

**General Terms and Conditions of
Ayee GmbH
for the Use of Wireless Local Area
Networks**

**§ 1 Scope of application and
commencement date of contract**

- 1.1 These General Terms and Conditions (“GTC”) govern the use of the Wireless Local Area Network (“WLAN”) of Ayee GmbH (“Ayee”) by the customer (“Customer”).
- 1.2 Services and offers by Ayee in connection with use of WLAN are based exclusively on these GTC. Use of WLAN is conditional on the Customer concluding an accommodation agreement with Boardinghouse Bad Homburg.
- 1.3 On first registration the guest must log on with his data and cell phone number and confirm that he has read and accepted the contract provisions. A short time after logging on he will receive an SMS message, sent to the cell phone number given, containing an individual access password (“access data”) which has to be entered once on a validation page.
- 1.4 The contract comes into effect on despatch of the access data provided by Ayee and activation of WLAN access by Ayee.

§ 2 Services to be provided by Ayee

- 2.1 Ayee will support the Customer in the transmission of data in a communication network controlled by Ayee, which is linked to the Internet. Wireless access to the

Internet on Ayee’s premises is facilitated for the Customer using Ayee WLAN.

- 2.2 Use of the service requires a cell phone and a WLAN-compatible terminal on the Customer’s part (e.g. laptop or PDA) with WLAN-compatible interface to standard 802.11g and 802.11b. Appropriate software must also be installed.
- 2.3 Transmission speed during use is contingent on technical conditions, such as Internet backbone network capacity, transmission speeds using the selected server of the particular content provider concerned and number of people using WLAN access.
- 2.4 Login for the first time is only possible using the access data allocated to the Customer by Ayee. It is only necessary to insert the access data again if the guest uses a WLAN terminal that has not already been registered. Access data is valid for twelve months from the day of registration on and expires at the end of that period.
- 2.5 Data is transmitted unencoded. It is therefore possible, in principle, for third parties to see data. Secure data transmission within WLAN can only be achieved by installing special security software. It is for the Customer to use such security software, if necessary.

§ 3 Customer’s obligations

- 3.1 Access data allocated by Ayee must not be passed on to third parties and must be safeguarded from third-party access.
- 3.2 The Customer is not permitted to allow third parties to use his WLAN access, whether or not for valuable consideration.
- 3.3 The Customer is forbidden to abuse WLAN. The Customer is forbidden, in particular, to
- send emails, messages or other information to third parties for advertising purposes without the prior express consent of the recipient; and
 - retrieve or download data or information without authorisation; and
 - infiltrate third-party data networks without authorisation; and
 - use executable routines or malware that are transmitted to or hidden on other computers without prior consent (e.g. spyware, diallers, viruses, trojans, computer worms); and
 - copy, distribute, offer or transmit third-party content protected by copyright or the like without prior express consent, especially using file-sharing networks.
- 3.4 The Customer is also forbidden to distribute or offer information with illegal or immoral content or to make the same available for downloading in any way. This includes, in particular, information which constitutes incitement of the people within the meaning of §§ 130, 130a and 131 StGB [*Criminal Code*] or incitement to commit criminal offences, which glorifies or plays down violence, which is sexually offensive, pornographic within the meaning of § 184 StGB, or is liable to seriously endanger the morals of children or minors or prejudice their welfare, or which harms the reputation of Ayee. The provisions of the Interstate Treaty on the Protection of Minors in the Media and the Law on the Protection of Minors must be observed.
- 3.5 The Customer is obliged to indemnify Ayee and its agents in respect of any third-party claims based on unlawful use of WLAN and services connected therewith or on a breach of duty laid down in these GTC on the part of the Customer. This applies, in particular, to claims for infringement of data protection law, copyright or other legal provisions.
- 3.6 If the Customer is aware, or should be aware, that such an infringement is threatened or is being committed by a third party using his access data the Customer is obliged to promptly inform Ayee.
- 3.7 If the Customer should be in breach of the aforementioned obligations Ayee will be entitled to summarily terminate the agreement on exceptional grounds and bar access to WLAN at the Customer's expense.
- 3.8 The Customer confirms that he uses antivirus software with up-

to-date virus definitions on his terminal and that he takes all safety precautions that can reasonably be expected of him, such as antivirus and trojan protection, and ensures that all security updates for the terminal concerned or for the operating system of his terminal have been installed.

§ 4 Liability; Limits to liability

4.1 Ayee provide the Customer with access to the Internet via WLAN. Ayee. Ayee do not check malware in particular (e.g. spyware, diallers, viruses, trojans, computer worms).

4.2 Ayee are not liable for loss or damage caused by force majeure, in particular natural catastrophes, strikes or lockouts. Neither is Ayee liable for unforeseeable temporary circumstances for which Ayee are not responsible, especially where caused by official rules and regulations or failure of communication networks.

4.3 Ayee are not liable for loss or damage that the Customer could have avoided by reasonable prompt data back-up.

4.4 Ayee excludes liability unless it is

- liability for loss or damage due to injury to life, limb or health resulting from intentional or negligent breach of duty on the part of Ayee or a statutory representative or agent of Ayee; or
- liability for other loss or damage resulting from intentional or grossly negligent breach of duty on the part of

Ayee or a statutory representative or agent of Ayee.

4.5 Ayee's liability for property loss not resulting from intent is limited to the amount permitted under § 44a TKG [Telecommunications Act].

4.6 Ayee's liability for property loss or material damage resulting from inadvertently negligent breach of fundamental duties on the part of Ayee is limited in quantum to loss or damage typically foreseeable at the time of conclusion of the contract subject, however, to the maximum amounts provided for in § 44a TKG. 'Fundamental duties' in the above sense means those duties towards guests that Ayee is obliged to fulfil in accordance with the substance and objective of the contract, the fulfilment of which is essential to enable the contract to be properly performed and on compliance with which the guest normally relies and is normally entitled to rely.

4.7 Ayee is not liable for loss or damage caused by the conduct of an employee or agent unless such persons act in the performance of their services.

4.8 Liability under the Product Liability Act is not affected.

4.9 Exclusion of liability applies, in particular, to breach of ancillary obligations, lack of economic success, loss of profits, indirect loss or damage, consequential

loss and loss or damage deriving from third-party claims.

§ 5 Data protection

The storage, processing and transmission of personal data is governed by Ayee's data protection rules to which the Customer must agree separately.

§ 6 Contract transfer and assignment

6.1 Ayee are entitled to transfer or assign rights and obligations under this contract to a third party either in whole or in part. Ayee are entitled, in particular, to have obligations under or in connection with this contract carried out by third parties.

6.2 The Customer may only transfer or assign this contract or individual rights and obligations under this contract to third parties with the prior written consent of Ayee.

§ 7 Right of retention; set-off

7.1 The Customer may only claim a right of retention in respect of counterclaims based on the same contractual relationship. The right to refuse performance under § 320 BGB is not affected hereby.

7.2 The Customer may only offset claims that are either not denied or have been established by way of a final court order.

§ 8 Forum; law applicable

8.1 The forum for all disputes arising out of or in connection with this contract and the performance hereof is Wiesbaden.

8.2 All legal relationships between the Customer and Ayee are governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods of 11. April 1980.

§ 9 Saving clauses

If a provision in these GTC should be or become invalid or incapable of implementation or should contain a loophole, the validity of the remaining provisions will not be affected thereby. The invalid or missing provision or provision incapable of implementation will be deemed replaced by such provision as the parties would reasonably have agreed if they had been aware of the invalidity, inability to implement or loophole.

Data Protection Rules

1. Ayee GmbH (“Ayee”) collect and use data necessary for the conclusion, substantive form, amendment, implementation or termination of this Agreement (Inventory Data). This includes the Customer’s surname, forename, address, telephone number and email address. Ayee also collect and use the Customer’s traffic data, consisting of IP address, data transfer volume, and log-in times.
2. Inventory data is deleted by Ayee one year after its collection or on expiry of the period permitted by law, whichever is the earlier. Traffic data is deleted six months after its collection or on expiry of the period permitted by law, whichever is the earlier.
4. Traffic data is used by Ayee to guarantee the safe operation of the communication network and to control abuse and take disciplinary action. In the event of abuse of the communication network or breach of the General Terms and Conditions of Boardinghouse Bad Homburg for the Use of Wireless Local Area Networks both inventory data and traffic data may be used to enforce measures under the civil and criminal law.
5. Subject to paragraph 4 of these Data Protection Rules, both inventory data and traffic data will be passed on only to Ayee’s service provider or collected by the latter and passed on to Ayee. Ayee’s service provider is subject to rules on data protection to the statutory extent and has taken the technical and administrative measures necessary to ensure compliance with the provisions of the BDSG [*Federal Law on Data Protection*] and especially the requirements laid down in the Annex to the BDSG. Subject to paragraph 4 of these Data Protection Rules, inventory and traffic data will not be passed on to any other third parties, save for Ayee being obliged to do so by law, governmental or court order
6. The Customer has the right to require the amendment, correction or deletion of inventory data at any time. The party to contact for this purpose is:

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