

# Terms and Conditions for the Enforcement of Legal Claims by COPYTRACK GmbH

These terms and conditions (in the following “terms and Conditions”) govern the assignment of COPYTRACK with the assertion of claims for copyright infringement.

## 1. Definitions of terms

1.1 “Rights holders” are the owner of the image rights in the sense of these terms and Conditions.

1.2 “Image” or “Images” in the sense of these terms and Conditions, are photographic works and photographs and products manufactured in a similar manner to photographs the meaning of copyright law, which the rights holder has held the exclusive image rights.

1.3 “Image rights” are this only due to rights holders rights within the meaning of these terms and Conditions in relation to the images of the rights holder.

1.4 “Image rights infringer” is any person who intentionally or negligently uses images on the Internet or otherwise, for private or business purposes without holding the necessary rights in the sense of these terms and Conditions.

1.5 “Exploitation rights” within the meaning of para. 1.3, the exclusive rights of the copyright holder to use the images in physical or virtual form, in particular the right, to use the images and illustrations thereof for advertising purposes as well as to other business (eg. illustration of images, data carriers, in magazines etc.) uses and private use, the right to reproduce and disseminate in multimedia applications (eg. Movies, presentations, websites) and on data media (CD-ROM, DVD, DVD-ROM, etc.), The right to upload and download images on the web (right of making available), the right to edit the images and to combine them with text and other images (synchronization).

1.6 “COPYTRACK image request machine” is a software of COPYTRACK, which finds copies of images of the copyright holder on Internet sites, as well as more relevant Web page data (Web page operators, etc.).

1.7 “COPYTRACK-App” is accessible via the COPYTRACK platform user platform, where the user can see his account, upload images and see the results of the COPYTRACK image request machine and may instruct the assertion of his legal rights.

1.8 “COPYTRACK services” includes all services offered by COPYTRACK, in particular the COPYTRACK platform, the COPYTRACK app, the COPYTRACK image request machine and the assertion of claims.

## 2. Scope of application

2.1 The offer of COPYTRACK is equally aimed at consumers, entrepreneurs, corporations, and persons of the public law.

2.2 These provisions shall apply to all business relations of COPYTRACK. Terms and conditions of the contractual partner shall not apply even if COPYTRACK does not object separately to their application in a particular case.

## 3. Specifications, flow

3.1 For the rights holder it is possible using the COPYTRACK image request machine to uncover Copyright image infringement on the Internet. Potential violations are displayed in the COPYTRACK app. If the rights holder believes that one of the uses found by COPY TRACK violated his rights, the rights holders may delegate COPYTRACK in asserting his ensuing claims.

3.2 COPYTRACK will first submit to the Image rights infringer an offer to conclude a license contract with a royalty set by the rights holder after commissioning (“licensing”). If the Image rights infringer accepts the offer and pays the required license fee, the claim for damages from the copyright holder of the specific image rights violation is dismissed. COPYTRACK grants to the Image rights infringer also a simple, spatially and temporally unlimited, non-sublicensable, non-transferable right without the obligation of any author to be named for recovery and public display of the image on the web page of the Image rights infringer on which the infringement has occurred.

3.3 Should the Image rights infringer refuse to conclude a license agreement COPYTRACK will make appropriate prospects, in its sole discretion and at its own expense, payment of a sum of damages set by the rights holder, but must be within the usual framework of that asserted against the respective Image rights infringer. For this, a default

action against the image rights infringer is first introduced. If unsuccessful, the method in accordance with Paragraph 7 is optionally delivered to cooperation lawyers of COPYTRACK for further enforcement.

3.4 COPYTRACK proposes a license fee the rights holder in order, the amount of which is dependent upon the current image fees of the MFM (Mittelstandsgemeinschaft Photo Marketing). The rights holder is free to change the license fee in the amount or to submit a license fee manually accordingly to his general license practice. COPY TRACK is entitled at its discretion to depart during the contract negotiations with the image rights infringers of the amount specified by the rights holder and also to form an agreement which provides for a lower license payments if COPYTRACK appears effective or productive in the sense of speeding settlement. The same applies to the damages against the image rights infringer asserted.

3.5 A certain performance success is not owed by COPYTRACK. The rights holder acknowledges that a successful assertion of claims and the implementation of payments by image rights infringers depends on various factors, which are prescribed by the applicable jurisdictions and COPYTRACK can not influence. COPYTRACK assumes no guarantee for the successful enforcement of claims or the amount of cash. Furthermore, the success of payments also depends on the solvency of the Image rights infringer. This fact can not be influenced by COPYTRACK.

#### 4. Conclusion

4.1 The images retrieved on COPYTRACK and displayed on the COPYTRACK App cases merely represent an invitation to submit an offer for the conclusion of a contract for the enforcement of the rights of the holder (management contract) and not a legally binding offer from COPYTRACK.

4.2 The copyright holder may assign COPYTRACK to assert the claims of the rights holder concerning the selection of the respective image, click on the "submit claim" – button, as well as launch a full input of the queried data on the COPYTRACK platform. Prior to the final conclusion of the contract, the rights holder has the opportunity to check his data for accuracy and correct by using the Back button on their browser. By further clicking on the "Submit claim" – button on the summary page of the order, the right holders commissions COPYTRACK with the binding assertion of his claims within the agreed scope and for the work towards a licensing.

4.3 By sending an order confirmation, the offer of the subsequent relicensing to the image rights infringer or by the assertion of license payments or damages against the image rights infringer, COPYTRACK accepts the order of the rights holder, so that an effective and binding contract comes about. COPYTRACK does not save the contract text, nor does it make it accessible to the customer. The rights holder can, however, view the respective transaction in his customer account at any time.

4.4 COPYTRACK is not obliged to accept any offer from the copyright holder to conclude an agency agreement. COPYTRACK is particularly likely to reject an offer if the prospects of success of the assertion of the claims due to actual, legal or economic reasons are low.

#### 5. Fiduciary assignment

5.1 The rights holder assigns COPYTRACK and then assigns to COPYTRACK his claims for the infringement of the rights of the image (main and secondary claims) for the purposes of the claim. COPYTRACK accepts the assignment. COPYTRACK is authorized to modify the assignment to reveal and display the image rights violations against the image rights infringers. COPYTRACK is also entitled to complete subsequent licensing of the affected image and to assert corresponding license payments. Further, this includes the assertion of the rights by third parties (e.g. collection companies) to arbitrage as well as any other extra-judicial recovery measures with respect to payments and / or relicensing, which are useful to realize payments by the image rights infringers. COPYTRACK is entitled in this context, to collect payments for the rights holders (collection authorization). In addition, the copyright holder grants COPYTRACK a simple, non-exclusive, perpetual, worldwide, under-licensable, transferable right of use in the disputed images. The rights holder waives COPYTRACK and licensees of COPY TRACK from the assertion of his claims for copyrights.

5.2 At the request of COPYTRACK, the rights holder undertakes to make a self-signed declaration on the image rights, the authorization for the assertion of the claims as well as the collection authority. The corresponding documents (pdf format) will be send to the rights holder via e-mail to the e-mail-address saved in the customer's account in due time. If COPYTRACK does not receive a copy from COPYTRACK (email or fax) within 28 days, COPYTRACK shall be entitled to charge the rights holder with a compensation of 30% of the required license payments per infringement by the rights holder, for the aforementioned documents. The rights holder is free to prove that COPYTRACK has suffered none or a lesser than alleged damage.

5.3 COPYTRACK can also make comparisons in transferred cases – including by means of the appropriate function (platform of the COPYTRACK platform), also in deviation from the assignment in the name of the owner of the rights.

#### 6. Compensation (performance fee)

6.1 COPYTRACK receives a commission in the amount of the agreed percentage to the enforced payments (hereinafter “performance fee”). The basis for calculating the performance fee is the amount that has been paid as a royalty payment or compensation from image rights infringers. The entitlement to performance fee is also valid if the payment has been or has been charged to the rights holder in full or in part due to the services provided by COPYTRACK pursuant to these terms and conditions. The rights holder shall only be entitled to offset the performance agreement against COPYTRACK if the counterclaim has been legally established or is not disputed by COPYTRACK.

6.2 The amount of the performance fee is determined by the country in whose jurisdiction where image rights violation has taken place and the means by which the claim has been successfully enforced. Specifically COPYTRACK calculated the following percentages:

<b>Territory</b>	<b>Commission for subsequent licensing</b>	<b>Commission on commercial debt collection</b>	<b>Commission on extrajudicial lawyers claim enforcement</b>	<b>Commission on judicial claim enforcement</b>
Germany	30%	30%	30%	30%
Europe (excluding Germany)	30%	30%	50%	50%
North America (USA, Canada)	30%	30%	50%	50%
Asia (Japan, South Korea, Singapore, China)	30%	30%	50%	50%
Rest of the world	30%	30%	50%	50%

The percentages are not cumulative.

6.3 Should not the first of the alleged requirements of COPYTRACK, but merely a part of the claim can be realized, COPYTRACK calculates the performance fee only on the partially enforced amount.

6.4 Should the assertion of claims by COPYTRACK not be successful, no costs shall be borne by the rights holders. This is true even if the enforcement of claims the benefits of cooperation attorneys pursuant to paragraph 5 were used.

6.5 COPYTRACK is entitled to their right to deduct the copyright holders against success attributable commission of the incoming payments, § 367 BGB applies accordingly. Cooperation lawyers are entitled to sweep out the payments received for the purpose of settlement with the rights holders directly to COPYTRACK.

6.6 For final settlement and payouts to the assignee COPYTRACK is only committed once COPYTRACK presents all documents required for billing. This concerns in particular the bank account to SEPA schemes.

## 7. Interest, dunning fees

7.1 Interest and dunning fees that incur after the assignment of the claims (5.1), stay with COPYTRACK and will not be paid out to the rights owner. They will not be taken in consideration regarding COPYTRACK's performance fee.

## 8. Judicial procedures, contracting, cooperation lawyers

8.1 Should the debate initiated by COPY TRACK collection efforts remain completely or partially unsuccessful, COPYTRACK entrusted with corresponding success, shall at its discretion and at its own expense appoint a specialized cooperation lawyer with the non-judicial or possibly judicial enforcement of claims. In this case, the mandate is established between the co-operation lawyer and COPYTRACK.

8.2 COPYTRACK performs a process as assignee and accepts the risk of litigation. COPYTRACK is free to terminate an incriminated process at any time without giving reasons.

8.3 If COPYTRACK's assessment of the prospects for success after the appointment of a co-operation attorney (e.g. due to changed law, case law, new circumstances) is changed, COPYTRACK is entitled to limit the offer for free of charge to the legal measures hitherto enacted. In this case, the rights holder is free to continue the extrajudicial or judicial prosecution of the damages. The cost exemption commitment from the COPYTRACK applies to the continuation incurred by the rights owner for all costs. Other costs of the collaboration lawyer shall be borne exclusively by the rights holder.

8.4 If the rights holder independently wants to take legal action against a image rights infringer without mandating a cooperation lawyer, he undertakes to inform COPYTRACK in front of a corresponding mandate here on. In this case, COPYTRACK calculates the rights holder an allowance amounting to 30% of the claimed amount of the claim for the compilation of the process relevant evidence.

## 9. Obligations of the copyright holder

9.1 The rights holder undertakes to provide COPYTRACK without delay with a copy of the original assignment of the assignment for any claim for the assertion. Furthermore, the rights holder is obliged to provide COPYTRACK all, appropriate to the effective enforcement of documents (e.g. facts declaration rights situation, existing license agreements etc.to ask) and declarations by third parties are available.

9.2 The copyright owner undertakes to offer COPYTRACK any claim of infringement found in the COPYTRACK image search to the assertion of the resulting claims. Only when COPYTRACK has rejected the conclusion of an agency agreement, is the rights holder entitled to the claim itself or enforcement by third parties.

9.3 For any case of the culpable infringement of the obligations under clauses 9.1 and 9.2, the rights holder shall pay COPYTRACK a contractual penalty of 30% of the claim to be claimed or claimed against the infringer. The rights holder is free to prove that COPYTRACK has suffered none or a lesser than alleged damage. Any further claims for compensation by COPYTRACK remain unaffected by this regulation.

9.4 If the rights holder is guilty of his obligation to cooperate in accordance with section 9.1, he shall also release COPYTRACK from any pre-litigation costs incurred by COPYTRACK in this matter.

9.5 If the rights holder submits a manually calculated license fee according to secc. 3.4 that differs from the image fees of the MFM (Mittelstandsgemeinschaft Photo Marketing), the rights holder affirms that the submitted license fee corresponds his generals license practice that he can prove by submitting suitable evidence such as invoices, price lists or general terms and conditions, that have been used by the rights holder in the past. If the manually submitted license fee is higher than the image fees of the MFM (Mittelstandsgemeinschaft Photo Marketing) and COPYTRACK suffers any financial loss during the enforcement of the claim due to the excessive claim, the rights holder will make up for the loss unless he proves that the manually submitted license fee correlates his generals licensing practice.

## 10. Right of revocation

If the customer is a consumer, he has a right of withdrawal. Consumers are any natural person who enters into a legal transaction for purposes which can not be attributed primarily to their commercial or independent occupation.

### Right of Cancellation

### Right of revocation

You have the right to revoke this contract within 14 days without giving reasons. The withdrawal period is 14 days from the date of conclusion of the contract. To exercise your right of revocation, you must contact us (COPYTRACK GmbH, Dresdener Straße 31, 10179 Berlin, phone: 030 – 809332-900, Fax: 030-809332-999, e-mail address: [contact@copytrack.com](mailto:contact@copytrack.com)) by means of a clear statement (for example, a letter sent by mail or by e-mail) about your decision to revoke this contract. You can use the enclosed sample revocation form, this is however not required.

In order to maintain the revocation period, it is sufficient that you send the notification of the exercise of the right of revocation before the end of the revocation period.

### Consequences of revocation

If you revoke this agreement, we will pay you all the payments we have received from you, including the delivery costs (except for the additional costs resulting from the fact that you have chosen a different type of delivery than the most favorable standard delivery offered by us ) within a period of fourteen days from the date on which the notice of revocation of this contract has been received by us. For this repayment, we use the same method of payment that you used in the original transaction, unless you explicitly agreed otherwise; in any case you will not be charged fees for this repayment.

If you have requested that the service be commenced during the period of revocation, you shall pay us a reasonable amount equal to the proportion of the services already provided to us by the exercise of the right of revocation with respect to this contract services rendered compared to the total amount provided for in the contract services equivalent.

#### Special instructions

Your right expires prematurely if the service has been completed by us and started the execution of the contract only after explicit consent and you have confirmed your knowledge before execution of the contract that you will lose your right with complete fulfillment of the contract on our part.

#### Model withdrawal form

(If you want to cancel the contract, then please fill out this form and send it back to us.)

To COPYTRACK GmbH, Dresdener Straße 31, 10179 Berlin, Telephone: 030 – 809332-900, Fax: 030-809332-999, E-Mail-Adresse: [contact@copytrack.com](mailto:contact@copytrack.com)

I / we (\*) hereby revoke the contract concluded by me / us (\*) for the purchase of the following goods (\*) / the provision of the following service (\*):

Ordered on (\*) / received on (\*)

Name of consumer (s)

Address of the consumer (s)

Signature of the consumer (s) (only in the case of a communication on paper)

Date

(\*) Delete as appropriate.

End of revocation

## 11. Alternative Dispute Resolution

COPYTRACK is neither obliged nor willing to participate in alternative dispute resolution proceedings in front dispute resolution bodies.

## 12. Contract duration and termination

12.1 The agency agreement with COPYTRACK ends when the image infringer has fully paid the required license payments or completely fulfilled the claimed claims and has been returned to COPYTRACK by the copyright owner.

12.2 COPY TRACK has the right to terminate the contract at any time to terminate without cause and without notice by declaration in text form (§ 126b BGB). This can also be the case if it is not for the mandate of a cooperation lawyer according to Art. Clause 8.1, or the owner of the rights shall proceed in accordance with clause 8.4.

12.3 The contractual relationship may also be terminated by the rights holder as well as COPYTRACK at any time with immediate effect for important reasons. COPYTRACK reserves particularly the right to terminate for cause prior to when the rights holder culpably violated, the duties and obligations within the meaning of para 5.2 and 9.

## 13. Rights guarantee, exemption

13.1 The rights holder represents and warrants to be owner of the rights necessary to prosecute the image rights violation and that the images which are the subject of the agency agreement, free of third party rights, especially no



copyrights or other rights of third parties, such as design rights, trademark rights or injure personal rights.

13.2 The rights holder indemnifies COPYTRACK from all claims of third parties resulting from the infringement of the rights of third parties under the agency agreement. In this case, the rights holder assumes all costs incurred by COPYTRACK from third parties. Reimbursable costs also include the costs of adequate legal defense, including court and legal costs.

13.3 In the event of a third party claim described above, the rights holder is obliged to provide COPYTRACK without delay, truthfully and in full, all information that may be required for the purposes of the review of the claims and for the defense.

#### **14. Legal enforcement by COPYTRACK, multiple assignment, pledge**

14.1 The rights holder shall not be entrusted with the performance of his image rights independently of the commissioning of COPYTRACK, that is, while the latter is charged with the demand for license payments. In any event, the copyright owner shall in such event be liable to COPYTRACK for the positive interest. COPYTRACK is to be made as if their activity alone was decisive for the realization of the license fees and is also to be released from the claims of third parties (lawyers) on their fees.

14.2 The rights holder is obligated to assign or pledge the claims arising from infringement of the image rights, which COPYTRACK has been charged with, only with the written consent of COPYTRACK.

#### **15. Liability**

15.1 COPYTRACK shall be liable without limitation if damage is caused by intent or gross negligence.

15.2 COPYTRACK shall only be liable for slight negligence if it is a breach of essential obligations and is thereby endangering the purpose of the contract or if COPYTRACK violates obligations which fulfill the proper implementation of the contract at all and if the user regularly complies with these obligations (Cardinal obligations). In this case, however, COPYTRACK is only liable for the foreseeable, contract-type damage.

15.3 The foregoing limitations on liability do not apply in case of injury to life, body and health.

15.4 Insofar as the liability of COPYTRACK is excluded or restricted, this also applies to the personal liability of COPYTRACK employees, representatives and vicarious agents.

#### **16. Final provisions**

16.1 The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

16.2 Contracts concluded with COPYTRACK in the electronic business are not saved after the conclusion of the contract and are not made available to the contractual partner.

16.3 The court of jurisdiction for disputes arising out of or in connection with contracts between COPYTRACK and the users who are merchants, legal persons of public law or a public special fund is the place of business of COPYTRACK in Berlin.

16.4 COPYTRACK reserves the right to amend these General Terms and Conditions if a change in the legal situation, the supreme court case or the market conditions so requires. COPYTRACK will send the amended terms and conditions to the contract partner at least four weeks prior to its entry into force and to the intended validity of these new terms and conditions as well as the right of the user of the new General Terms and Conditions. If the contractual partner does not object to the validity of the new terms within this period, or if he logs in to the COPYTRACK services after the entry into force of the terms and conditions, the new AGB shall be deemed accepted. COPYTRACK will advise users of the importance of the four-week period, the right of objection, and the legal consequences of silence.

16.5 Amendments and additions to these General Terms and Conditions must be made in text form (§ 126b BGB).

16.6 The contract language is German. If the contractual partner is in another language and the translation deviates, the German version shall prevail.

Terms of business: April 2017