

APL

LICENSING TERMS AND CONDITIONS

1. DEFINITION:

- 1.1 "APL" means Argus Photo Limited whose registered office address is Room 2001-4, Progress Commercial Building, 9 Irving Street, Causeway Bay, Hong Kong;
- 1.2 "Customer" means the party who is so described in the Invoice or License as defined below;
- 1.3 "Hong Kong SAR" means the Hong Kong Special Administrative Region;
- 1.4 "Image" includes electronic and/or digital image, photograph, transparency and picture;
- 1.5 "Invoice" means any document so described and issued by APL to Customer before issuing the License. The document contains particulars of Image to be licensed and the amount of License Fee;
- 1.6 "License" means the permission given by APL to Customer for reproducing any Images;
- 1.7 "License Fee" means the monetary consideration to APL for acquiring the License;
- 1.8 "RM Image" means rights--managed Image (class of Image) so described by APL;
- 1.9 "RF Image" means royalty--free Image (class of Image) so described by APL;
- 1.10 "RF License Agreement" means the contract between Customer and the RF Image's publisher; and
- 1.11 "This Agreement" means the terms and conditions herein contained.

2. PAYMENT:

- 2.1 For RF Image, Customer shall pay APL the prescribed License Fee immediately upon his receipt of the Invoice in such sum as stipulated in the Invoice and described in detail in the RF License Agreement of the selected Image, whenever applicable;
- 2.2 For RM Image, Customer shall pay APL the prescribed License Fee within 30 days from the date of Invoice.

3. INVOICE AND LICENSE:

- 3.1 Upon accepting Customer's application for License, APL will send to the Customer the Invoice together with the selected Image(s) simultaneously. For avoidance of doubts, Customer is under liability to pay the prescribed License Fee in the Invoice, notwithstanding he has not reproduced the Image(s), unless he cancels the Invoice/usage within time. In case the Customer fails to pay the License Fee within time, APL shall have right to charge interest on the outstanding License Fee at the rate of 2% per month.
- 3.2 APL will not issue License to the Customer unless the Customer accepts the terms of Invoice and pay the prescribed License Fee.
- 3.3 All acts beyond the scope of License are deemed unlawful and unauthorized.
- 3.4 All forms of taking, copying or reproducing the Image sending together with the Invoice or any part of it by whatever means, equipments, facilities and machines without License are strictly prohibited and it shall be treated as a use of the Image notwithstanding that such Image taken or reproduced may subsequently be altered, retouched, developed, processed or converted into other or different modes or forms of representation.

4. DELIVERY OF IMAGE AND ACCEPTANCE:

- 4.1 APL will deliver the Image to the Customer in whatever mode or manner as directed by the Customer but at the Customer's own risk and costs;
- 4.2 Customer is deemed to have accepted the Image in good condition at the time of delivery unless the Customer notifies APL otherwise in writing within 24 hours after the delivery by APL. APL's record of delivery is final and conclusive.

5. CANCELLATION:

- 5.1 Customer shall have no right to cancel the Invoice or usage specified therein after the seventh day from the Invoice's issuance date;
- 5.2 If the Customer chooses to cancel the whole Invoice, the Customer shall immediately pay to APL 30% of the total License Fee as stipulated in the Invoice; or alternatively, if the Customer chooses to cancel any usages of Image in the Invoice, the Customer shall immediately pay to APL 15% of the License Fee which APL originally charged on the usage that the Customer wishes to cancel;
- 5.3 In addition, the Customer shall, immediately after the cancellation of Invoice/usage, return to APL any Image obtained from them in good condition. If the Image, under cancellation, is delivered online to the Customer via internet or email, the Customer shall promptly destroy or remove the Image from its computer database/record or any device which is capable of storing the Image to the intent that the Customer will no longer possess or

control the Image; and after such cancellation, the Customer shall report the same to APL accordingly.

- 5.4 No cancellation of Invoice or usage is valid until the Customer satisfactorily performs clauses 5.2 and 5.3 herein and after receiving APL's confirmation of it in writing.

6. WARRANTY:

- 6.1 APL provides Image to Customer on "AS-IS" and "AS-AVAILABLE" basis.
- 6.2 APL gives no warranty as to the existence of model, property, personality or other releases in respect of the Image nor guarantee the accuracy, correctness, completeness, reliability of the Image caption, keyword, translation and/or any other information provided with or contained in the Image.
- 6.3 APL gives no warranty on the underlying rights subsisting in the Image. All models, devices, logos, signs, marks, views or texts in the Image may contain or possess its independent intellectual property rights or other proprietary right of a third party. Customer shall at his own means obtain the third party's consent for the release of any relevant rights, if any.
- 6.4 APL disclaims all express or implied warranties on the Image to the extent permissible under all applicable laws.

7. GENERAL PROVISION:

- 7.1 Customer shall compensate APL for any damage caused to the Image.
- 7.2 APL's License is not assignable or transferable to any third party.
- 7.3 Unless otherwise stated, APL's License is granted on a non-exclusive basis.
- 7.4 Customer shall not use any Image for illegal, unlawful or immoral purpose.
- 7.5 APL is not liable for any losses or damages suffered by Customer arising from any use or intended use of Image.
- 7.6 Customer shall keep APL fully indemnified against all claims or demands made by any third party arising from and/or occasioned by the Customer's use on any Image obtained from APL.
- 7.7 APL is not responsible for any losses or damages whatsoever caused by or relating to any electronic or information or data transmission made through the computer, internet, server, website or email or other appliances or devices directly or indirectly caused to Customer, including but not limited to service interruption or any act beyond the control of APL.
- 7.8 If, notwithstanding the terms herein, APL is found liable to the Customer for any damage or loss suffered by it in connection with the use of Image, APL's liability shall in no event exceed the License Fee of the subject Image or HK\$5,000.00 whichever is the less.
- 7.9 Customer accepts that all electronic records are valid documents and shall have legal effect under the Electronic Transactions Ordinance, Cap. 553, laws of Hong Kong SAR.
- 7.10 Any notice required to be served on the Customer shall be sufficiently served on the Customer's last known address or fax number or email address. For notice by post, it shall be deemed to have been given at the time and dating of posting. For notice by fax/email, it shall be deemed to have been given at the time and dating of sending.
- 7.11 If context permits or requires words importing the singular number shall include the plural number and vice versa and words importing the masculine, feminine, neuter gender or corporation, shall include the others of them.
- 7.12 Headings do not form part of this Agreement.
- 7.13 If any terms of this Agreement is found unenforceable due to whatever reasons, it will not affect the enforceability of other terms of this Agreement.
- 7.14 No alteration or addition can be made to this Agreement without APL's prior written consent.
- 7.15 Customer shall indemnify APL for all costs and expenses incurred by it for enforcing its rights hereunder.
- 7.16 In addition to the usual rights to claim for damages or indemnity for the loss suffered as a result of the unauthorized use of the Image, APL is also entitled to seek for injunction order to restrain the unauthorized use of the Image.
- 7.17 All transactions with APL hereunder are governed by the laws of Hong Kong SAR. In case of dispute, Customer hereby irrevocably agrees to submit to the exclusive jurisdiction of the court of Hong Kong SAR.
- 7.18 For Customer who is not a legal entity (i.e. corporation or limited company), he declares and warrants that he is over the age of 18 and has the necessary authority and capacity to contract and accept the terms and conditions herein.