

**Outline of Ancillary Expenses
and additional information
for the Lease**
(Mietvertrag, Pachtvertrag, Baurecht)

This form is being given to you by Mr./Mrs.

who are acting as broker and are represented by
Mr./Mrs .

Pursuant to established business practises the broker may act as dual broker.

The broker does ☐/does not ☐ have a close familial or business relationship
to the third party.

I. Ancillary expenses in the case of tenancy agreements
(Mietverträge)

II. Ancillary expenses in the case of lease agreements
(Pachtverträge)

**III. Additional costs for the brokerage of rights to erect
buildings on leasehold land (Baurecht)**

IV. Energy performance certificate

V. Legal basis of the broker's commission

VI. Consumer protection provisions

VII. Rights to rescind contracts



ÖVI form no. 13M/4/2012 General terms and conditions pursuant to Section 10 IMVO
[Real Estate Broker Regulation] 1996 BGBl. [Federal Law
Gazette] No. 297/1996 recommended by the Federal
Chamber of Commerce Austria, Section for Real Estate
Experts and Escrow Agents. **GZ 2012/03/30 - Mag.Rü/Pe**

I. Ancillary expenses in the case of tenancy agreements

(Mietverträge)

1. Fees payable on tenancy agreements (Section 33 item 5 *Gebührengesetz* ("GebG") [Austrian Fees Act]):

1% of the gross rent (including VAT) payable during the term of contract; maximum: 18 times the annual value; in case of an indefinite term of contract 1% of three times the annual value. From 1 July 1999 onwards the landlord/lessor (or, as his representative, the broker, property manager, attorney or notary or other party) is obliged to calculate and pay the fee himself. In case of **tenancy agreements** with a fixed term on buildings or parts of buildings **the major purpose of which is housing**, the fees are limited to three times the annual value as of that point in time.

2. Costs of execution of agreement as agreed within the scope of the fee regulations of the respective person who prepared the contract.

3. Commission

The **calculation of the commission** is based on the **gross rent**, which consists of:

- basic rent or subrent;
- pro-rata service charges and regular public charges;
- share in special expenses (e.g. lift), if any; and
- any remuneration for furniture or equipment rented together with the premises or other additional services of the landlord.

In order to calculate the basis of calculation of the commission the value added tax must not be included in the gross rent. The heating costs are also not to be included if the transaction concerns a tenancy relationship pertaining to a flat, in case of which pursuant to the tenancy law regulations the amount of the rent may not be agreed upon freely (reasonable rent, reference value rent).

In addition, a commission for special compensation in an amount of up to 5% can be agreed with the previous tenant.

Main tenancy agreements (Hauptmietverträge) or sub-tenancy agreements (Untermietverträge) on flats and detached (one-family) houses	Maximum commission plus 20% VAT	
	Landlord	Tenant
indefinite period/period of more than three years	3 monthly gross rents	2 monthly gross rents
period up to 3 years	3 monthly gross rents	1 monthly gross rent
Agreement on a supplementary commission in the event that a lease agreement is extended or converted into an indefinite lease.	Taking into account the entire term of contract, the commission may be raised to the maximum amount, however not to exceed 1/2 monthly rent	Taking into account the entire term of contract, the commission may be raised to the maximum amount, however not to exceed 1/2 monthly rent
Services of real estate brokers who are at the same time managers of the property where the premises are located	Maximum commission plus 20% VAT	
	Landlord	Tenant
indefinite period/period of more than three years	2 monthly gross rents	1 monthly gross rent
period of at least 2 years but not more than 3 years	2 monthly gross rents	½ monthly gross rent
period shorter than 2 years	1 monthly gross rent	½ monthly gross rent
Agreement on a supplementary commission in the event that a lease agreement is extended or converted into an indefinite lease.	Taking into account the entire term of contract, the commission may be raised to the maximum amount, however not to exceed 1/2 monthly rent	Taking into account the entire term of contract, the commission may be raised to the maximum amount, however not to exceed 1/2 monthly rent
Main tenancy agreements (Hauptmietverträge) or sub-tenancy agreements (Untermietverträge) on business premises of all kinds	Maximum commission plus 20% VAT	
	Landlord	Tenant
indefinite period/period of more than three years	3 monthly gross rents	3 monthly gross rents
period of at least 2 years but not more than 3 years	3 monthly gross rents	2 monthly gross rents
period shorter than 2 years	3 monthly gross rents	1 monthly gross rent
Agreement on a supplementary commission in the event that a lease agreement is extended or converted into an indefinite lease.		Taking into account the entire term of contract, the commission may be raised to the maximum amount
It is possible to agree on charging the lessor's commission (not to exceed 3 gross monthly rents) to the lessee of the premises (Sec. 12 IMVO).		

II. Ancillary expenses in the case of lease agreements

(Pachtverträge)

1. Fees payable on lease agreements (Section 33 item 5 *Gebührengesetz* ("GebG") [Austrian Fees Act]) 1% of the gross rent payable during the term of contract; in the case of an indefinite term of contract 1% of three times the annual value.

2. Costs of drafting the agreement according to the fee regulations of the person who prepared the contract.

3. Commission

(a) Leases, in particular in agriculture and forestry

In the case of leasing of properties or parts of properties a commission may be agreed with both clients which is fixed at a percentage of the rent payable during the term of the lease.

In the case of an **indefinite term of lease**.....5% of the rent payable
for 5 years.

In case of a fixed term of	
up to 6 years.....	5% up to 12 years 4%
up to 24 years.....	3% more than 24 years 2%

in each case plus 20% VAT.

In the case of appurtenances an additional commission of 3% of the value plus 20% VAT may be agreed upon.

(b) Lease of businesses

In the case of an **indefinite term of lease** 3 times the monthly rent.

In the case of a fixed term of lease of	
up to 5 years.....	5%
up to 10 years.....	4%
more than 10 years	3%

in each case plus 20% VAT.

In case of compensation for investments or furniture/equipment a commission of 5% of the amount paid by the lessee therefore may be agreed with the lessor or the previous lessee.

III. Additional costs for the brokerage of rights to erect buildings on leasehold land (Baurecht)

For brokering the rights to erect buildings on leasehold land, the maximum commission equals the following percentage of the rates payable for the leased land throughout its term:

3% for rights extending from 10 – 30 years

2% for rights exceeding 30 years.

In the event that the term exceeds 30 years, it is possible to agree on a flat commission rate of 3% (plus VAT) which is to be based on the 30-year rent, instead of the 2% fee (Sec 12 (4) IMVO provision on maximum values as amended). As the cap is limited to 2% of the 45-year rent, this amount also equals the maximum commission, regardless of any term of contract which may exceed that period.

IV. Energy performance certificate

The *Act on the Presentation of the Energy Performance Certificate* (EAVG) provides that in the event a building or an object of usage is **rented/leased**, the landlord/lessor has to present to the tenant/lease-holder an **Energy Performance Certificate** in due time before the contractual declaration and hand it to the tenant/lease-holder if the agreement is closed. At the time of presentation, the **Energy Performance Certificate** may not be older than 10 years.

As of December 1, 2012 (when the Act on the Presentation of the Energy Performance Certificate will enter into force) advertisements in print and electronic media must specify the thermal heat requirements (*Heizwärmebedarf* or *HWB*) and the overall energy efficiency factor (*Gesamtenergieeffizienzfaktor* or *fGEE*). Both, landlord/lessor and broker will be subject to this obligation.

Starting on December 1, 2012, the tenant/lease-holder must be given the original or a complete copy of the Energy Performance Certificate, no later than 14 days after conclusion of the agreement. In the event the landlord/lessor fails to provide it, the tenant/lease-holder is entitled to procure the Energy Performance Certificate, provided he / she has requested the certificate from the landlord/lessor in vain. The tenant/lease-holder can then opt to either claim reasonable expenses for the certificate at court, or file a court request for the hand-over of the certificate.

The landlord/lessor may choose to hand-over either an **Energy Performance Certificate** on the **overall energy efficiency** of the object or of a comparable object within the same building, or on the entire building. With regard to one-family homes, the requirement to present and hand-over an energy

certificate will be satisfied by means of an energy certificate for a comparable building. The author of the Energy Performance Certificate must, however, confirm such comparability.

The Energy Performance Certificate must be compliant with the respective provincial regulations and is designed to create comparable information on the standard energy consumption of an object. The calculation of energy indicators is based on pre-defined conditions and standard parameters which are not user-dependent, resulting in the fact that there may be considerable deviations when the property / object is actually used.

If no Energy Performance Certificate is presented, Sec. 5 EAVG provides that an overall energy performance corresponding to the age and type of the building has been agreed.

There is no obligation to present an Energy Performance Certificate until December 1, 2012 for those buildings or objects of use, if no Energy Performance Certificate is required under the applicable provincial Building Codes. As of December 1, 2012 there will be an Austrian-wide list of exemptions from this requirement, however, historical monuments and listed buildings, for instance, will no longer be exempted from this obligation.

The new EAVG 2012 going into effect on December 1, 2012, will also include administrative penalty provisions. Both the landlord/lessor and the broker who fail to state the HWB and fGEE values in an advertisement are subject to a fine of up to EUR 1,450. Brokers will only be excused if they have informed the landlord/lessor of the subject obligation, requesting both indicators and the procurement of an Energy Efficiency Certificate, which the landlord/lessor refused to supply. Moreover, the landlord/lessor faces an administrative penalty of up to EUR 1,450 if he/she fails to present and / or hand-over the Energy Performance Certificate.

V. Legal basis of the broker's commission

Section 6 paras 1, 3 and 4, Section 7 para 7, Sections 10 and 15 Maklergesetz
[Austrian Broker Act]

Section 6 (1) The client is obliged to pay a commission in cases where the transaction is concluded with a third party due to the broker's activity pursuant to the contract.

(3) The broker is entitled to the commission even if, due to his activities, the transaction to be brought about pursuant to the contract is not entered into, but another transaction is entered into, the economic purpose of which is equivalent to the original transaction.

(4) The broker shall not be entitled to a commission if he himself becomes a contracting party to the transaction. This shall also apply if the transaction entered into with a third party is the economic equivalent to a conclusion of the transaction by the broker himself. In the event of any other close familial or economic relationship between the broker and the third party which might impair the safeguarding of the interests of the client, the broker shall only be entitled to a commission if he immediately notifies the client of such close relationship.

Section 7 (1) The entitlement to a commission shall come into existence when the transaction becomes legally effective. The broker shall not be entitled to any advance.

Section 10 (1) The entitlement to a commission and the claim for reimbursement of additional expenses shall arise when they have been incurred.

Special commission agreements

Section 15 (1) An agreement according to which the client, is required to pay an amount, for instance as compensation for or reimbursement of expenses incurred and professional services rendered, even if there is no successful conclusion of a deal attributable to the broker, shall only be permissible up to the amount of the agreed or locally customary commission and only in the event that

1. the transaction described in the broker agreement is not entered into contrary to good faith because the client - contrary to the course of the negotiations up to that point - fails to take any action that would be required for the conclusion of the deal without important reason;
 2. a transaction is entered into with the third party solicited by the broker the purpose of which is not equivalent to the original transaction if conclusion of the transaction is the result of the broker's activities;
 3. the transaction described in the broker agreement is not entered into with the client but with a different person because the client informed such person of the business opportunity made known to him by the broker or if the transaction is not entered into with the third party but with a different person because the third party notified the latter of such business opportunity or
 4. the transaction is not entered into with the third party because a statutory or contractual right of first refusal, resale or a right to succeed is exercised.
- (2) Such a payment may, in the case of sole broker agreements, be agreed upon if

1. the sole broker agreement is terminated early by the client in violation of the contract and without important reason;
 2. the transaction was entered into during the term of the sole broker agreement in violation of the contract through the activities of a different broker instructed by the client; or
 3. the transaction was entered into during the term of the sole broker agreement in a way other than by the activities of a different broker instructed by the client.
- (3) Payments pursuant to para 1 and para 2 shall be considered remuneration (*Vergütungsbetrag*) within the meaning of Section 1336 ABGB [Austrian General Civil Code].

An agreement pursuant to Section 15 Maklergesetz [Broker Statute] must be made in writing in the case of broker agreements involving consumers.

VI. Consumer protection provisions

Section 30b *Konsumentenschutzgesetz* [Austrian Consumer Protection Act] (1). Prior to conclusion of a broker agreement the real estate broker shall, with the due diligence of a prudent real estate broker, deliver to the client who is a consumer a **written outline** stating that he is acting in the capacity of a broker as well as listing the costs, including the commission, that will probably be incurred by the consumer due to conclusion of the transaction in question. The amount of the commission shall be stated separately; in the event of a close economic or familial relationship within the meaning of Section 6 para 4 third sentence *Maklergesetz* the client shall be notified thereof. If the real estate broker, by virtue of business practices, may act as dual broker, the said outline shall also contain information to this effect. In the event that the facts and circumstances change considerably the real estate broker shall adjust the outline accordingly. If the broker does not fulfil these duties at the latest before the client makes a contractual statement with respect to the transaction in question, Section 3 para 4 *Maklergesetz* shall apply.

(2) The real estate broker shall provide to the client all information required in Section 3 para 3 of the *Maklergesetz* in writing. This includes all circumstances and conditions which are significant for the evaluation of the transaction in question.

Due to established business practices real estate brokers may also act as dual brokers without explicit consent of the client. *If, pursuant to the client's instruction, the real estate broker is acting on behalf of only one party of the transaction in question, he shall inform the third party to this effect.*

VII. Rights to rescind contracts

1. Rescission of contract pertaining to real estate pursuant to Section 30 a *Konsumentenschutzgesetz* ("KSChG") [Austrian Consumer Protection Act]

A **client** who is a **consumer** (Section 1 KSChG) and

- has made a contractual statement on the day of the first visit to the premises,
- and if such statement refers to the acquisition of a tenancy right, any other right to use a property or to ownership, namely
- to a flat, a detached (one-family) house or a property suitable for construction of a detached (one-family) house and if
- the same is intended to be used for covering the consumer's own urgent need for accommodation or of that of a close relative;

may declare **within one week in writing that he rescinds such contractual statement.**

The **time period begins** to run only when the consumer has received a duplicate of the contractual statement and information regarding the right to rescind the same, i.e. either on the day after he made the statement or, if the duplicate including the information on the right to rescind the contractual statement was delivered later on, at such later point in time. In any case **the right to rescind the contractual statement expires** not later than one month after the date of the first visit.

Agreements on the payment of a down payment, forfeit money or the like prior to expiration of the period allowed for rescission pursuant to Section 30 a KSChG shall be ineffective.

2. Right of rescission in the case of door-to-door selling pursuant to Section 3 KSChG

A **client** who is a consumer (Section 1 KSChG) and has made a contractual statement

- outside the offices of the real estate broker
- and has not brought about the business relationship with the real estate broker for the purpose of concluding the contract himself

may declare to rescind the statement in writing until conclusion of the contract or thereafter within one week. The period only begins to run when the consumer is given a document containing name and address of the entrepreneur, the information necessary to identify the contract and an information about the right to rescind the contract.

In case such an information is missing or wrong the **right to rescind will not expire** at all.

Note:

If the consumer contacts the real estate broker him- or herself (e.g. on the basis of an advertisement), the consumer has established the contact independently and thus - regardless of where the contract was concluded - is not entitled to any right to rescind the contract pursuant to Section 3 KSchG.

3. The right to rescind the contract in case of non-occurrence of essential facts or circumstances (Section 3a KSchG)

The consumer may rescind his application for a contract or the contract itself in writing if

- with no initiative of his
- essential circumstances
- that were described by the entrepreneur as being likely
- have not occurred or have only occurred to a considerably smaller extent.

Essential circumstances are

- the necessary cooperation or consent of a third party,
- tax benefits,
- public aid or a prospective loan.

The period for rescission of the contract is one week after the consumer is able to notice such non-occurrence if he was informed about such right to rescind the contract in writing. In any case, however, the right to rescind the contract will end one month after complete performance of the contract by both parties.

The consumer is not entitled to rescind the contract if

- in the course of the negotiations he knew or was required to have known about such non-occurrence;
- if the right to rescind the contract is negotiated in individual cases (not possible to include in a form); or
- if the contract was adjusted in an appropriate way.

4. The right to rescind a developer contract pursuant to Section 5 BTVG [Austrian Developer Contracts Act]

The Developer Contracts Act introduced regulations intended to protect persons acquiring rights to buildings, flats and/or business premises which are yet to be built and/or to be renovated thoroughly. The Statute is only applicable to developer contracts in case of which **advance payments** of

more than ATS 2,000 (Euro 145,35) per sq.m. of usable space must be effected.

The lessee may withdraw from his/her contractual statement if he/she does not receive the following information from the developer in writing until a week before concluding the contract:

1. the provisional content of the contract;
2. the provisional text of the agreement with the commercial bank in the event mandatory security is required to comply with Section 7 (6/2) of the Austrian Developers' Contract Act (Bauträgervertragsgesetz – BTVG, blocked account model);
3. the provisional text of the certification in accordance with Section 7 (6/3 c) of BTVG in the event mandatory security is required to comply with Sec. 7 (6/3) (solvency model in subsidized rental housing);
4. in the absence of the nomination of a trustee: the provisional text of the security (guarantee, insurance) to be issued in the event securities are required under the law of obligation (Sec. 8);
5. if applicable, the provisional text of the additional security according to Sec. 9 (4) to fulfill the mandatory security required by the developer by entry in the land register (Sections 9 and 10, installment plan A or B).

If the buyer does not receive the information listed under points 1-5 above including a written explanation of his / her right of withdrawal until at least one week before signing the contractual statement, he/she shall be entitled to **withdraw from the contract**. Withdrawal may be declared at any time before the contract becomes legally effective. After that withdrawal has to be declared within 14 days. The period of withdrawal begins on the date of receipt of the pertaining information, but not before the contract becomes legally effective. Notwithstanding the receipt of the information, the right of withdrawal will expire 6 weeks after the contract has become legally effective.

In addition, the purchaser may rescind his contractual statement if a **residential construction subsidy** on which the parties based the contract is not granted in full or to a substantial extent for reasons for which the purchaser is not responsible. Rescission of the contract must be declared within one week. The **period for rescission of the contract commences** as soon as the purchaser is informed of the fact that no residential construction subsidy will be granted and if at the same time or later he/she receives written information regarding the right to rescind the contract. The **right to rescind the contract expires** not later than one month after receipt of the information about the fact that no residential construction subsidy will be granted.

A statement of rescission regarding a real estate transaction which is addressed to the real estate broker shall also apply to a broker agreement concluded in the course of making the contractual statement.

Mailing of the statement of rescission on the last day of the period (date of postmark) is sufficient. The statement of rescission shall be deemed sufficient if a written document is sent which contains a contractual statement of only one party plus an additional statement showing the consumer's decline of the offer.

Although this information was prepared with the utmost care, ÖVI is unable to assume any liability whatsoever for the correctness of its contents.

Copyright owner and distribution:

Österreichischer Verband der Immobilientreuhänder (Austrian Association of Real Estate Experts), A-1040 Vienna, Favoritenstrasse 24/11, Phone +43 1 5054875, Fax +43 1 505 48 75-18, www.oivi.at