if **FINCALLORCA** would otherwise have been able to provide appropriate assistance.

9.2. The **customer** shall immediately report deficiencies to the holiday property itself, its furnishings, or other deficiencies or malfunctions to the contact specified by **FINCALLORCA**, without a special reference towards the lessor themselves, and request a remedy. If said report is not submitted through the **customer's** own fault, they shall have no claims vis-à-vis the lessor if they would have been able to immediately remedy to deficiency or malfunction, or remedy the situation by providing another, equivalent holiday property.

9.3. To ensure that the **customer** is not disadvantaged in providing proof that damages to the holiday property or its facilities are to no fault of their own or in proving the extent of the damages, it is **strictly recommended** that any damages determined when moving in or at a later point are immediately reported to the lessor or their appointed agent, also if the **customer** did not cause said damages or if they do not disturb them.

9.4. If the stay at the holiday property is severely impaired by a defect or malfunction for which the lessor is contractually liable, the **customer** reserves the right to terminate the contract with the lessor. The same applies if it cannot reasonably be expected from them to continue their stay because of said defect or malfunction for an important reason apparent to the lessor. Termination shall only be allowed if the lessor or, if available and contractually agreed, their agent allow an appropriate deadline set by the **customer** to pass without remedying the defect. No deadline must be set if the defect cannot be remedied, if this is refused by the lessor or their agent, or if a special interest of the **customer** entitles them to extraordinary termination.

10. Obligations vis-à-vis the lessor

10.1. The holiday property may only be occupied by those persons specified in the contract. In the event of overoccupancy, the lessor, without prejudice to their right to terminate the contract, is entitled to demand an appropriate, additional remuneration for the period of overoccupancy. The surplus persons are to leave the property immediately.

10.2. Visits of any third parties who are not specified as fellow travellers within the framework of the contractual agreements, with a stay extending 24 hours and particularly those including an overnight stay, shall be reported to the lessor. If said notification is not made, or if such visits objectively constitute additional occupancy of the holiday property, the provisions of Clause 9.1. shall apply mutatis mutandis.

10.3. The customer and their fellow travellers undertake to treat the property with care. Customers also undertake to take all efforts which can reasonably be expected from them to contribute to the remedying of any service impairments and reduce potential damages to a minimum.

10.4. The customer shall exactly follow the (operating) instructions on the use of the property and its facilities available in the holiday property or communicate to them on site. In particular, customers are prohibited from making any interventions to the technical facilities of the holiday property, including the electrical installations, the water and sewerage supply, individual appliances, heating, the circulating pump installations of swimming pools, and locking devices without the approval of the owner or their agent. The customer shall be liable for any damages culpably caused by a relevant infringement, if applicable jointly and severally together with their fellow travellers.

10.5. The customer undertakes to observe the local regulations communicated to them, particularly those on fire and noise prevention and the water supply.

10.6. Customers furthermore undertake to regularly clean the holiday property, which shall be left in a clean condition before departure. Any final cleaning included in the price does not cover the cleaning of the dishwasher and the stove, the oven, the refrigerator, and the kitchen appliances; these must be left in a perfectly clean condition. If any extra cleaning is required, the lessor shall charge the cleaning time. Any defilements or damages to the property's facilities which cannot be remedied by usual means shall be charged separately. Any indemnifications resulting from the aforementioned provisions to the detriment of the customer must be paid to the lessor before departure and can be deducted if a deposit has been posted.

10.7. Pets may only be brought along after prior authorisation by the lessor. The species, size, and number of animals must be indicated precisely and truthfully. The culpable refraining of providing information, or the culpable provision of false information, might constitute grounds for extraordinary termination on the part of the lessor.

11. Arrival and departure time, delayed arrival

11.1. The customer can move into the holiday property on the day of arrival at the time specified in the documents on the brokered holiday property. No claim to prior occupancy exists.

11.2. FINCALLORCA shall provide information on the latest possible time of arrival. No claim to a key transfer or property takeover exists in case of delayed arrival.

11.3. Guests shall always communicate late arrivals to the contact specified in the applicable documents, this particularly applies if the lessor or a local agent is willing to arrange for a delayed (key) transfer in exceptional cases.

11.4. The guest shall bear the accommodation costs incurred due to delayed arrival.

12. Special regulations in connection with pandemics (in particular the Corona virus)

12.1. The parties agree that the arranged services shall always be provided by the respective lessor in compliance with and in accordance with the official requirements and conditions applicable at the respective time of travel. This applies in particular to the occupancy of the respective holiday property by members of one or more households. Occupancy by members of more than one household is explicitly not agreed, irrespective of the agreed maximum

number of occupants.

13.2. The customer agrees to comply with reasonable usage regulations or restrictions of the lessor when using the services and to notify the lessor immediately in the event of typical symptoms of illness occurring.

13. Obligations of FINCALLORCA regarding entry regulations and visa entry requirements

13.1. FINCALLORCA shall only inform the customer of the entry and visa regulations if such an order is expressly agreed on. In all other cases, any such duty to clarify or inform only exists if special conditions, either known to **FINCALLORCA** or publicly evident, necessitate and express notice and the relevant information is not already contained in the offer documents available to the customer.

13.2. Such duties to inform on the part of **FINCALLORCA** are limited to communicating information from current, industry-standard information sources. **FINCALLORCA** is not subject to any special research obligation without an express agreement. **FINCALLORCA** can also fulfil its obligation to provide information by providing reference that the customer should themselves follow up with the information points worth considering.

13.3. The aforementioned provisions shall apply mutatis mutandis to providing information on customs regulations, health regulations for entry, health-related precautionary measures to be taken by the customer and their fellow travellers, as well as for import and export regulations.

14. Liability of the mediator

14.1. If **FINCALLORCA** has not expressly agreed with the customer to assume a contractual duty, **FINCALLORCA** shall only be liable for the proper fulfilment of the agency duties. These agency duties in particular include the legally effective transfer of the offer to conclude a contract with the service providers to receive brokerage services, as well as, in the case of acceptance of the contract offer by the service providers to receive brokerage services, the transfer of the confirmation of contract on behalf of and for the account of the service providers to receive brokerage services.

14.2. FINCALLORCA shall not be liable for defects and damages to the customer arising from the mediated travel service. This shall not apply if **FINCALLORCA** reached an express agreement on the service or the securing of the service, in particular, if this significantly deviates from the service description of the service provider.

14.3. The preceding regulations shall not do prejudice to any of **FINCALLORCA**'s own liability resulting from the culpable infraction of its agency duties.

14.4. The liability of a mediator pursuant to § 651w (4) BGB and § 651x BGB shall remain unaffected by the regulations above.

15. Place of jurisdiction and governing law, consumer dispute resolution

15.1. FINCALLORCA points out that, against the background of the law on consumer dispute resolution, **FINCALLORCA** does not take part in any voluntary consumer dispute resolution. If consumer dispute resolution becomes mandatory for **FINCALLORCA** after its publication, **FINCALLORCA** shall inform the consumer in some suitable form. For all contracts concluded with electronic transactions, **FINCALLORCA** makes reference to the European online dispute resolution platform <https://ec.europa.eu/consumers/odr/>.

15.2. For **FINCALLORCA**'s agency service, German law shall solely apply to the entire legal and contractual relationship between the customer and **FINCALLORCA**.

15.3. The **customer** can only take legal action against **FINCALLORCA**, if **FINCALLORCA** is used

as a mediator, at its place of business.

15.4. For any claims asserted by **FINCALLORCA** vis-à-vis the **customer**, if any claims from the mediation contract are asserted, the **customer's** place of residence shall be decisive. For claims against **customers** who are merchants or legal entities under public or private law with a place of residence or permanent address abroad, or whose place of residence or place of business of **FINCALLORCA**.

15.5. The regulations above do not apply:

a) if and insofar as any regulations from international agreements or European law, which cannot be overridden contractually and apply to the mediation contract between the **customer** and **FINCALLORCA**, result in deviating circumstances to the benefit of the **customer**; or

b) if and insofar as any regulations in an EU member state of which the **customer** is a citizen, which cannot be overridden contractually and apply to the mediation contract, offer more beneficial terms to the **customer** than the aforementioned regulations or the relevant German provisions.

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