

**PIXTRAKK WEB
GENERAL CONDITIONS OF
SUBSCRIPTION TO THE MONITORING
SERVICE FOR PUBLICATIONS ON THE
INTERNET WITH THE DEBT RECOVERY
SERVICE**



PixWays SA
19 rue Béranger
75003 Paris - France

A public limited (SA) company
with a capital of €282,740
RCS PARIS B 453 749 269 Code
APE 6311 Z
VAT No. FR654537492690024

These General Conditions of Subscription define the conditions in which PixWays, a public limited company (Société Anonyme) with a capital of 282,740 euros, whose head office is located at 66, rue René Boulanger, 75010 Paris, registered under number B 453 749 269 at the Paris Trade and Commerce Registry, (“**PixWays**”) proposes that Clients subscribe to its Services (as defined in Article 2 of the General Conditions).

We suggest that you read the General Conditions attentively and, if you wish, print them out before filling in the subscription form accessible online via the following link: www.pixtrakk.com/conditions-generalesLegal.pdf.

By subscribing online by filling in the form accessible at www.pixtrakk.com/inscription you accept and confirm that:

- (i) you have the capacity to sign a contract.
- (ii) you fulfill all the conditions required to subscribe to the PixTrakk Web Service or that you have received power of attorney necessary to represent your employer.
- (iii) You have read, understood and accepted the General Conditions.

It should be pointed out that by accepting the General Conditions and using the PixTrakk Web Service, the Client enters into a contract with PixWays.

The Client and PixWays are hereafter referred to collectively as the “Parties” and individually as the “Party”

The following is hereby agreed:

In a context of growth in and of the resources and capacity of media diffusion, particularly on the Internet, the owners of content protected by intellectual property rights are, now more than ever, confronted with the problematic of how that content is used.

For photo agencies and independent photographers, the systematic identification of Images used (whether or not that use has been acknowledged) makes it possible at once to more efficiently monitor the various uses made of them, and to trace unauthorized, illicit uses.

With its PixTrakk Web Service, PixWays offers a unique service monitoring the publication of digital Images in the print media and on the Internet, thereby contributing to the protection of intellectual property rights.

This monitoring service is of interest to all rights holders in that it makes it possible to track down reproductions and/or representations of their Images.

By subscribing to the PixTrakk Web Service, the Client benefits from the Legal Service in regard to sums due from Users for the illicit use of Images or Assets (pre-litigation phase) and, if necessary, defend the Client’s interests before the competent Court.

Article 1: Definitions

The terms with capital letters used in the Contract, including those in the preamble, are defined below:

General Conditions: designates the General Conditions of subscription, including their preamble and appendix.

Match: designates the identification of the use of all or part of a digital Image either in the print media or on the Internet.

Asset: designates an asset protected by the intellectual property rights associated with an Image.

Partner: designates PixWays' partner law firm responsible for recovering debts on behalf of the Client.

PixTrakk Reference Base: designates the database of the 3000 Client's Images benefitting from the PixTrakk Web Service.

Service PixTrakk Web Service: designates

-the technical service: the Images published on the internet are collected, identified and compared to the PixTrakk Reference Base. When a Match is found, the information is sent to the Client via a web interface, and

- the Legal Service

User: designates any person having made or making an Illicit use of one or more Images or of one or more Assets, as identified via the Services.

Illicit use: designates any use on the Internet of an Image identified in the Pixtrakk Reference Base and which reproduction has not been authorized by the Client.

Legal Service: designates the legal service provided by our Partner, which will assist the Client in recovering sums due from Users, and carry out certain legal actions on behalf of the Client, according to circumstances and within the framework of a joint agreement between the Client and the Partner.

File: designates any file opened by the Partner on the PixTrakk platform following the notification by the Client of the illicit use of one or more Images.

Client: designates any entity or person holding a stock of Images or intellectual property rights associated with the Images and who subscribes to the Services.

Signature: designates the digital signature of an Image generated by PixWays when it is entered into the PixTrakk reference base and used to identify Matches.

Image: designates a photograph or an Asset provided in a low resolution electronic format as part of the PixTrakk reference base.

Subscription: designates the act by which the Client expressly accepts the General Conditions and subscribes to the PixTrakk Web Service.

Article 2: Object

The purpose of the General Conditions is to define the conditions in the PixTrakk Service is provided to the Client.

2.1 PixWays

Undertakes to:

- provide the Client with Matches via web access as soon as they become available.
- provide the Client with access to all technical and commercial developments.
- make no illicit use of Images placed at its disposal.

2.2 The Client

The Client will provide PixWays with Images (see **Appendix**) in order to make it possible for it to monitor the use of those Images on the Internet via the PixTrakk Web Service.

The Client undertakes:

- not to copy either all or part of the PixTrakk website in another website or on a company intranet.
- not to set up a hypertext link between another website and the PixTrakk website without the prior agreement of PixWays.
- to provide PixWays and the Partner with all documents and information relevant to PixTrakk Web Service.

The Client acknowledges and accepts:

- that it is exclusively responsible for the identification of illicit uses of Images and Assets via the PixTrakk Web Service; and
- that the Partner will act on its behalf within the framework of the Legal Service; and
- that a Signature does not, under any circumstances, constitute a work derived from an Image.

Article 3: Implementation, hosting, and ways of subscribing to the PixTrakk Web Service

3.1 PixWays undertakes to supply the Client with the list of elements required to integrate Images into the PixTrakk Web Service.

3.2 The PixTrakk Web Service is provided by PixWays.

3.3 PixWays undertakes to make all reasonable efforts to guarantee that the PixTrakk Web Service achieves the highest quality on a permanent, continuous basis. In this perspective, it is expressly understood that, with regard to the Client, PixWays only subscribes an obligation of means.

Article 4: Legal Service

4.1 By subscribing to the PixTrakk Web Service, the Client benefits from the Legal Service.

4.2 Costs and expenses associated with legal services (notably those associated with bailiffs and lawyers) provided within the framework of the Legal Service **in the pre-litigation phase** are covered by PixWays.

4.3 By subscribing to the PixTrakk Web Service, the Client expressly mandates PixWays to collect on its behalf the sums paid in the pre-litigation phase (after notification has been given but without having gone to court) by any person having made an Illicit use of an Image identified within the framework of the PixTrakk Web Service.

4.4 Within the framework of the mandate defined in Article 4.3, above, the Client acknowledges and accepts Pixways' right:

- to carry take all necessary steps in regard to the CARPA (Caisse des règlements pécuniaires des avocats); and
- represent the Client vis-à-vis the CARPA; and
- collect sums owed by Users in the form of settlement compensation within the framework of the provision of PixTrakk Web Service.

4.5 The mandate as defined in Article 4.3, above, is valid for the entire duration of the provision of the PixTrakk Web Service, as well as the period required, after the provision of Service has come to an end, for the collection of monies paid by all persons identified within the framework of the Service as having made Illicit use of an Image.

4.6 The Client has the possibility of informing the Partner of the Illicit use of one or more of its Images or Assets. The Client can also suggest the level of compensation that it would like to obtain for such illicit use.

4.7 Before declaring the Illicit use of an Image or an Asset, the Client must guarantee that it holds all the rights to the Image or the Asset used, that it has not authorized the use of that Image or Asset and that no similar authorization for use has been given by another rights holder (for example, pooled images).

4.8 The Client undertakes to furnish PixWays and the Partner with all supporting documents useful in regard to the provision of the Legal Service. This undertaking encompasses, without limitation, documents and information making it possible to establish:

- the Client's ownership of the rights to the Images and Assets, as well as the Client's *locus standi*, and
- the original character of the Images and Assets.

4.9 The Partner can, at its entire discretion, decide if there are grounds to undertake pre-litigation steps in regard to the illicit use of Images or Assets pointed out by the Client.

4.10 The File may be closed by mutual agreement between the Client and the Partner or by the Partner, at its sole discretion.

4.11 After an Illicit use has been reported to the Partner by the Client, any request for the unilateral closing of a File from the Client without consultation with the Partner will result in the payment of a lump sum of 150 (one hundred and fifty) euros before tax. This sum will be deducted from the sum to be paid by PixWays to the Client for the month during which the report has been made, or in the event of an insufficient sum, as soon as these amounts are owed to the Client from PixWays.

4.12 Although suggested by the Client, the total of the sum claimed in the pre-litigation phase (after notification of legal action but before going to court) is, *in fine*, determined by the Partner. The Partner can, among other things, decide, at its entire discretion, whether or not to apply the evaluation coefficient suggested by the Client with a view to calculating the level of compensation to be claimed.

4.13 The Client undertakes not to contact the User, either directly or indirectly, or to attempt to obtain compensation without the assistance of the Partner.

4.14 The Client will be represented directly by the Partner within the framework of legal proceedings. All legal proceedings will be decided on conjointly by both the Partner and the Client. The prices practiced by the Partner will be decided on conjointly by the Parties. As an example, PixWays will communicate to the Client the Partner's standard prices for standard procedures.

Article 5: Brands, Images and Logos

The Client authorizes PixWays and the Partner to use its brand and logo and, on specific request, a small number of Images, within the strict limit of the promotion of the PixTrakk Web Service.

Article 6: Length of the Contract

6.1 The Client subscribes to the PixTrakk Web Service and for a fixed term of one (1) year, beginning on the date of signature of the Subscription and renewable by tacit consent on the anniversary of the beginning of the Service, except if it is cancelled in the conditions outlined below.

6.2 Either Party can cancel the Subscription and the Mandate (as defined in Article 4.3, above), in respecting a period of notice of three (3) months preceding the date of the anniversary of the date on which the Subscription was signed notified to the other Party by registered letter with an acknowledgement of receipt.

6.3 If the Subscription is cancelled due to PixWays, the Client will be reimbursed on a pro rata basis reflecting the length of time in which the PixTrakk Web Service was used.

Article 7: Geographical scope of the Contract

The PixTrakk Web Service covers the entire world.

Article 8: Financial conditions

8.1 In return for the provision of the PixTrakk Web Service, the Client pay PixWays an annual fee of €99 VAT, revisable every year according to the modalities outlined in Articles 8.2 and 8.3 of the General Conditions (the "**Price**").

8.2 The monthly/annual fee is subject to the SYNTEC Index and is revisable every year on the anniversary of the date on which the Subscription was signed, according to the following calculation:

$$P = P0 \times I/I0$$

P = Revised price

P0 = Price

I = last SYNTEC Index published prior to the revision of the Subscription.

I0 = last SYNTEC Index published prior to the date of the signature of Subscription.

8.3 As well as the revision of the Price as stipulated in Article 8.2 of the General Conditions, an additional increase in the fee linked to variations in the costs borne by PixWays in the provision of the PixTrakk Web Service is applicable on each anniversary of the signature of the Subscription. If necessary, PixWays undertakes to inform the Client four (4) months before the anniversary of the signature of the Subscription.

8.4 A one year Subscription to the PixTrakk Web Service is payable online using a bank card, or via a Paypal account.

8.5 The Client undertakes to pay PixWays a percentage of sums generated by the spontaneous payment (after notification of legal action but before going to court) of compensation (with the exception of costs and expenses, notably including lawyers' and bailiffs' fees) as specified in Article 8, above. In the event of any legal action undertaken, an agreement must be reached between the Client and the Partner.

8.6 The percentage defined in Article 8.5, above, is 40% for a French User, and 45% for a foreign User in the pre-litigation phase, and 15% of damages and interests (excluding Article 700, costs and expenses) received by the Client as the result of a legal ruling or a compensation settlement.

8.7 Said sums due to PixWays for the PixTrakk Web Service will be deducted directly from the compensation paid by the User. The Client will invoice PixWays for the sums owed to it, based on each settlement compensation statement sent by PixWays to the Customer.

8.8 The Client provides PixWays with a mandate to invoice Users for all sums claimed during the pre-litigious phase (including allowances, expenses, and, notably, lawyers' fees), as well as for collecting those sums. Furthermore, the Client grants PixWays the mandate to represent it in all legal procedures and, in this regard, in all agreements with Users when such agreements are envisaged.

8.9 All sums payable by the Client to management and administrative bodies with legal authority (if imposed by law) associated with compensation received within the framework of the pre-litigation phase will be directly settled by PixWays. Where necessary, such sums will be deducted from PixWays' payment to the Client of the balance of the compensation owed by PixWays following the terms outlined in Articles 8.5 and 4.11 of the Contract.

Article 9: Confidentiality

9.1 The following information is considered confidential: information relative to the General Conditions and the stipulations contained therein and, in a general and non-exhaustive manner, to the PixTrakk Reference Base, to the PixTrakk Web Service, to the technology used by PixWays, to the current and future activities of PixWays, and to its expertise, whether this information is obtained directly or indirectly from PixWays, its employees, sub-

contractors, service representatives or providers. Nevertheless, it is understood by the Parties that the Partner has the right to inform the CARPA (Caisse des règlements pécuniaires des avocats) of the Mandate.

9.2 The Client undertakes (i) not to make use of confidential information, for whatever reason, except in regard to the execution of the rights and obligations deriving from the General Conditions, and; (ii) not to divulge confidential information to any person, by any means whatsoever, except for those of its employees, service providers or sub-contractors to whom such information is necessary within the framework of the execution of the General Conditions. This stipulation is not applicable in the event of the communication of confidential information at the request of an administrative or legal authority.

9.3 The Client undertakes to ensure that this obligation of confidentiality is respected by its officers and employees.

9.4 Notwithstanding the stipulations outlined in this article, PixWays can refer to the existence of the contractual relationship with the Client as a commercial reference, in conformity with applicable legislation and regulations.

9.5 In the case in which the Subscription is cancelled, the obligations of confidentiality outlined in Article 9 will be effective for a period of ten (10) years.

Article 10: Limitation of liability

10.1 PixWays can only be held responsible for the pecuniary consequences of direct and foreseeable damages resulting from the provision of the PixTrakk Web Service.

10.2 PixWays cannot, under any circumstances, take responsibility for indirect or unforeseeable damages occasioned within the framework of the provision of the PixTrakk Web Service, including notably, but without the list being exhaustive, loss of earnings, loss of turnover or profits, loss of clientele, loss of business opportunities, cost of obtaining a product, a piece of software, or a replacement service or technology.

10.3 PixWays cannot be held responsible for interruptions to, a lack of speed of, or a lack of access to the Internet, or for any other problems affecting the transmission of telecommunications networks or perturbing the use of the PixTrakk Reference Base and the PixTrakk Web Service.

10.4 PixWays' total liability, in regard to all cases, cannot be superior to the sums effectively collected by PixWays within the framework of the provision of the PixTrakk Web Service in the twelve (12) months preceding the initiation of legal proceedings.

10.5 At any event, the Client can only raise the issue of the potential liability of PixWays, in the case in which the General Conditions are not respected, within a period of one (1) year from the date of the contractual infringement in question; this stipulation is acknowledged and accepted by the Client.

Article 11: Force majeure

11.1 Neither of the Parties will be liable in the case in which the execution of their obligations is delayed, restricted or rendered impossible due to force majeure, as defined in case law, or due to unforeseeable circumstances (hereafter, “Force Majeure”).

11.2 In the event of a case of Force Majeure, the execution of the obligations of each Party will be suspended. If the case of Force Majeure persists for more than three (3) months, the Subscription can be terminated at the request of the most diligent Party, without engaging the liability of the other Party. Each of the Parties will cover all costs deriving from the case of Force Majeure incumbent upon them.

The following events in this non-exhaustive list are considered to constitute cases of Force Majeure: authoritarian interference, war (declared or otherwise), terrorism; invasion; rebellion; blockade; sabotage; vandalism; total or partial strikes external to either of the Parties; social conflict external to either of the Parties; civil strife; bad weather; natural catastrophe; fire; epidemic; blockade of the means of transport or supply, notably in terms of energy; breakdown in the provision of electricity, heating, air conditioning, telecommunications networks, or data transport; problems with satellites; changes in the law or jurisprudence either partially or entirely precluding the provision of the PixTrakk Web Service.

Article 12: Cancellation

12.1 In the case in which one of the Parties fails to respect the obligations stipulated in the Contract, the Subscription can be cancelled *ipso jure* by the other Party within one (1) month of an unanswered recommended letter of formal notice with an acknowledgement of receipt.

Article 13: Personal data

PixWays has the right to process personal data concerning the Client within the framework of the provision of the PixTrakk Web Service. The processing of personal data is required to ensure that the PixTrakk Web Service is provided in an efficient manner.

PixWays has the right to retain the bank details of the Client with the sole objective of debiting the Client’s account on an annual basis for the provision of the PixTrakk Web Service.

The Client has the right to access and rectify any information concerning it. It can exercise this right by contacting PixWays via:

- email: info@pixways.com ; et
- post: PIXWAYS - 66 rue René Boulanger – 75010 Paris – France.

The Client can also, for legitimate reasons, raise an objection to the processing of its data.

Article 14: Applicable law and competent jurisdiction

The General Conditions are governed by French Law. Any dispute concerning the interpretation and execution of the General Conditions that cannot be resolved amicably will fall under the exclusive competence of the Paris Court (Tribunal de Paris), France.

Appendix: Technical characteristics of the PixTrakk Web Service

- **Compressed image files will be:**
 - Low resolution: a minimum of 400 X 600 pixels.
 - In JPEG format.

- **Images can be sent to the PixTrakk Web Service in the following ways:**
 - **via FTP on the Internet.** The Images must be sent to the main server at <ftp.pixtrakk.com>. Information regarding connections (identifier and password) will be supplied to the Client.

- **Access to the publication monitoring service:**

The Client is able at all times to access its publication monitoring service via the following address:

<http://www.pixtrakk.com/login>

- **Technical Support Contact:**

Technical contacts will be supplied during the implementation of the Service. For all relevant information, contact support@pixtrakk.com.