

TERMS AND CONDITIONS
(Status: December 2019)
for deliveries and services provided to

EHL Wohnen GmbH

Prinz-Eugen-Strasse 8-10 | 1040 Vienna

1. Scope of application

- 1.1 These terms and conditions apply to all services, above all brokerage services, provided by EHL Wohnen GmbH [FN 489946j], hereafter abbreviated as “EHL“.
- 1.2 The respective business partner (hereafter also referred to as the “customer“) has taken note of the fact that the companies listed under Point 1.1 are closely related economically to each other and to all other member companies of the “EHL Group“ in Austria.
- 1.3 These terms and conditions apply to all (also future) business relations between the customer and EHL, in particular to all services provided by EHL.
- 1.4 Any deviations from these terms and conditions or from the customer’s terms and conditions have no validity unless they are expressly agreed in writing between EHL and the customer. Moreover, the customer’s terms and conditions are not considered part of the contract content even if they are not rejected by EHL.
- 1.5 The provisions of the terms and conditions apply – unless expressly agreed otherwise – to both consumers and to businesspersons. “Consumer” in the sense of the following provisions of the Austrian Consumer Protection Act (“Konsumentenschutzgesetz“) is understood to mean any natural person or legal entity who/which concludes a legal transaction for a purpose that cannot be attributed to his/her/its independent professional activities. A “businessperson” is understood to mean a permanently established organisation of independent economic activities which are not necessarily profit oriented (§ 1 (2) of the Austrian Consumer Protection Act).

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2. Scope and performance of services

- 2.1 EHL will act as a broker on the basis of a separate agency contract (respectively brokerage contract). EHL is required to provide its services correctly as defined in the agency contract.
- 2.2 EHL will act as a dual broker for the brokerage of transactions unless indicated otherwise for a specific case.
- 2.3 The offers prepared by EHL are based solely on the documents and information provided by its business partner(s). EHL entitled to rely on the documents and information provided and is not required to evaluate them or verify their accuracy, conclusiveness and/or completeness.
- 2.4 If the customer is aware that a property offered by EHL is already available for sale or rental or is aware of another business opportunity offered by EHL, the business partner must inform EHL without delay, but at the latest within 14 (fourteen) days (beginning with the first contact to EHL). If this disclosure is not made on time or at all, the business partner acknowledges that a commission will be payable on the offered property/offered business opportunity.

3. EHL's commission entitlements

- 3.1 Any and all activities by EHL, in particular brokerage activities, are principally provided in exchange for payment. The business partner is required to pay the brokerage commission in the event the brokered transaction is concluded with a third party as a result of the contractually agreed services. EHL is also entitled to receive a commission when it has provided services in a manner other than the identification of another party. The entitlement to a commission becomes due and payable when the brokered transaction attains legal validity.
- 3.2 The maximum rates for commission entitlements by real estate brokers defined by the applicable legal regulations, in particular the Austrian Real Estate Brokerage Directive ("Immobilienmaklerverordnung", Austrian Federal Gazette BGBl 1996/297 in the current version) are understood to be agreed.
- 3.3 The business partner also agrees to pay the commission when EHL's activities do not result in the conclusion of the contractually agreed transaction, but in the conclusion of a transaction with a similar economic purpose.

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3.4 The business partner is also required to reimburse EHL for expenses and any trouble taken, also in absence of successful brokerage activities attributable to EHL, at an amount equal to the commission which would otherwise be payable (§ 15 (1) of the Austrian Brokerage Act, “Maklergesetz) when

- contrary to good faith, the transaction described in the brokerage contract is not materialised only because the business partner, in contrast to the previous course of negotiations, fails to conclude the legal act required for completion of the transaction without reasonable grounds;
- a different transaction is concluded with a third party named by EHL, to the extent the brokerage of this transaction falls within EHL’s scope of activity;
- the transaction described in the brokerage contract is not concluded with the business partner but with another person because the business partner informed this person of the opportunity indicated by EHL, or the transaction is not concluded with the named party but with another person because this person was informed of the business opportunity by the named party;
- the transaction with the named third party does not materialise because a legal or contractual right to pre-emption, repurchase or entry is exercised.

3.5 If an exclusive brokerage agreement has been concluded, compensation or reimbursement for expenses and/or trouble taken as described under Point 3.4 is also agreed when

- the business partner cancels the exclusive brokerage agreement prematurely in violation of the contract without important reason;
- the transaction is completed during the term of the exclusive brokerage agreement in violation of the contract through the actions of another broker commissioned by the business partner, or
- the transaction is completed during the term of the exclusive brokerage agreement in a different manner than through the actions of another broker commissioned by the business partner.

3.6 All entitlements to commissions (including compensation or reimbursement for expenses and trouble taken) are understood to be exclusive of any statutory value added tax (net).

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3.7 All invoices are due and payable immediately, without deductions, after receipt.

3.8 An offset against receivables held by EHL is only possible for recognised or legally valid counterclaims.

4. Obligations of the business partner to cooperate

4.1 The business partner is required to provide EHL with correct, honest and comprehensive support for its activities within a reasonable period of time; to supply all required documents and information; and to inform EHL of any subsequent changes that are relevant for its activities.

4.2 The business partner is required to treat as confidential the possibility of concluding a legal transaction brokered by EHL and may not disclose any information to third parties.

4.3 The business partner will obtain all necessary approvals – where required – for the validity of the legal transaction brokered by EHL and provide EHL at any time with information on the status of the related proceedings.

4.4 If the business partner fails to provide the necessary cooperation, either not on time or not in the agreed manner, he/she will be responsible for the resulting consequences, e.g. delays or additional costs.

5. Warranty/liability

5.1 EHL agrees to provide the contractually agreed brokerage activities with due diligence and in a factually correct manner. However, EHL will not accept any responsibility/guarantee for specific results or success.

5.2 EHL will only be liable in the case of intentional or gross negligence. EHL will not be liable for damages caused by slight negligence, except in the case of personal injury or claims under the Austrian Product Liability Act (“Produkthaftungsgesetz”).

5.3 To the extent permitted by law, any liability is hereby excluded for subsequent damages, lost profits, damages arising from third party claims, savings expected but not realised or indirect damages.

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5.4 A limitation period of 1 (one) year applies to claims for damages; this period begins on the date the business partner becomes aware of the damage.

6. Miscellaneous

6.1 If individual provisions of these terms and conditions are or should become invalid, this will have no effect on the remaining provisions. The invalid provisions are to be replaced by provisions which meet the parties' intended economic purpose as closely as possible.

6.2 Any changes to this contract must be made in writing. This also applies to the annulment of the written form clause.

6.3 These terms and conditions as well as all legal transactions concluded on the basis thereof are subject solely to Austrian substantive law under the exclusion of UN sales law and under the exclusion of reference norms/conflict-of-law rules.

6.4 The sole competent court for all legal disputes arising from or in connection with this agreement is the court in 1010 Vienna which has subject-matter jurisdiction over this agreement.

7. Supplementary provisions for the consumer business

7.1 The mandatory statutory provisions of consumer legislation (in particular, the Austrian Consumer Protection Act / "Konsumentenschutzgesetz" etc.) apply to all contracts between EHL and consumers.

7.2 Point 3.8 reads as follows: An offset with receivables held by EHL is only permitted in the event of insolvency on the part of EHL or in the event of counterclaims which are legally connected with EHL's liability or which have been determined by the court or accepted by EHL.

7.3 Point 5 applies, provided Points 5.3 and 5.4 are omitted entirely.

7.4 Point 6.4 is excluded; the statutory provisions apply to lawsuits against consumers (in particular, § 14 of the Austrian Consumer Protection Act).

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8. Information on statutory rights of withdrawal in accordance with the Austrian Distance Contracts Act (“Fern- und Auswärtsgeschäfte-Gesetz“) and the Austrian Consumer Protection Act

Consumers have the right to withdraw from a distance contract or a contract concluded outside business premises within 14 (fourteen) days without providing any reason. The withdrawal period begins on the date the brokerage contract is concluded.

In order to exercise the right of withdrawal, EHL must be informed by means of a clear statement (e.g. letter, telefax or email) of the decision to cancel this contract. The attached sample (“**withdrawal form**“) can be used but is not required.

Compliance with the withdrawal deadline is ensured when the notice to exercise the right of withdrawal is sent before the end of the withdrawal period. The days required for mail delivery are not counted as part of this period.

If the consumer wants EHL to begin with the fulfilment of the contract before the end of the 14-day withdrawal period (e.g. collection of information and/or documents, site inspections, etc.), he/she must expressly inform EHL. Any such statement results in the consumer losing his/her right of withdrawal if the contract performance is completed during this period (§ 18 (1) no. 1 of the Austrian Distance Contracts Act). EHL notes that, due to the different business practices in the real estate brokerage business, the mere naming of a third party is sufficient to justify EHL’s entitlement to a commission. If these requirements are met, the consumer can no longer withdraw from the brokerage contract.

In accordance with § 3a and § 30a of the Austrian Consumer Protection Act, consumers have additional rights of withdrawal. These provisions – in the current version – read as follows:

§ 3a. (1) The consumer can also withdraw from his/her contract request or contract when, without any initiative on his/her part, circumstances relevant for his/her approval, which were presented as probable by the contractor/supplier during the contract negotiations, do not occur or occur to only a very limited extent.

- (2) Relevant circumstances in the sense of para. 1 are
1. expectations of cooperation or consent by a third party which are required for performance by the contractor/supplier or use by the consumer,
 2. prospects of tax benefits,
 3. prospects of government grants and
 4. prospects of a loan.

(3) Withdrawal can be declared within one week. The time period begins to run as soon as the consumer realises that the circumstances named in para. 1 will not occur or only occur to a very limited extent and he/she has received written instructions concerning this right of withdrawal. However, the right of withdrawal expires at the latest one month after the complete

fulfilment of the contract by both contract partners; for bank contacts with a term exceeding one year, the right of withdrawal expires at the latest one month after the conclusion of the contract.

- (4) The consumer is not entitled to a right of withdrawal when
 1. during the contract negotiations, he/she knew or should have known that the relevant circumstances would not occur or occur to only a very limited extent,
 2. the exclusion of the right of withdrawal was agreed,
 3. the contractor/supplier has stated his/her readiness to adjust the contract accordingly, or
 4. the contract is subject to the Austrian Insurance Contract Act (“Versicherungsvertragsgesetz”).
- (5) § 3 (4) applies analogously to the statement of withdrawal.

§ 30a. (1) If a consumer submits a declaration of contract for the purchase of leasehold rights, other rights of use or ownership of an apartment, a single-family house or land suitable for the construction of a single-family house on the same day he/she first inspected the contract object, he/she can withdraw from his/her declaration of contract if the purchase is intended to cover the urgent housing needs of the consumer or a close family member.

(2) This withdrawal can be declared within one week after the consumer’s declaration of contract. If a broker is involved and the withdrawal from the declaration of contract is directed to this person, the withdrawal will also apply to any brokerage contract concluded in connection with the declaration of contract. Moreover, § 3 (4) applies to the statement of withdrawal.

(3) The time period described in para. 2 begins to run as soon as the consumer receives a copy of his/her declaration of contract and written instructions concerning the right of withdrawal. However, the right of withdrawal expires at the latest one month after the date of the first inspection. Any rights of withdrawal to which the consumer is entitled under other legal provisions – in particular §§ 11 ff. of the Austrian Distance Contracts Act – remain unaffected.

(4) The payment of a deposit, forfeit money or advance payment before the end of the withdrawal period cannot be validly agreed.