

# Full version: Correct use of images

## Region Nauders – Tiroler Oberland - Kaunertal

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**General terms and conditions for the use of the picture archive of the region Nauders - Tiroler Oberland - Kaunertal (in the following "NTKBA").**

**The transmission of the image files can be carried out via WeTransfer, USB stick, Dropbox, e-mail and the like.**

Valid from: January 2018

Provider: TVB Tiroler Oberland

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### **I. General Remarks**

(1) The NTKBA serves the purpose of providing photos and videos (together hereinafter referred to as "image files"). The image files taken or downloaded from it can be used free of charge subject to the regulations in point IV. (restrictions of use) of these General Terms and Conditions.

(2) Use in the sense of these General Terms and Conditions shall be deemed to include not only downloading but also any form of electronic and printed publication of the image files or a part thereof. Furthermore, layout, copy, projection including public reproduction, reproduction in all currently technically available processes, printing, scanning and storage of the image files on electronic data carriers or in electronic databases, even if only parts of the image files (excerpts) are involved, shall be deemed to be use.

(3) The use of the NTKBA is subject to revocation at any time and by granting a non-exclusive license (Werknutzungsbewilligung), and only as set forth in these General Terms and Conditions. Any deviating terms and conditions of the user are hereby expressly objected to.

(4) The user of the NTKBA expressly declares that he agrees to these General Terms and Conditions

(5) Image files downloaded from the NTBKA as well as digitally transmitted by the TVB Tiroler Oberland always remain the property of the TVB Tiroler Oberland.

(6) The TVB Tiroler Oberland is entitled to change these General Terms and Conditions at any time (Änderungsvorbehalt). TVB Tiroler Oberland will inform the user of such changes by sending the amended General Terms and Conditions to the notified e-mail address. The amendment of the General Terms and Conditions entitles the user to terminate the contractual relationship within a period of one month from notification. If the user does not terminate the contract within this one-month period, the amended General Terms and Conditions are deemed to be agreed.

## **II. Liability of the TVB Tiroler Oberland and of the user**

(1) TVB Tiroler Oberland assumes no liability for errors and defects in hardware and software which arise during data transmission or for other damage, in particular also such which arise during the use of the storage media used by third parties for the storage of image files.

(2) Furthermore, TVB Tiroler Oberland assumes no liability for the (in particular technical and economic) suitability of an image file or the data volume of an image file for the purpose of use stated, intended or actually realised by the user. Any use of an image file of any kind is at the exclusive risk of the user.

(3) The TVB Tiroler Oberland does not guarantee that the Internet pages made available, the image files made available for retrieval in the NTKBA or the transmitted compact discs are free of viruses, unauthorized program codes, Java codes or source codes or any other parts or components which may interfere with function or business.

(4) The user shall be liable for any use of the NTKBA and the image files made available there, which is against these General Terms and Conditions or which is a misuse or illegal use, in each case. Solely the user is responsible for the text used along with the image files downloaded from the NTKBA.

(5) Should the user nevertheless use the downloaded image files in an inadmissible manner, he undertakes to indemnify and hold harmless TVB Tiroler Oberland to the full extent for any loss, or damage and/or claims by third parties arising from this.

(6) Furthermore, the user will fully indemnify and hold harmless the TVB Tiroler Oberland for claims of third parties brought against the TVB Tiroler Oberland from the use of the image files - including claims based on permitted usage.

## **III. Restrictions of Use**

### **(1) Prohibition of Damage to Reputation**

The image files downloaded by the user from the NTKBA may not be used in a manner that is likely to damage the reputation and standing of the TVB Tiroler Oberland, the tourist destinations of the region or any other public or private institution whose legal or decision making authority is directly or indirectly the region.

### **(2) Prohibition of Direct Commercial Use**

Furthermore, the image files downloaded by the user from the NTKBA may not be used for direct commercial purposes, i.e. image files downloaded from the NTKBA may not be used for merchandising purposes as part of a product intended for sale (e.g. T-shirt with an image file from the NTKABA). However, the use of image files for advertising purposes is permitted (e.g. use of the image file from the NTKBA in an advertising brochure), since here the image files from the NTKBA or the hosted image archives only serve the marketing of a product or a service, but are not directly part of the product intended for sale (permitted indirect commercial use). In case of doubt, the written permission of the TVB Tiroler Oberland for use must be obtained beforehand.

### (3) Restriction of the Communicated Content

The images downloaded by the user from the NTKBA may only be used in connection with the Nauders - Tiroler Oberland -Kaunertal region. This means that images of this region may not be used in such a way that an uninitiated viewer would associate them with another Tyrolean region or a region outside of Tyrol. In case of commercial use, the image files may also only be used to promote the region Nauders - Tiroler Oberland - Kaunertal as a tourism & business location. Furthermore, the user must adhere to the Code of Ethics of the Austrian Advertising Council (Werberat).

### (4) Editing Prohibition

Any processing or editing, in particular the distortion of the image files by copying, re-photographing, photo-composing, electronic aids or in any other way is not permitted (editing prohibition). A section or part may be shown as long as the expressiveness of the picture is not changed.

### (5) Protection of Privacy Rights

Use of the image files in connection with the use of texts which may lead to the degradation or impairment of the interests of the persons depicted in the image files is not permitted and makes the user liable for any damage. Personal rights of the persons depicted may not be negatively affected or impaired by the use of the image files. Equally inadmissible are uses of the image files in erotic, criminal or other offensive contexts, as well as uses which disparage minorities, ethnic, religious/other groups or which are likely to offend the feelings/convictions of members of these groups.

### (6) Use for Journalistic Purposes

The use of image files from the NTKBA for journalistic purposes is permitted without prejudice to the above clauses. The user is obliged to observe the journalistic principles of the Press Council (Press Code).

### (7) Obligation to Delete

Image files must be removed from all data storage devices immediately after use (obligation to delete).

### (8) Prohibition of Archiving and Passing On

The archiving of the image files by the user and/or third parties as well as the passing on of the image files to third parties, unless this is necessary for the user's own advertising purposes (e.g. to advertising agencies, booking platforms, Facebook), is not permitted. Passing on is also permitted if it serves to promote the Nauders - Tiroler Oberland - Kaunertal region (e.g. through press agencies). Graphic & advertising agencies are requested to contact the TVB Tiroler Oberland directly, regardless of a permitted passing on according to this provision.

### (9) Contractual Penalty

In the event of an unauthorised use of the image files from the NTKBA contrary to the above-mentioned clauses of these General Terms and Conditions, the user must pay a contractual penalty of € 3,000 (in words: three thousand euros) to the TVB Tiroler Oberland in each individual case within

14 days of being requested to do so. The TVB Tiroler Oberland may assert claims for damages in excess of this amount as well as for the omission of use. Any profit made by a user as a result of an action taken against the prohibited commercial usage pursuant to point IV. para. (5) is to be paid to TVB Tiroler Oberland. In this case the user is obliged to account to TVB Tiroler Oberland for these transactions.

#### **IV. Rights of Use**

(1) By downloading the image files from the NTKBA, the TVB Tiroler Oberland generally grants only a (non-exclusive) permission to use the work (Werknutzungsbewilligung). This also applies in particular to image files whose image content represents a work (e.g. works of the fine and/or performing arts). The use of these image files requires the consent of the author or other legal owner of the work depicted in the image file if necessary. The user must independently obtain the relevant information and any necessary consent. This shall also apply analogously to the consent of the person depicted in an image file or the obtaining of publication permission for image files from collections, museums, etc.

(2) Image files from the NTKBA are only made available by the TVB Tiroler Oberland for use in accordance with the permissible purpose of use stated in the request.

#### **V. Copyright Notice (Fotocredit)**

(1) The TVB Tiroler Oberland expressly requires a source and copyright notice, in such a way that for each individual picture (photo) "Source: TVB Tiroler Oberland / Author (name of author)" is stated in such a way that there can be no doubt as to the assignment to the respective picture (photo). The above obligation is part of the license agreement. The user must indemnify the TVB Tiroler Oberland from claims by third parties resulting from the omission of the copyright notices.

(2) Subsection (1) shall also apply to advertising, insertions in television programmes and films or other media, unless an express special agreement has been made.

(3) Unless otherwise stated above, any use is subject to the provisions of the Austrian Copyright Act (Urheberrechtsgesetz).

(4) A complete specimen copy of each printed publication must be sent to the TVB Tiroler Oberland unsolicited and free of charge. This must state exactly which picture (photo) was used in which publication and in which place.

#### **VI. Duration/Termination of the Contractual Relationship**

(1) This user agreement is concluded for an indefinite period. The user is entitled to terminate the contractual relationship at any time by sending an e-mail to [office@tiroler-oberland.com](mailto:office@tiroler-oberland.com). The TVB Tiroler Oberland is entitled to terminate the contractual relationship with a notice period of one month to the end of each month without giving reasons.

(2) The TVB Tiroler Oberland is entitled to terminate this usage agreement without notice for an important reason.

## **VII. Jurisdiction, Miscellaneous**

(1) Subsidiary agreements to these General Terms and Conditions must be in writing to be legally effective. This shall also apply to any waiver, amendment or cancellation of this written form requirement.

(2) For all disputes arising from these General Terms and Conditions and the use of the NTKBA, the applicability of Austrian law (excluding its international private law provisions) is agreed. The application of Austrian substantive law shall also be deemed agreed for the use of the NTKBA by foreign users.

(3) The competent court for AT 6500 Landeck shall have exclusive jurisdiction for all disputes arising out of or in connection with these General Terms and Conditions and the use of the NTKBA.