

Hong Kong Tourism Board

Terms and Conditions of Submission and Reproduction of Picture

1. In this agreement the terms:
 - 1.1. CLIENT shall mean any person or corporation applying to the Supplier for reproduction rights herein stated subject to the terms and conditions set out herein;

SUPPLIER shall mean the Hong Kong Tourism Board (HKTB);
 - 1.2. PICTURE includes a photograph, transparency, negative, digital file, design, artwork, painting, montage, drawing, engraving, graphics, image and caption or any other item which may be offered in whatever format or media for the purposes of reproduction;
 - 1.3. REPRODUCTION includes any form of publication or copying of the whole or part of any picture, altered or not, whether by printing, photography, slide projection (whether or not to an audience), xerography, artist's reference, artist's illustration, layout or presentation, electronic or mechanical reproduction or storage by any other means;
 - 1.4. DATE FOR RETURN is the date by which the picture must be returned as specified on the loan form. If no date is specified, the Date for Return shall be two weeks from the date of the loan form.
 - 1.5. DOWNLOAD or DOWNLOADING means digital delivery conducted by World Wide Web site operators providing facilities on their Websites through which users may reproduce (by the process commonly known as "downloading") and store picture or other materials from the Websites to their own computers or storage devices whether or not for a fee or other consideration. This shall include the making of copies of picture or material which is transient.
2. No variation of terms or conditions set out herein shall be effective unless agreed in writing by both parties.
3. Picture is supplied to the Client for one-time use and no property or copyright in any Picture shall pass to the Client whether on its submission or on the Supplier's grant of reproduction rights in respect thereof.
4. Client may be required to pay a non-refundable service fee to cover administrative costs and dispatch of Picture by the Supplier on each submission and resubmission of Picture whether or not reproduction rights are required or granted. The Client shall pay for courier, express or any other special delivery arrangement requested.
5. Reproduction rights:
 - 5.1. Reproduction rights (if and when granted) are strictly limited to the use specified on the Supplier's paid licence, loan or complimentary form and unless otherwise agreed in writing relate to a single publication in a single one-time use. The Client shall apply for reproduction rights for any reprints or use of the Picture not stated in the form.
 - 5.2. Reproduction rights are granted on non-exclusive, non-transferable and limited licence basis to the Client.
 - 5.3. Reproduction rights granted are personal to the Client and may not be assigned, nor may any Picture submitted to the Client be loaned or transferred to third parties save for the purpose of the exercise by the Client of such reproduction rights strictly for the purpose approved and PROVIDED THAT any such third party shall as a condition precedent for use, sign and return an acknowledgement of this terms and conditions confirming compliance and indemnity to the Supplier as stated.
 - 5.4. Any reproduction rights granted are by way of non-exclusive licence and no partial or other assignment of copyright shall be implied.
 - 5.5. All intellectual property rights subsisting in respect of the Picture belong to the Supplier or have been lawfully licensed to us for use. All rights under applicable laws are hereby reserved. Picture (including any subjects or components depicted thereon) submitted to the Client cannot be copied, reproduced, posted, published, uploaded, transmitted or distributed or resold or offered (free of charge or with monies) to any person or organisation in digital, slide, print or any other format by any means (electronic, mechanical, micro-copying, recording, storage retrieval system or otherwise) or media unless otherwise agreed in writing on the Supplier's form. Nor can the Picture be offered for

Downloading through intranet, Websites, CD-ROMs or other media. In the event that the Picture is licensed to the Client through Website or any digital access, the Client shall not Download the Picture from such Website or digital device for reproduction or otherwise unless otherwise agreed in writing on the Supplier's form.

- 5.6. In the case where a copyright notice or credit line be required to accompany the Picture and if any Picture reproduced by the Client omits such credit line the reproduction fee payable by the Client shall be subject to an increase to be decided by the Supplier.
 - 5.7. Electronic use, storage or transmission of images is forbidden without the express written permission of the Supplier.
 - 5.8. Picture (including its subject, components, caption and any graphic or image thereon) shall not be copied, on-loaned or otherwise disposed of and no use whatsoever shall be made of them by the Client without prior written consent of the Supplier, nor shall the Picture be altered or manipulated, added to, or deformed or any part deleted without the prior written consent of the Supplier. Client cannot create derivative works out of the Picture (including its subject, components, caption and any graphic or image thereon) as the Picture is copyrighted under applicable laws.
 - 5.9. While the Supplier takes all reasonable care in the performance of this Agreement generally, the Supplier shall not be liable for any loss or damage suffered by the Client or by any third party arising from use or misuse or reproduction of any Picture or its content and caption.
 - 5.10. The Client shall not use Picture in any way, or in connection with any material, which is unlawful, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive or otherwise objectionable or unreasonable or infringing upon any laws or regulations or intellectual property right or proprietary rights or confidentiality obligations and shall indemnify the Supplier against any claims, damages, proceedings, loss or costs arising from such use. The Client shall not use the Picture in any way that could be construed as being adverse or derogatory to the image of Hong Kong or the Supplier or the subjects featured in the Picture. The Client shall note that certain categories of Picture (ie "travel trade use") are restricted to use by the travel trade and the media for editorial use that promotes Hong Kong tourism.
 - 5.11. It is the Client who must satisfy himself that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that the Supplier gives no warranty or undertaking that any such rights, releases or consents are or will be obtained whether in relation to the use of names, people, trademarks, registered or copyright designs or buildings, works of art depicted in any Picture. In the event that the Picture is used or reproduced by or with the authority of the Client then the Client shall indemnify the Supplier against any loss, damage, proceedings or costs where such rights, releases or consents have not been obtained.
6. Reproduction fees on sale basis:
- 6.1. Until the Supplier has invoiced the reproduction fee neither party is committed to grant or to acquire any reproduction rights in any Picture. After a fee has been agreed and an invoice issued there is a firm and binding contract whereby the Supplier is committed to grant reproduction rights and the Client to acquire them upon Supplier's receipt of the Client's payment. If after such invoicing but before payment, the Client requests cancellation of the reproduction rights the Supplier may in its discretion cancel subject to the Client paying a cancellation fee.
 - 6.2. The Client's rights to reproduce a Picture arises only when the Supplier's invoice relating to the grant of such right is fully paid. Any reproduction before payment of the invoice constitutes an infringement of rights and a breach of this Agreement entitling the Supplier to rescind the Agreement and rendering the Client liable for the payment of damages.
 - 6.3. The Client agrees to indemnify the Supplier in respect of any claims or damages or any loss or costs arising in any manner from the reproduction without proper reproduction rights of any Picture supplied to the Client by the Supplier.
 - 6.4. No Picture will be released to the Client unless payment is paid in full. If the Picture is supplied electronically, payment shall be made in full before downloading from the Website or CD-ROM.
 - 6.5. On the Client's death or bankruptcy or (if the Client is a Company) in the event of a Resolution, Petition or Order for winding-up being made against it, or if a Receiver is appointed, the Supplier may

at any time thereafter inspect any record, accounts and books relating to the reproduction of the Supplier's Picture to ensure that the Picture is being used in accordance with the reproduction rights granted to the Client.

7. Picture on loan to Client:

7.1. The Client shall inspect and report any damage of the Picture prior to borrowing them. The Client shall immediately inform the Supplier in writing of any known loss or damage to the Picture while in the Client's possession or that of any third party. If a Picture is not returned before the Date for Return, the Supplier may in its sole discretion presume it to be lost.

7.2. The Client shall be liable to pay compensation to the Supplier in respect of each Picture lost or damaged. The compensation amount is to be determined by the Supplier. Payment of compensation does not give rise to any rights of the Client in any Picture.

7.3. Any Picture returned without its mount or with its caption or other mount data missing or defaced, may incur a replacement charge. Any Picture returned with scratches on its surface or is defaced will be considered damaged and a compensation fee may apply.

7.4. The Client must return every Picture to the Supplier by its Date for Return by any method affording proof of delivery. Adequate protection must be given to Picture in transit. A delivery note listing and totalling the returned Picture must be enclosed, and an advice in writing with this same information sent by separate post.

7.5. Unless otherwise agreed each Picture may be held by the Client rental free until its Date for Return and thereafter the Client shall be liable to a rental fee per Picture per week or part thereof pending its return. Payment of the rental fee does not entitle the Client to retain the Picture after the Date for Return.

8. The Client shall supply the Supplier, when so requested, two copies of the relevant pages containing any Picture supplied by the HKTB. In other media evidence of use must be made if requested.

9. This agreement shall be subject to and construed according to laws of the Hong Kong Special Administrative Region and the parties hereto agree to submit to the exclusive jurisdiction of Hong Kong Courts.

Disclaimers

The Hong Kong Tourism Board (HKTB) and/or its respective suppliers make no representation about the suitability of the information, Picture and related graphics provided (whether in the Hong Kong Pictorial photo CD or published on HKTB Websites or otherwise) for any purpose. All such information, Picture and related graphics, including but not limited to details of attractions, events, hotels, tours and cruises, are provided to the HKTB by its respective suppliers or operators. It is recommended that prospective users should liaise directly with these suppliers or operators to confirm any information that they seek to rely on.

Any subject appearing in the Picture held, distributed or published by the Hong Kong Tourism Board (HKTB) or any reference made by the HKTB in the Hong Kong Pictorial photo CD or on its Websites does not imply an endorsement or recommendation of the quality of fitness of purpose of that company or entity, or its services or products.

The HKTB provides the information, Picture and related graphics in slide or electronic format, or published on its Website, or in any other form, including CD-ROMs, without warranty of any kind and the HKTB and/or its suppliers disclaim all warranties and conditions including all implied warranties and conditions of merchantability, quality, fitness for a particular purpose, title and non-infringement. In no event shall the HKTB and/or its respective suppliers be liable for any incidental, special, direct, indirect, punitive or consequential damages or any damages whatsoever resulting from loss of use, business, data or profits, whether in an action of contract, negligence or other tortious action, arising out of or in connection with the use or misuse or reproduction of such Picture provided, even if HKTB has been advised of the provision of such damage.

Change, alteration, manipulation, deformation, deletion or addition to the Picture (including its subject, component and, any graphic or image thereon) or creation of any derivative works with respect thereto, whether paid for or supplied free of charge, is strictly forbidden without the prior written approval of the HKTB.