

General Terms and Conditions for Product/Service Sponsorship

All Product/Service Sponsorship bookings and contracts are subject to these General Terms and Conditions which shall become a binding contract on the Advertiser and the Advertising Agent once booking has been accepted by TVB.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these conditions, the terms contained herein, the initial letter of which is capitalised, shall have the following meanings (except where the context otherwise dictates):

"Advertiser"	means a person, firm or company which has placed Booking(s) with TVB or has authorised its "Advertising Agent" to place Booking(s) with TVB. The term shall also mean and include the Advertiser's successors in title and assignee. The Advertiser, together with its "Advertising Agent" are jointly and severally responsible for all payments due to TVB.
"Advertising Agent"	means a person, firm or company which has placed Booking(s) with TVB on behalf of the Advertiser and who/which agrees to be bound jointly and severally together with the Advertiser for all sums due to TVB under these Conditions, and which is authorised by the Advertiser to act on the Advertiser's behalf in the placement of Booking with TVB. The Advertising Agent appointed by the Advertiser shall be deemed to have full authority to act on all matters connected with the placing and changing of Booking and the supply of Sponsored Product. Notwithstanding the foregoing, TVB reserves the right to accept or reject the Advertising Agent appointed by the Advertiser at its complete discretion.
"Affiliates"	means any person, including any officer, director, employee or partner of a person controlled by, controlling or under common control with a Party.
"Booking"	means any request, agreement, purchase order or contract for the purchase of Product Sponsorship made by the Advertiser and/or the Advertising Agent with TVB subject to the Conditions.
"Codes of Practice"	means the Generic Codes of Practice on (a) Television Advertising Standards; (b) Television Programme Standards; (c) Television Technical Standards and (d) any other standards, directions and regulations, issued and amended by the Communications Authority of Hong Kong ("Communications Authority") from time to time.
"Conditions"	means the General Terms and Conditions contained herein and as amended from time to time.
"IP Rights"	means all copyrights, trademarks, other intellectual property rights of whatever nature and description whether now existed or created in future including every element, material and component part in perpetuity.
"Jade"	means the free-to-air television channel transmitted and operated by TVB which principally transmits in the Chinese language via digital signals.
"J2"	means the free-to-air television channel operated by TVB which principally transmits in the Chinese language via digital signals.
"Logo"	means any of the trademarks, service marks, designs, trade names, logos, slogans and all other identifying marks used and incorporated in the Programme by virtue of the use of the Sponsored Product provided by the Advertiser and/or the Advertising Agent under the Booking(s) and pursuant to the Conditions.
"Party"	means either TVB, the Advertiser or the Advertising Agent and Parties mean TVB, the Advertiser and the Advertising Agent.
"Product"	means the goods, services or whatever the Advertiser wishes to promote.
"Programme"	means the programme during which the Sponsored Product will be placed.
"Rates"	means the rate of charges determined by TVB from time to time as applicable to any Booking.
"Rate Card"	means the prevailing rate card published by TVB containing details of rates for Product Sponsorship in different Programmes available, the Conditions and such other terms and conditions governing the sale of Product Sponsorships of TVB.
"Sponsored Product"	means the Product to be supplied by the Advertiser and/or the Advertising Agent as set out in the Booking.
"TVB"	means Television Broadcasts Limited.
"TVB Finance & Information"	means the free-to-air television channel operated by TVB which principally transmits in the Chinese language via digital signals.

1.2 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated, associations and partnerships.

2. COMPLIANCE

The Advertiser and the Advertising Agent acknowledge that the conduct of the business of TVB is governed by the Broadcasting Ordinance (Cap. 562) and its related regulations, its licence, the Codes of Practice and all applicable laws as amended from time to time and that all Bookings made by the Advertiser and/or the Advertising Agent are subject to compliance with TVB's obligations under the aforesaid law, regulations, licence and Codes of Practices. In the event that TVB determines, whose judgement shall be final and absolute, that the continued performance of its contractual obligations to the Advertiser and/or the Advertising Agent may infringe or be in breach of the aforesaid law, regulations, licence and Codes of Practice, or would place TVB in a prejudicial position, TVB shall have the right to terminate the whole or such part of the Booking as remains outstanding with the Advertiser and the Advertising Agent. The Advertiser and the Advertising Agent shall not have any claim in any nature whatsoever against TVB for such termination and shall be liable for payment of any sum due or accrued due by the Advertiser or the Advertising Agent to TVB for any telecast made or facility or service supplied up to the time of termination.

3. PRODUCT

- 3.1 The Advertiser and the Advertising Agent undertake to procure the availability of the Sponsored Product at such locations, times, for such period and in such quantity and manner as TVB may request from time to time during the production of the Programme at the Advertiser and the Advertising Agent's cost.
- 3.2 The Advertiser warrants that it is the sole owner of and control the worldwide IP Rights of the Sponsored Product and the Logo or has acquired all necessary rights to enable TVB to use the Sponsored Product and the Logo as contemplated in the Booking and the Conditions and that none of the Sponsored Product and the Logo infringes the IP Rights of any third party in any part of the world.
- 3.3 The Advertiser warrants that use of the Sponsored Product and Logo in the Programme and the exploitation of the Programme incorporating the Sponsored Product and Logo will not expose TVB, its Affiliates, and their respective agents or licensees to any civil or criminal proceedings or claims of any nature by any third party. For this purpose, the Advertiser grants to TVB a non-exclusive irrevocable and perpetual licence to use and incorporate the Sponsored Product and the Logo into the Programme.
- 3.4 The Advertiser undertakes that the Product shall be safe and fit for its intended use and purpose and comply with all relevant laws (including Broadcasting Ordinance (Cap. 562) and other conditions controlling or regulating television advertising), regulations and codes in force (including the Codes of Practice).
- 3.5 The Advertiser and the Advertising Agent acknowledge that the Communications Authority is the statutory body vested with the authority to make a final determination of whether the Product Sponsorship has violated any of the above-mentioned rules. TVB is, therefore, not in a position to give any conclusive advice to the suitability of Product Sponsorship for telecast. TVB shall not incur any liability to the Advertiser or the Advertising Agent who shall have no claim whatsoever for damages or otherwise in respect of any advice sought from or given by TVB.

- 3.6 The Advertiser confirms that a comprehensive public and product liability insurance policy is in force covering all claims, actions or damages which may arise as a direct or indirect result of the use by the public of the Product being promoted in the Programme.
- 3.7 Unless otherwise provided in the Booking, TVB shall not be responsible for any damage caused to the Sponsored Product and the Advertiser and the Advertising Agent shall be responsible for all risks of the Sponsored Product and shall take out and maintain at all relevant times insurance against loss and damage and any accident damage or injury caused in connection with or arising out of the use of the Sponsored Product by TVB.
- 3.8 If any Sponsored Product accepted by TVB for telecast is subsequently ruled unacceptable by the Communications Authority or TVB determines otherwise due to other circumstances or evidence arising which may affect TVB's original acceptance of the Sponsored Product, TVB shall immediately cease to telecast Sponsored Product and the Advertiser shall have no claim whatsoever for damages or otherwise in respect of such original acceptance or non-transmission of the Sponsored Product. The Advertiser and/or the Advertising Agent shall remain liable to TVB for the payment of Sponsorship Fee.
- 3.9 TVB reserves the right, at its absolute discretion, to do any act or thing in respect of the transmission of any Product Sponsorship or part thereof (including the fading, editing or cutting thereof) which is found to contain unsuitable materials and TVB shall not thereby incur any liability for the transmission of any such Product Sponsorship or part thereof, but the Advertiser and/or the Advertising Agent shall remain liable to TVB for payment of the Sponsorship Fee.

4. NON-EXCLUSIVE RIGHTS

The Advertiser and the Advertising Agent acknowledge that TVB is entitled to arrange for other companies or entities to sponsor, advertise or promote their products or services in the Programme.

5. PAYMENT

- 5.1 The Advertiser and the Advertising Agent jointly and severally undertake to pay the Sponsorship Fee in accordance with the payment terms as stipulated in the Booking.
- 5.2 All payments of the Sponsorship Fee made shall be non-refundable. Unless otherwise specified, any part of the Sponsorship Fee required to be paid within 30 days from the date of invoice.
- 5.3 In making payment, time shall be of the essence. All payments made shall be free of any deductions, taxes (including withholding tax), custom duties, levies, charges of any kind imposed or assessed (other than profits tax of TVB).
- 5.4 TVB reserves the right to charge interest at the rate of 1.5% per month for any payment overdue and without prejudice to any other remedy available to it, to suspend the broadcast of the Programme incorporating the Sponsored Product and the Logo or any part thereof.

6. IP RIGHTS

- 6.1 The Advertiser and the Advertising Agent acknowledge and confirm that all IP rights and any other rights in the Programme, and in all materials created in connection with the production of the Programme (including but not limited to Programme title, the names, products, characters, graphics, images, visual and musical works contained in the Programme, and the likenesses of the aforesaid), together with the product of services of TVB in the Programme shall vest in and belong to TVB absolutely and TVB shall have the right to exploit the aforesaid elements and materials in any manner method and form as its deems fit throughout the world in perpetuity and to retain all sums received from exploitation of any of the above elements in or related to the Programme.
- 6.2 TVB acknowledges that all the IP Rights in the Sponsored Product and the Logo are and shall remain the sole and exclusive property of the Advertiser.

7. EDITORIAL CONTROL

- 7.1 The Advertiser and the Advertising Agent acknowledge that all editorial decisions concerning the content of the Programme are entirely at the sole discretion of TVB.
- 7.2 The Advertiser and the Advertising Agent agree that TVB shall be entitled at its sole discretion to make such change, deletion, alteration, interruption or edition to the Programme and to create different versions of the Programme as it may deem necessary. No warranty or undertaking is given to The Advertiser and the Advertising Agent that all the Sponsored Product and the Logo used or shown in the Programme will be retained during the rerun of the Programme.

8. PRODUCTION EXPENSES

All expenses in the production of the Programme shall be borne by TVB.

9. WARRANTIES AND INDEMNITIES

- 9.1 The Advertising Agent warrants that it has been duly authorized by the Advertiser to act for and on its behalf with respect to the subject matter hereof and the undertaking of the Conditions and Booking by the Advertising Agent, and any subsequent amendments in writing made by it shall be valid and binding upon the Advertiser without reservation.
- 9.2 Each of the Advertiser and the Advertising Agent warrants that:
- (a) it will be responsible for obtaining and paying for all necessary licenses and consents to the transmission and exhibition of any advertising or copyright material contained in the Sponsored Product and Logo;
 - (b) no Sponsored Product or Logo will breach the Codes of Practice, the IP Rights or other rights of, or be defamatory to any third party;
 - (c) the Sponsored Product submitted shall comply with all aspects with the laws of Hong Kong;
 - (d) no misleading or wrongful information is contained in the Sponsored Product;
 - (e) it will indemnify and keep TVB indemnified against all actions, proceedings, costs (including legal costs on a full indemnity basis), damages, expenses, penalty claims, demands and liabilities arising from any breach of the above warranties or in any manner whatsoever in consequence of the use, recording or telecasting of any Sponsored Product, Logo, or matter supplied by or transmitted for the Advertiser or the Advertising Agent, including all costs incurred in obtaining advice on and dealing with threatened claims or proceedings whether or not actually brought or instituted;
 - (f) it will indemnify and keep TVB indemnified against all penalties imposed by the Communications Authority and/or any other regulators or authorities for any breach arising from the telecast of Sponsored Product supplied by or transmitted for the Advertiser or the Advertising Agent. Upon request by TVB, the Advertiser and the Advertising Agent shall provide evidences to the Station in support of the accuracy and regulatory compliance of the Sponsored Product; and
 - (g) it will defend, indemnify and hold TVB, its Affiliates and their respective agents and licensees harmless from any and all claims, actions, proceedings of any kind and from any and all damages, liabilities, costs and expenses (including legal costs on a full indemnity basis) relating to or arising out of any breach of the representations or warranties or other provisions of the Conditions by the Advertiser or the Advertising Agent.
- 9.3 Each of the Parties confirms that it has and will retain good title and authority to enter into the Conditions and Booking.

10. VARIATIONS FROM TELECAST SCHEDULE

All scheduled telecast times of Programmes are subject to changes due to programming exigencies. TVB will do its best to adhere to the scheduled times for telecast but will not give any warranty in respect thereof, and, in particular, will not give any warranty as to the specific telecast date or time of Programmes.

11. CONFIDENTIALITY

- 11.1 Subject to Condition 11.2 hereof, each Party undertakes to the others that it will treat as confidential the terms of Booking together with all information whether of a technical nature or otherwise relating to any matter concerning the business or affairs of the other Parties as may be communicated to it hereunder (provided such information is supplied in writing and marked confidential), and will not disclose such information to any person, firm or company (other than to its auditors and other professional advisors or to its employees or directors on a need to know basis) or to the media, and will not use such information other than for the purposes of Product Sponsorship, subject always to any prior specific authorization in writing by the relevant Party to such disclosure or use.
- 11.2 The provisions of Condition 11.1 hereof shall not apply to any information which:
- (a) is in the public domain other than by the default of the recipient Party;
 - (b) is obtained by the recipient Party from a bona fide third party having the right to disclose such information;
 - (c) is or had already been independently generated by the recipient Party;
 - (d) is required to be disclosed by law or the valid order of a court of competent jurisdiction or the rules of any recognized stock exchange or the request of any governmental regulatory authority, in which event the disclosing Party shall so notify the other as promptly as practicable and shall use its reasonable endeavour to seek confidential treatment of such information.

12. MODIFICATION AND CANCELLATION

- 12.1 Bookings once made cannot be cancelled unilaterally by the Advertiser and/or the Advertising Agent.
- 12.2 No modification or amendment of Booking will be effective unless in writing and signed by TVB and the Advertising Agent or the Advertiser.
- 12.3 Save as expressly permitted in this Agreement, none of the Clients can unilaterally cancel or terminate this Agreement. TVB shall be entitled to the full amount of the Sponsorship Fee in any event of termination unless such termination is made by TVB due to circumstances outside the reasonable control of TVB and in which case TVB shall be entitled to retain all payments of Sponsorship Fee made but not otherwise, and without prejudice to Condition 12.4.
- 12.4 Notwithstanding anything herein before contained, TVB may, at any time forthwith, terminate the Booking by notice in writing to the Advertiser or the Advertising Agent in the event the Product Sponsorship activities concerned is being terminated, restricted, curtailed or affected by law or decree or by any determination made by the Communications Authority or by any means beyond the control of TVB. Such determination shall be without prejudice to the liability of the Advertiser for any sum due or accrued due by the Advertiser to TVB for any telecast made or facility or service supplied up to the time of termination.

13. SURVIVAL OF PROVISIONS

All provisions of the Conditions which in order to give effect to their meaning need to survive its termination shall remain in full force and effect including without limitation the provisions of this clause and provisions on Confidentiality, Warranties and Indemnities, Product and Compliance.

14. NO REPRESENTATION

The Advertiser and the Advertising Agent acknowledge that no representations or promises not expressly contained in these Conditions or in the Booking has been made by TVB or any of its agents, employees or representatives.

15. NO ASSIGNMENT

None of the Parties shall assign or transfer the Booking without the prior written consent of the other Parties whose consent shall not be unreasonably withheld.

16. ENTIRE AGREEMENT

The Conditions govern all Bookings made by the Advertiser and the Advertising Agent which, together with the Booking, shall represent the entire agreement between the Parties.

17. NOTICE

Any notice required to be given must be in writing and may be given either by post or by personal delivery or by facsimile or other acceptable means of communication. Notice will be deemed as duly served 24 hours after posting or on the date of delivery or transmission.

18. LIMITATION TO LIABILITY

In no event shall TVB be liable for any indirect, special, incidental, consequential, punitive or exemplary damages in connection with Product Sponsorship.

19. NO PARTNERSHIP

The Conditions and Booking shall not be deemed to constitute a partnership or a joint venture or contract of employment between the Parties.

20. NO WAIVER

The invalidity or unenforceability of any provision under the Condition or the Booking shall not affect the enforceability of any other provisions and the Condition or the Booking shall continue in full force and effect as if the unenforceable provision had not been inserted. No failure by TVB to exercise or enforce any of its rights under the Condition or the Booking will act as a waiver of such rights against the Advertiser or the Advertising Agent.

21. GOVERNING LAW

The Conditions and Booking shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region the courts of which shall be courts of competent jurisdiction.

22. THIRD PARTY RIGHT

Nothing in the Conditions and Booking, expressed or implied, is intended to or shall confer upon any person other than the Parties to the Booking any right, benefit or remedy of any nature whatsoever under or by reason of the Conditions and Booking. The provision of the Contracts (Right of Third Parties) Ordinance (Cap. 623) of the laws of Hong Kong are expressly excluded from the Conditions and Booking.



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Information herein is subject to change

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