

fincallorca

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Dear customers,

The following terms and conditions shall become contents of the agency contract in the event of your booking, insofar as they are validly agreed, which you - hereinafter referred to as "Customer" - conclude with Fincallorca GmbH - hereinafter referred to as "FINCALLORCA" – regarding the holiday flat/holiday home. "Holiday flat" or "holiday home" will hereinafter be uniformly referred to as "Holiday Domicile". The following terms and conditions simultaneously regulate the contractual relationship between you and the owner/landlord, with whom the contract is concluded on the basis of the arrangement of FINCALLORCA. For reasons of simplification, the owner/landlord of the Holiday Domicile shall hereinafter be referred to as "Landlord". The booking confirmation and the valid terms and conditions at the time of the booking shall be stored by Fincallorca and may be sent again upon request at any time. Please read these terms and conditions with due care and attention.

1. Position and services of FINCALLORCA, applicable legal provisions

1.1. In the brochure/on the website, FINCALLORCA offers the agency of third-party services, namely, of contracts with the Landlords of the Holiday Domiciles. Therefore, FINCALLORCA only has the position of the agent between the Customer and the Landlord. This does not apply, insofar as FINCALLORCA gives the appearance of providing contractually prescribed services with respect to the Holiday Domicile as its own, in accordance with the principles of section 651a subsection 2 BGB [German Civil Code].

1.2. The rights and duties of FINCALLORCA as an agent arise from these terms and conditions, any supplemental contractual agreements, or alternatively, from the statutory provisions of Sections 675, 631 et seqq. BGB (provisions on agency business against payment).

1.3. For the rights and duties of the Customer vis-à-vis the Landlord, the statutory provisions and the agreements reached with the same apply exclusively.

1.4. Insofar as the following provisions contain regulations regarding the stay and the rights and duties of the Customer and Landlord, these agreements shall be made by FINCALLORCA as a representative on behalf of, and as the attorney of, the Landlord and shall become the content of the contract concluded with the same through the arrangement by FINCALLORCA.

2. Booking procedure

2.1. The booking can take place verbally, in written form, by telephone, by telefax, by e-mail or via the Internet. The information from FINCALLORCA in advance of the booking, regarding the availability of the requested Holiday Domicile, is non-binding and does not constitute an offer of a contract by FINCALLORCA.

2.2. With the booking, the Customer is bindingly offering the Landlord of the Holiday Domicile, represented by FINCALLORCA, to conclude the contract on the basis of the description of the Holiday Domicile, all supplementary details in the brochure/on the Internet and these terms and conditions. Within the scope of the contract offer, the Customer will receive information about the availability and the specific payment terms of the requested Holiday Domicile.

2.3. The contract shall be concluded with legally binding effect for the Customer and Landlord, with the booking confirmation sent by FINCALLORCA as the agent of the Landlord, in written form, by telefax or in electronic form. For bookings that are made less than one week prior to start of occupancy, the booking confirmation may also be legally binding when it takes place by telephone.

3. Payment processing

3.1. FINCALLORCA is the authorised collection agent in respect of all payments, also regarding cancellation costs and other payments to the Landlord.

3.2. A deposit falls due upon conclusion of the contract (receipt of the booking confirmation). The amount of the deposit is 30% of the total price and is payable to FINCALLORCA within 5 working days after receipt of the booking confirmation. The residual payment is due to FINCALLORCA 5 weeks prior to commencement of the trip. The Customer will be informed about these payment terms prior to his booking in the information about the availability of the Holiday Domicile. Furthermore, they are stated in the booking confirmation.

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3.3. The accepted payment methods for the deposit as well as the final payment are bank transfers and, in case of last minute bookings (up to 6 weeks before arrival), credit cards too.

3.4. If the deposit and/or the residual payment is not received by FINCALLORCA or the agreed payment recipient within this deadline, even though the Holiday Domicile is available in accordance with the contract and no contractual or legal right of retention exists for the Customer, FINCALLORCA is authorised to declare its withdrawal from the contract after a reminder and setting a deadline, on behalf of and with the authority of the Landlord and charge the Customer a lump-sum withdrawal fees on behalf of the Landlord.

3.5. Insofar as the Landlord is prepared and able to surrender the booked property in accordance with the contract, and no contractual or legal right of retention exists for the Customer, no entitlement exists to move into the property and to the contractual services without full payment.

4. Withdrawal by the Customer, rebooking, substitute person

4.1. It is recalled that, in contracts for Holiday Domiciles, no legal right of withdrawal exists vis-à-vis Landlords. However, the Customers shall be granted a contractual right of withdrawal by the Landlord in the contracts arranged by FINCALLORCA, according to the following provisions. The declaration of withdrawal can exclusively be addressed to FINCALLORCA as the agent of the Landlord. It is urgently recommended to declare the withdrawal in writing.

4.2. In the case of withdrawal, the Landlords may charge the following lump-sum withdrawal costs, through FINCALLORCA, as the collection agent, for which expenses saved in their settlement and the possible occupation of the Holiday Domicile otherwise must be taken into account. These lump-sum withdrawal fees amount to:

a) For a withdrawal up to the 90th day prior to the start of occupation, 30% of the total price.

b) For a withdrawal from the 89th to the 60th day prior to the start of occupation, 50% of the total price.

c) For a withdrawal from the 59th to 30th day prior to the start of occupation, 75% of the total price.

d) For a withdrawal from the 29th day until the day before start of occupation or failure to arrive without a declaration of withdrawal, 90% of the total price.

4.3. In the case of the assertion of lump-sum withdrawal costs in accordance with regulations 4.2 above, the owner/Landlord shall not be obligated to provide evidence of occupying the Holiday Domicile otherwise during the originally arranged contractual term. However, the Customer expressly reserves the right to prove directly to the Landlord or to FINCALLORCA that the Landlord did not incur a loss at all or only a significantly lower loss than the respective asserted lump-sum compensation. In the case of such evidence, the Customer is only obligated to pay the lower amount.

4.4. The Landlord reserves the right to assert the concrete loss in place of the lump-sum compensation and must quantify and document the saved expenses to the Customer, in this case, in consideration of occupancy otherwise, which may have taken place, and details about this, as well as saved expenses.

4.5. In any case of withdrawal, the Customer is authorised to appoint a substitute, on the basis of the booking contract, who shall enter into the contract concluded with the Customer, with all its rights and duties. The Landlord may object to the entry of the substitute into this contract himself or through FINCALLORCA, as the agent, if this person or his co-travellers do not comply with the contractual agreements or other material contractual circumstances exist in respect of the substitute or his co-travellers.

4.6. The conclusion of trip cancellation insurance and insurance for covering the repatriation costs, in the event of an accident or illness, is expressly recommended. This may be concluded, inter alia, via the service website of FINCALLORCA.

4.7. A contractual or legal entitlement to the implementation of changes after conclusion of the contract with respect to the travel date, the occupancy duration, booked additional services or other material contractual circumstances (rebooking) does not exist. If rebooking is possible and if it takes place at the Customer's request, FINCALLORCA may charge a rebooking fee of EUR 25.- per rebooking on behalf of the owner, up to 90 days prior to the start of occupancy. Rebooking requests, which take place after the expiration of this deadline, may, if possible, only be implemented after withdrawal from the contract under the foregoing terms and conditions and a simultaneous new booking. This does not apply to rebooking requests, which only incur negligible costs.

5. Cancellation by the Landlord

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5.1. If the execution of the contract is significantly impeded as a consequence of force majeure, which was not foreseeable at the time of conclusion of the contract, the Customer or the Landlord, represented by the FINCALLORCA, may cancel the contract. In this case, the corresponding application of the provisions of Section 651 j of the Civil Code of the Federal Republic of Germany and the provisions, which are referred to in this provision, shall be agreed.

5.2. The Landlord, his local authorised representative or FINCALLORCA, as his agent, may cancel the contract after the start of occupancy, if the Customer and/or his co-travellers continue to disrupt the execution of the contract, notwithstanding a warning, or if they should conduct themselves in violation of the contract in such a manner, which justifies the immediate rescission of the contract. This particularly applies in the case of premeditated or grossly negligent damage to the Holiday Domicile and its inventory, as well as the culpable violation of the special obligations in accordance with Clause 11. of these terms and conditions. If the contract is cancelled, the Landlord is entitled to the total price; however, the Landlord must offset any expenses saved, as well as those payments obtained from otherwise occupying the Holiday Domicile.

6. Unused services

6.1. If the Customer fails to use the services provided to him in accordance with the contract, particularly as a consequence of late arrival and/or earlier departure due to illness or for other reasons that are not the fault of the Landlord or FINCALLORCA, or does not fully utilise the services, no entitlement shall exist by the Customer to a proportional refund.

6.2. However, the Landlord shall repay the Customer such amounts, which he obtained from otherwise occupying the property.

6.3. The Customer is put on notice that the costs, which he incurs due to non-culpable discontinuation of the stay, may only be covered by a specific trip discontinuation insurance and not by ordinary trip cancellation insurance. Such trip discontinuation insurance is not included in the price for the Holiday Domicile. It is recommended to take out this insurance.

7. Security deposit

7.1. After conclusion of the contract, upon moving in or during handover of the key (or later, if this is not possible with late arrival or leaving the key in a safe place), the Landlord is entitled to request a security deposit, insofar as this is shown in the description of the Holiday Domicile and/or the booking confirmation.

7.2. The security deposit relationship shall be exclusively concluded between the Customer and the Landlord. FINCALLORCA shall not have any obligations to charge or repay the security deposit.

7.3. If the Holiday Domicile and/or its furnishings and the garden display damage upon return, for which legitimate reasons exist for believing that this was caused by the Customer or his co-travellers, the Landlord shall be entitled to retain the costs incurred for covering the damage from the security deposit. Insofar as it is expressly stated in the property description, the Landlord may also use the security deposit for covering incidental costs, such as electricity, water, heating, fireplace wood, interim cleaning or other additional services used on site.

7.4. The Landlord shall issue a statement for the security deposit upon the departure of the Customer and shall pay back the refundable amount of the security deposit in cash or transfer it to the Customer's account promptly after departure and/or claim the retentions from it. In the event of such a retention, the Customer reserves the right to all objections to the grounds and amount of the claim, on which the retention is based.

8. Entry requirements

8.1. For German citizens, for (variable), a valid identity card or child's identity card is sufficient (no replacement documents!).

8.2. Provisions to be observed by foreign Customers can be obtained from their domestic representation or a consulate. Without an express agreement in this respect, FINCALLORCA shall not be obligated to find out and/or refer to entry regulations for non-EU foreigners, stateless persons or persons with a comparable status.

9. Obligations of the Customer vis-à-vis FINCALLORCA and the Landlord, cancellation by the customer

9.1. Defects of FINCALLORCA's agency services shall be notified to the same by the Customer at once and the opportunity for remedy shall be given. If this notification remains culpably, any claims by the Customer from the agency contract shall lapse, insofar as FINCALLORCA would have been able to provide appropriate remedy.

9.2. In case of defects to the Holiday Domicile itself, its furnishings, or other defects or faults the Customer shall notify the office specified by FINCALLORCA at once, without separate notification to the Landlord himself, and demand repair. If this notification is culpably omitted, no entitlement shall exist by the Customer vis-à-vis the Landlord, insofar as he would have been able to repair the defect or the fault directly or by providing an equivalent, different Holiday Domicile.

9.3. In order for the Customer not to incur any disadvantages with respect to his fault or lack of fault in the case of damage to the holiday property or its furnishings regarding the body of evidence, it is highly recommended that if such damage is determined upon occupation or later on, the appointed representative must be notified at once, even if the Customer has not caused such damage himself and even if it does not bother him.

9.4. If the stay in the Holiday Domicile is significantly impaired by a defect or a fault, for which the Landlord must accept contractual liability, the Customer may cancel the contract with the Landlord. The same applies, if it becomes unreasonable for him to continue his stay as a consequence of such a defect or fault for a compelling reason, which is identifiable for FINCALLORCA. The cancellation is only admissible, once the Landlord or his representative, if available and agreed as a contact, has allowed a deadline set by the Customer to expire, without providing remedy. It is not necessary to set a deadline, if the remedy is impossible or is refused by the Landlord or his representative or if the immediate cancellation of the contract is justified by a specific interest of the Customer.

10. Liability

The contractual liability of FINCALLORCA, as an agent for the agency contract, is limited to three times the value of the arranged services, for any damages of the Customer, which are not physical injuries, insofar as the Customer's damages have neither been caused by FINCALLORCA in a premeditated or grossly negligent manner, or if FINCALLORCA is solely responsible for damages, on the basis of culpability by its legal agents.

11. Obligations vis-à-vis the Holiday Domicile provider

11.1. The contractual property may only be occupied by the number of persons specified in the contract. In the case of over-occupancy, the Landlord is entitled to charge an additional, appropriate fee for the period of over-occupancy and, if necessary, demand compensation for fines imposed on the Landlord and the surplus persons must vacate the property immediately.

11.2. The hosting of guests by the Customer in the contractual property is restricted to visits without overnight accommodation. Letting guests stay overnight requires the express prior consent of the Landlord, regardless of the existing number of beds, and can be made dependent on the payment of an extra fee by the Customer. Clause 11.1 applies.

11.3. Without the Landlord's express prior consent, changed occupancies, i.e. a change or succession of persons, who occupy the Holiday Domicile, with respect to individuals or overall, are not permitted. In the event of such conduct contrary to contract, the Landlord is entitled to demand an additional fee.

11.4. The erection of tents, caravans etc. on the property is not permitted.

11.5. The Customer undertakes to handle the Holiday Domicile and its furnishings with care, also on behalf of his co-travellers, and to notify the Landlord about any damage and defects during the period of occupation as soon as possible.

11.6. Premises, facilities or spaces, which are local to the Holiday Domicile and are referred to in the description of the Holiday Domicile or corresponding local information to the effect that they do not belong to the contractually owed services, may not be entered by the Customer or his co-travellers.

11.7. The Customer undertakes to leave the house in a tidy, clean and orderly condition upon departure. Leftover food must be taken away/disposed of. The waste must also be disposed of by the Customer. If the Holiday Domicile is not vacated in a proper condition, the Landlord is entitled to retain the costs incurred from the security deposit.

11.8. Pets may on be brought along, if

a) this is envisaged in the description of the property

b) truthful details have been provided with the booking regarding the type, species and size

c) an explicit confirmation has been provided in the booking confirmation regarding the arrangements for bringing the pet along

d) and the animals are house-trained and well-disciplined and correspond to the details provided upon booking.

Beds and sofas are reserved for two-legged beings.

12. Exclusion deadline for claims from the agency contract, limitation period, information about consumer dispute settlement

12.1. Claims by the Customer from the agency contract, which are due to injury to life, limb or health, including contractual claims to compensation, which are due to negligent breach of duty by FINCALLORCA or premeditated or negligent breach of duty by a legal representative or legal agent of FINCALLORCA, shall become time-barred in three years. This also applies to claims for the compensation of other damages, which are based on grossly negligent breach of duty by FINCALLORCA or deliberate or grossly negligent breach of duty by a legal representative or legal agent of FINCALLORCA.

12.2. All other claims from the agency contract become time-barred within one year.

12.3. The limitation period in accordance with clauses 12.1 and 12.2 begins at the end of the calendar year, in which the claim was incurred and the Customer became aware of the claim or should have become aware of it without gross negligence. If the last day of the deadline falls on a Sunday, a nationally recognised public holiday at the declaration venue or a Saturday, such a day shall be replaced by the next working day.

12.4. If negotiations are pending between the Customer and FINCALLORCA about the claim or the circumstances underlying the claim, the limitation period is suspended until the Customer or FINCALLORCA refuse to continue the negotiations. The limitation period shall occur no earlier than three months after the end of the suspension.

12.5. With respect to the law on the settlement of consumer disputes, FINCALLORCA points out that FINCALLORCA will not participate in any voluntary settlement of a consumer dispute. Insofar as the settlement of a consumer dispute should become binding for FINCALLORCA after these travel terms and conditions go into print, FINCALLORCA shall inform the consumers about this in the appropriate form. For all travel contracts, which have been concluded in electronic legal communication, FINCALLORCA refers to the European online dispute settlement platform <http://ec.europa.eu/consumers/odr/>.

13. Choice of law and legal jurisdiction

13.1. With regard to the agency activity of FINCALLORCA, the entire legal and contractual relationship between the Customer and FINCALLORCA, German law applies exclusively.

13.2. The Customer may only file legal action against FINCALLORCA at its registered office, insofar as it is being claimed upon in its capacity as an agent.

13.3. For legal actions by FINCALLORCA against the Customer, insofar as claims are asserted from the agency contract, the Customer's place of residence is decisive. For legal actions against Customers, who are merchants, public-law legal entities or persons, who have their place of residence or usual abode abroad or their place of residence or usual abode is not known at the time of filing legal action, insofar as claims from the agency contract are asserted, the registered office of FINCALLORCA shall be agreed as the legal jurisdiction.

13.4. The foregoing provisions do not apply if the contractually non-negotiable provisions of international treaties or European-law provisions, which are applicable to the agency contract between the Customer and FINCALLORCA, stipulate otherwise in favour of the Customer or if the provisions in the Member State of the EU, to which the Customer belongs, which are applicable to the travel agency agreement, are more favourable for the Customer than the foregoing provisions or the corresponding German provisions.

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