

## 1. Scope of these General Terms and Conditions of Trade, Changes

- 1.1 The following terms and conditions (hereinafter called GTC) apply to the provision of services (hereinafter: "Services") which Framepool AG (hereinafter "Framepool") makes available to the contractual partner (hereinafter: "Customer").
- 1.2 Changes to these GTC shall be notified to Customer when he uses the Framepool Internet portal and becomes valid and binding at the latest when Customer uses Services. In the event of changes to the detriment of the Customer, the Customer may terminate this contractual relationship with immediate effect.
- 1.3 The Customer's general terms and conditions shall not apply, even if Framepool does not expressly oppose them.

## 2. Definitions

These definitions apply to these GTC, the Special Terms and Conditions (hereinafter: STC) and any Licensing Agreement.

**Clause:** Refers to sections of his GTC, or, if used in the STC (see definition below), the respective section of the STC having the number shown by the following digit.

**Film Material:** Genus covering uncut raw material, films and single shots, regardless of whether they are copyrighted or otherwise legally protected.

**FP code:** Serves to clearly identify a shot.

**License:** The Customer's rights which result from a Licensing Agreement.

**Licensed Territory:** Territory to which the Rights of Use granted are restricted, i.e. in which they may be exercised.

**Licensed Language:** Language in which a soundtrack for the licensed Film Material may be produced and in which the licensed Film Material may be used.

**License Term:** Length of period during which the Rights of Use which have been granted may be exercised.

**Licensing Agreement:** The contract between the Licensor and the Customer regarding the use of Film Material which was concluded through the agency of Framepool.

**Licensing Fee:** Fee owed to the Licensor for granting the Right of Use; any applicable VAT shall be owed in addition.

**Licensor:** Contractual partner of the Customer when a Licensing Agreement is concluded through the agency of Framepool.

**Rights of Use:** The rights to use Film Material in a specific way granted under copyright.

**Special Terms and Conditions of Trade:** those terms and conditions which shall govern the Licensing Agreement (also: STC)

**Shot:** Series of frames without cut.

**Third Party Rights** are personal rights of subjects appearing in the footage and rights in objects appearing in the footage, i.a. copyrighted works (including i.a. music, architecture, memorials, sculptures), trademarks, business and personal names.

**Webshop:** the website established by Framepool for the online marketing of Film Material.

## 3. Conclusion of the Agreement with Framepool

As soon as the Customer utilises any of the Services the contractual relationship between Customer and Framepool governed by this GTC comes into existence.

## 4. Services

- 4.1 Services include:
  - offline research for film material on behalf of the Customer,
  - granting of access to the Webshop to enable search and selection of Film Material ,
  - preview and download of Shots for selection purposes (subject to prior sale),
  - delivery of preview videocassettes containing time coded film material for selection purposes (subject to prior sale),
  - offline research for the authorised grantor(s) of Third Party Rights and the clearance of Third party rights at the expense of Customer,
  - the delivery of selected Shots in the ordered quality.

The grant of Licenses to the Film Material selected by Customer is performed on behalf and at the expense of the respective Licensor.

- 4.2 If a Service is provided for consideration only, Customer shall receive notice before he places the order.
- 4.3 Access to the Webshop is in principle offered 24 hours a day, 7 days a week, 365 days a year; however, are limited to an average availability of 85% of a year. Transmission problems which are due to defective connections of network providers not commissioned by Framepool are not included in this figure.
- 4.4 Framepool is allowed to interrupt and limit the time for the provision of Services. If the Service is for consideration, such interruption or limitation is allowed to the extent necessary for reasons of public safety, in order to carry out operationally-necessary work or to reduce failures. Framepool will take the Customer's interests into consideration as far as possible.
- 4.5 The agreed availability times only apply on the condition that the Customer meets his obligations in time and in full.

## 5. Customer's Duties and Obligations, Back-Up of Data

- 5.1 The Customer shall, at his own cost, create and maintain the technical, organisational and contractual conditions for his Internet access, including sufficient speed of data transmissions.
- 5.2 The cost of Internet access and usage shall be born by the Customer.
- 5.3 Any use of the Services shall be not abusive and in compliance with applicable law. He shall observe nationally or internationally protected copyrights, Rights of Use on copyright and other ancillary rights which apply to the Film Material, and only utilise these within the framework of the licensing agreements concluded through the agency of Framepool. The Customer will observe the copyrights and related industrial property rights of Framepool with regard to the Webshop, its content and structure and only use it within the framework of these GTC.
- 5.4 The Customer does not acquire any rights or Rights of Use regarding Film Material by downloading, processing or paying the charges for the download for preview purposes. Insofar as the Customer obtains Film Material for preview purposes, he may make use of it solely personally and for the purpose of selecting suitable material for the intended use; he must leave all markings affixed by Framepool in place. It is not admissible to disseminate, copy or pass on Shots downloaded from the Webshop unless an appropriate license is obtained.
- 5.5 The Customer may not make use of the Film Material obtained through the agency of Framepool in order to create information material with illegal contents. This includes in particular information and portrayals which
  - incite racial hatred or depict cruel or other inhuman acts of violence against people in such a way that it amounts to a glorification or to making such acts of violence appear harmless or depicts the cruel or inhuman aspect of the process in a manner which violates human dignity (sects. 130, 131 StGB (German Criminal Code)),
  - glorify war,
  - promote a terrorist organisation,
  - incite a criminal offence,
  - deal with acts of violence, sexual abuse of children or sexual acts of people with animals (sec. 184 clause 3 StGB (German Criminal Code)),
  - are subject to the "Statute Protecting Against Publications Which are Morally Harmful to Adolescents" or are clearly suitable to pose a serious moral danger to children and adolescents or to impair their well-being,
  - violate the honour of the people shown in the Film Material or their privacy rights,
  - contain defamatory remarks which can harm the reputation of Framepool or
  - contain other illegal or immoral content.
- 5.6 The Customer must not use the Film Material licensed through the agency of Framepool in any manner other than that expressly allowed by the Licensing Agreement, regardless of whether it is legally protected in its specific form. An extension of Rights of Use is possible at any time by means of a Licensing Agreement, however subject to restrictions which may come into existence afterwards. If customer undertakes to recreate/reproduce Film Material delivered for preview

and thereafter uses the pictures deriving from such recreation/reproduction, he shall pay to Framepool twice the amount of the License Fee for said Film Material if licensed properly.

5.7 Customer bears the sole responsibility for the Picture created by using Film Material licensed through the agency of Framepool, and its utilisation. Customer shall verify whether the use of the Film Material in the License Territory is admissible. Licensor accounts only for the copyright and ancillary rights of those involved in the production of the Film Material.

5.8 It is incumbent upon the Customer to implement security measures against transmission errors, operating failures and loss of data which he deems to be worth preserving for economic or other reasons. The Customer shall backup this data on a regular basis.

5.9 The Customer shall, upon the first request, hold Framepool and its licensors harmless from all claims lodged by third parties against Framepool due to the Customer infringing his duties vis-à-vis Framepool.

## 6. Access Codes, Utilisation by Third Parties

6.1 It is solely the Customer who is allowed to make use of the access codes required for online access. If he should allow third parties to use these access codes he has to take responsibility for their actions as if he himself had made use of access codes. This applies accordingly, if the Customer allows several users to register with different access codes on his account, and if one of the authorised users appointed by himself allows a third party to make use of his or any other of the Customer's access codes.

6.2 Rights and obligations arising under the contract can only be assigned to third parties with the explicit written consent of Framepool.

6.3 The Customer shall immediately modify the access codes required for accessing Services, if he has reason to believe that these have become known to unauthorised third parties or that third parties are making use of Services with his access codes.

## 7. Licensing of Film Material chosen by the Customer, Licensing Fee

A Licensing Agreement between the Customer and the respective Licensor(s) comes into effect pursuant to the provisions of the Special Terms and Conditions (STC). Nothing in this GTC shall be construed as a License grant. Customer shall bear the risk for using the Film Material in the License Territory, and Licensor shall only be liable with respect to the copyrights. The limitations of liability included in these GTC for the benefit of Framepool shall also apply to the relationship Customer/Licensor to the benefit of the Licensor.

## 8. Charges, Framepool Service Fees

Framepool shall receive from the Customer those fees notified before Customer ordered the respective service, i.a. fees

- for offline research of film material on behalf of the Customer,
- for delivering the shots ordered depending on the means of delivery,
- for obtaining clearance of Third Party Rights according to Clause 4.1.

The Customer owes these fees in addition to the Licensing Fee.

## 9. Invoicing and Terms of Payment, Current Account Agreement, Default in Payment

9.1 Billing, Due Date: The fees owed to Framepool, expenses, Licensing Fees and the consideration to be paid for clearance of third party rights are invoiced and collected by Framepool. They become due for payment upon invoicing, insofar as no later due date has been agreed in writing.

9.2 Setting-off Claims: The Customer can set off against claims by Framepool as well as against claims collected by Framepool on behalf of Licensor(s) to the extent such counter-claims are undisputed or adjudicated in a legally binding manner.

9.3 Objections against statement of account and invoices, time limit for objections: Objections against a statement of account or invoice have to be made in writing directly to Framepool. If no objections are lodged within a term of six weeks from receipt of the statement of account or an invoice or payment or collection of the invoice amount, objections against the invoicing of Services and Licensing Fees are deemed to be excluded.

## 9.4 Direct Debit Authorisation, Costs of Return Debits:

Fees which are due shall be collected from Customers' accounts by direct debit or by debiting the credit card account provided by the Customer, unless otherwise agreed in writing. The Customer shall grant Framepool appropriate authorisation in writing separately. If the Customer does not give or revokes authorisation, Framepool shall charge an appropriate processing fee for the resulting additional administrative expenditure, which is equivalent to the costs arising from this.

For cases of return debits due to incorrect account details having been quoted or a lack of funds on the account or other reasons arising in the Customer's sphere, Framepool shall charge a processing fee amounting to EUR 20.00 per debit plus the bank fees charged to Framepool for the return debits.

## 9.5 Default in Payment :

If the Customer is in default with regard to settling due claims of Framepool or the Licensor, interest is charged on these claims from the start of default at a rate of 10 % p.a.. Framepool is entitled to charge a processing fee of EUR 20.00/reminder for any reminders issued.

## 10. Liability, Warranty

### 10.1 Framepool is liable

10.1.1 for damages which are due to a deliberate or grossly negligent actionable tort or a deliberate or grossly negligent violation of contractual or pre-contractual obligations by Framepool or a legal representative or vicarious agent of Framepool,

10.1.2 in case of slight negligent conduct only if major obligations important for the carrying through of the contract have been violated, however with the proviso that the liability is limited to compensation of foreseeable damages typical to the contract and to the maximum amount of liability quoted in clause 13,

10.1.3 as an agent in accordance with § 179 clause 2 BGB (German Civil Code), in compliance with clause 10.3.

### 10.2 Force majeure

Framepool is exempted from any obligation to perform in cases of force majeure. Force majeure encompasses all unforeseeable events as well as events which, although they themselves were foreseeable, have effects on performance of the contract, which could not be prevented by reasonable efforts on the side of Framepool. This includes in particular lawful measures in the course of labour disputes, including those at plants of third parties, as well as measures by government offices.

### 10.3 Warranty

Framepool warrants to have been commissioned by the respective Licensor to market the Film Material. The Licensor warrants to be entitled to license the Rights of Use. If the Order Form states the clearance of Third Party Rights (Cleared Rights), the warranty includes the respective clearance by the party which did obtain the clearance, as notified by Framepool. If a third party claims that the contractual use of Film Material licensed by agency of Framepool infringes said third party's Copyrights or Cleared Rights, the Customer shall

- immediately inform Framepool or an authorized person nominated by Framepool of this claim and provide information necessary for the defence,
- defend himself against the claims asserted in accordance with the instructions received from Framepool or an authorized person nominated by Framepool,
- in cases where there is an imminent danger take measures required for defence, if a deterioration of the legal situation is impending,
- refrain from measures which might hinder or impair defence against the claims asserted.

Framepool shall at its own option either (1) conduct the legal dispute with the claimant at its own cost or (2) offer the Customer a license for replacement material for his use, for which no rights of third parties apply or (3) reverse the licensing agreement.

In the event of further claims by the Customer the following shall apply:

Such claims by the Customer are – with the exception of the following sentence - directed exclusively against the individual Licensor in question, which Framepool will in such case immediately name to the Customer upon his request. Should Framepool have acted as an un-

authorised representative and the Customer's claim be based on this reason, the Customer's claims are exclusively directed against Framepool, and any liability by Licensor is excluded. Claims by the Customer directed against Framepool and/or the Licensor shall be limited as provided in Clause 13 applies. Insofar as claims by the Customer are directed exclusively against the Licensor, any liability by Framepool is excluded.

#### 10.4 Exclusion of Technical Defects

The Customer concludes the Licensing Agreement after diligently selecting from the shots he can view online. Framepool's warranty for the shot is therefore limited to the digital copy supplied to the Customer being free from technical faults and corresponding with the copy which is available online. The Customer's warranty right is limited to a substitute delivery of technically faultless material.

In the event of the substitute delivery failing, the Customer has the right to rescind the Licensing Agreement for the shot in question.

#### 10.5 Unlimited statutory liability

Statutory liability for deliberate infliction of damage, warranted quality, malice and deficiencies in title remains unaffected.

### 11. Default by Framepool

In the event of default by Framepool the Customer is entitled to the remedies provided by law. Liability for damages is, insofar as there is no case of intent or gross negligence by Framepool or intent or gross negligence of a vicarious agent of Framepool, limited to foreseeable damages typical to the contract and a maximum amount of liability as mentioned in Clause 13.

### 12. Term of GTC, Notice of Termination, Blocking Access to Services

12.1 The contract is concluded for an indefinite period of time and may be terminated with immediate effect at any time. As soon as Framepool receives the Customer's written notice of termination Framepool is authorised and obliged to discontinue Services for the Customer with immediate effect.

12.2 Framepool is entitled to terminate the contract with a one month's advance notice to the end of a calendar quarter.

12.3 The contractual partners' right to termination for cause without notice remains unaffected.

12.4 Framepool is authorised to block access if the Customer

- is in default with payments amounting to at least 80 Euros and any security which may have been provided has been consumed or
- gives rise to termination for cause in accordance with 12.3.

12.5 In the case of notice of termination, the provisions of these GTC shall, insofar as they became part of a licensing agreement, remain effective. Claims for fees by Framepool and the Licensor remain unaffected by notice of termination of this contract or a ban on services.

### 13. Maximum Amount of Liability

13.1 If Framepool or Licensor become liable to the Customer, the liability is limited to the maximum amount of liability (hereinafter: MAL) in accordance with Clauses 13.2 through 13.5 in the those cases explicitly named herein.

13.2 In case of a liability for damage caused by Services for consideration or in case Framepool acted as an unauthorised representative, MAL shall equal the amount paid by customer for the respective Service, excluding the License Fee

13.3 In case of liability for damage caused by Services for free, MAL shall equal 1.00 Euro.

13.4 In the event of a loss of data, MAL is limited to expenditure for restoration, to be calculated on the assumed availability of backup copies.

13.5 Should Licensor not be the rightful licensor of the Rights of Use licensed to Customer or not be in a position to grant those rights, the liability of Licensor and Framepool is restricted to an amount equalling the License Fee paid by Customer for the respective Rights of Use prior to the date of any applicable claim in respect thereof.

### 14. Exclusion of Additional Rights of the Customer and any other Liability by Framepool

With the exception of mandatory rights and claims which according to German law can not be subject to individual agreements of

the contractual parties, all rights of the Customer not explicitly conceded in the GTC are excluded, for example, the right to withdraw, give notice, rescind the contract or demand a reduction of the price as well as indemnification for damages of any kind – regardless of the legal basis, in particular also including impossibility, default, actionable tort, breach of contract, warranty, negligence in contracting.

### 15. Data protection

Personal data of the Customer is only collected, processed or used, insofar as the person involved has given his or her consent or if it is permissible under the applicable law.

### 16. Miscellaneous

16.1 The invalidity of individual clauses of this GTC does not affect the validity of the remaining provisions and the contractual relationship. The invalid provision shall be replaced by an appropriate provision which – within the framework of what is legally admissible – comes closest to the intention of the invalid provision.

16.2 Changes and addenda to the Licensing Agreement and those to the STC and GTC must be made in writing.

16.3 The contract between Framepool and the Customer is governed by the laws of the Federal Republic of Germany, with the exception of the Convention on the International Sale of Goods (CISG).

16.4 Venue and place of performance is at the registered office of Framepool.

# Special Terms and Conditions of Trade for the use of Film Material

## 1. Effectiveness of License Agreement

If Framepool receives an "Order of Film Material and Licensing Agreement" (Order Form) which shows

- Customers written or electronic signature or transaction data only known to the Customer (TAN or password),
- a description identifying the Film Material to be ordered,
- the usage intended by the Customer (Intended Use) and/or the Rights of Use to be acquired including possible limitations with regard to the License Territory, Term or the number of broadcasts/re-runs),
- the Licensing Fee,
- consideration to be paid for the settlement of Third Party Rights, if any,
- the handling fees due to Framepool as well as the expenses (expenses to be named only by type, e.g. shipping, not necessarily the respective amount) to be refunded,

a Licensing Agreement between the Customer and the respective Licensor(s) becomes effective upon confirmation of this order by Framepool, incorporating the content of the Order Form, the Special Terms and Conditions as laid down hereinafter (STC) as well as the General Terms and Conditions for Framepool Services (GTC). The provisions of the Order Form have priority over the GTC and STC, and the STC in turn precede the GTC, insofar as they would otherwise be contradictory.

## 2. Content and Limitations of the Rights of Use, Definitions

### 2.1 Right of Making Available:

The Right of Making Available is the right to make the Film Material available via the Internet or by comparable electronic distribution channels in such a way that local storage of the film material is not possible on a permanent basis.

### 2.2 Right to Edit Film Material :

The Right to Edit Material encompasses the right to change, to amend and to modify the Film Material in full or in part, in particular to shorten, split and mix it with other productions, to transfer it into other work formats or analogue technology and to integrate it one-time into a new picture to be created by the Customer.

### 2.3 Picture:

The motion picture created by exercising the Right to Edit the licensed Film Material. The Customer acquires the rights to the resulting Picture which he is legally entitled to. Framepool and the Licensor have no rights to the Picture; however, the rights of the Licensor and of Framepool to the licensed Film Material in its isolated form remain unaffected.

### 2.4 Right to Broadcast:

The right to broadcast is the right to broadcast the Film Material terrestrial, via cable, wireless, by satellite or any other technical broadcasting methods regardless of the economical type of utilisation, including Pay TV and video on demand. The right to broadcast includes one broadcast and one re-run within 48 hours, unless pricing was based on a higher number of broadcasts.

### 2.5 Video Right:

The video right is the right to copy, rent out or distribute the Film Material on all types of image/sound carriers (Cassette (e.g. VHS), CD, DVD), restricted to a certain number of copies, as the case may be.

### 2.6 Right to Perform:

The right to perform is the right to make the Film Material perceptible to the public by technical installations. The Right to Perform applies to all film formats and other image/sound carriers and comprises commercial and non-commercial performances.

### 2.7 Printing Right

The Printing Right comprises the right to take single frames out of the Film Material, to work on it and to typographical print and distribute the same, however restricted to a certain circulation

### 2.8 License Term

Rights of Use are limited to the term of license named in the Order Form (License Term). If no License Term as indicated in the Order Form, the License Term is one year following initial utilisation, at the most two years following conclusion of the License Agreement, unless a different term results from the specific Rights of Use agreed.

### 2.9 License Territory

Rights of Use are only granted for those territories which were named in the Order Form (License Territory). The Right to Make Available is only granted for the licensed language named in the Order Form.

## 3. Content and Limitations of the License

### 3.1 License

The Customer is entitled to edit the Film Material identified in the Order Form to create one (1) Picture and to use the Film Material as part of the Picture. The use is restricted to the License Territory and the License Term and those rights of use necessary to achieve the defined purpose of the licence grant.

The licence grant is restricted to the use in the Picture identified in the Confirmation of the Usage of Film Material according to Clause 8 of these STC. It is subject to the suspending condition of full payment of the License Fee and fees due to Framepool.

### 3.2 No Re-Creation

The Customer is not allowed to re-create an already existing Picture/copyright protected work by making use of the Film Material, not even if it is based on the same raw material.

### 3.3 Approval Requirements

If the name of the producer of the Film Material and/or the cameraman was shown on the Order Form, and the new film production to be created is essentially to consist of Film Material which was produced by the same producer and/or cameraman, the making of a newly created film production by utilising the material requires express written approval by the respective producer and/or cameraman in advance. A film production essentially consists of Film Material created by a producer or a cameraman if seventy-five percent or more of it is created from such Film Material.

### 3.4 Exemptions, Third Party Rights, Copyright and Performing Arts Societies

The Rights of Use granted to the Customer comprise only Rights of Use under Copyright as stipulated in the Order Form. Only if and when the Order Form states a Third Party Rights' clearance, such Third Party Rights are included. If not, the specific use of the Film Material might require the clearance of such Third Party Rights. If Customer asks for such service, Framepool shall try to obtain such clearance. If such clearance is not available, the Customer shall change the Film Material so that the respective copyright protected works, subjects and trademarks are no longer identifiable.

The Customer will discharge these rights, even if they are assigned to copyright or performing rights societies (e.g. GEMA, VG Bild-Kunst). This applies accordingly for the discharge of moral rights of people depicted in the Film Material and possible claims by persons involved in the production of the Film Material, insofar as these can be asserted exclusively by Copyright or Performing Rights Societies.

Insofar as the Licensor has indicated any limitations for use on the electronic Order Form, the right granted to the Customer is limited accordingly.

## 4. Named Usages

### 4.1 Usage: TV News (Breaking News Cast)

The Customer acquires the Rights to Broadcast the Picture as part of a breaking news cast. It includes any number of broadcasts, but expires one month after the rights were acquired. A Picture is used for breaking news if it is broadcasted as part of a news programme, a news magazine or special report on current affairs.

### 4.2 Usage: Commercials (TV and/or Theatre)

In this context, 'commercial' means the promotion of product or services or the reputation of enterprises, organisations, institutions or subjects.

*Usage: TV Commercial:* The Customer acquires the Right to Broadcast the Picture for the agreed number of runs only; the length of the Picture is less than 3 minute.

*Usage: Infomercial:* The Customer acquires the Right to Broadcast the Picture, having the character of a reportage, for the agreed number of runs only, the length of the Picture exceeds 5 minutes.

*Usage: Public and Social Services:* The Customer acquires the Right to Broadcast the Picture to promote a named not-for-profit organisation or its services for the agreed number of runs only.

*Usage: Theatre Commercial:* The Customer acquires the Right to Perform the Picture on the agreed number of screens.

- 4.3 Usage: Television Motion Picture/TV Series/TV Documentary  
The Customer acquires the Right to Broadcast the Picture for a Usage other than a breaking news cast (Clause 4.1) or Commercial Usage (Clause 4.2).
- 4.4 Usage: Motion Picture all Media  
The Customer acquires the Right to Perform, the Right to Broadcast, the Video Right (the number of copies not restricted) including the right to rent out the Picture, however excluding the Usage for a breaking news cast (Clause 4.1) or a commercial usage (Clause 4.2), but including the right to promote the Picture, for the period of statutory copyright protection of the Picture
- 4.5 Usage: Corporate Film  
The Customer acquires the Right to Perform the Picture for the promotion of an nominated enterprise or its products outside film theatres and points of sale, the Video Right and Right of Making Available via Intranet in an encoded form.
- 4.6 Usage: Internal Corporate Film-Presentation  
The Customer acquires the Right to Perform the Picture on occasion of an internal presentation for educational or reporting purposes of one named enterprise one or several times, as indicated in the Order Form.
- 4.7 Usage: Public Presentation  
The Customer acquires the Right to Perform the Picture on occasion of a publicly accessible event, e.g. trade fair, for the promotion of one named enterprise one or several times, as indicated in the Order Form.
- 4.8 Usage Cultural Event  
The Customer acquires the Right to Perform the Picture for a named educational or cultural event on occasion of a publicly accessible event or series of events in exhibitions, museums or theatres, as indicated in the Order Form.
- 4.9 Usage: POS  
The Customer acquires the Right to Perform the Picture on occasion of the promotion of one named enterprise or its products and services at point of sales and sales talks.
- 4.10 Usage: E-Board/Infoscreen  
The Customer acquires the Right to Perform the Picture on a named number of Flat or Silver Screens each having a size of up to 25 square meter on public streets, airports, stations (train, bus and subway) and stadiums.
- 4.11 Usage: Internet  
The Customer acquires the right to encode the Film Material in any streaming video format, as well as the Right of Making Available the Film Material in the language version licensed via IP (Internet Protocol).
- 4.12 Usage: Mobile  
The Customer acquires the right to encode the Film Material in any streaming video format, as well as the Right of Making Available the Film Material via mobile networks (WAP, GPRS, UMTS).
- 4.13 Usage: Moodfilm (Pitch)  
If a Customer orders Film Material for the purposes of an internal presentation, which is intended to enable his customers to select Film Material (Pitch), he does not acquire any rights to use this Film Material; any use of this material beyond the pitch is excluded.
- 5. Exclusive Rights**  
If the Customer acquires a right exclusively, Framepool and the Licensor shall not grant any third party the respective right to use the Film Material in question, not even non-exclusively for the intended Usage and period in question.
- 6. Delivery of the Film Material, Return of Delivery Material**  
Framepool delivers the Film Material to the Customer in the way and in the data format shown on the Order Form. After use of the Film Material in compliance with the Licensing Agreement, Customer shall return to Framepool free of charge the Film Material and all copies made therefrom, or, in case of magnetic recordings - erase or destroy the recordings and notify Framepool accordingly. This does not apply to those parts of the Film Material which became part of the Picture licensed and the copies of the respective Picture.
- 7. Calculation of the Licensing Fee**  
The Licensing Fee is calculated on the basis of the length of the Film Material used by the Customer (Duration of Use), the Usage, the number of broadcasts, the License Term and License Territory, in the case of the Usage of a web stream the number of language versions

used, as well as the price category of the Film Material (Calculating Factors). In case of a multiple use of the same sequence of the Film Material or a freeze image the duration of the repetitions and the freeze image shall be added to the Duration of Use.

The License Fee displayed in the Order Form is calculated by applying Calculating Factors on basis of information on the intended use provided by the Customer. If the actual use exceeds the intended use, the License Fee is increased in accordance with the Clause 9.

**8. Confirmation of the Usage of Film Material**

After having created the Picture the Customer shall immediately forward a specimen copy of the productions master on VHS (with TC) and a Usage Report to Framepool. The Usage Report shall include information on

- the final title of the Picture,
- the positioning of the Film Material within the Picture with TC-In and TC-Out per shot by fp-No. or delivery material, respectively,
- the intended dates for broadcasting and,
- if the rights in the Picture are licensed to a third party, name and address of said third party.

If the complete Usage Report is not delivered to Framepool within four weeks after creation of the Picture, the customer shall refund to Framepool expenses for the substitutive execution based on a hourly rate of € 60 and any damage suffered.

**9. Subsequent Billing and Crediting**

If the Usage Report indicates a use of the Film Material in excess of the Calculating Factors underlying the Licensing Agreement, Framepool may bill the excessive use subsequently.

If Framepool explicitly granted to the Customer a right to receive a credit for Film Material ordered but not used, the Customer shall receive upon receipt of the Usage Report a proportionate credit, if Customer, together with the confirmation, returns to Framepool the Film Material not used or confirms in writing its destruction. The credit shall equal the delta between the License Fee originally agreed and the License Fee the Customer would have owed if he had from the outset acquired the Rights of Use actually needed, however, the credit shall not exceed 80% of the License Fee originally agreed. When calculating the credit, the License Fee for each single Shot actually used shall be calculated as having a duration of at least 6 seconds, but at least 10 seconds for each order per price class. A credit shall not be given if the Usage Report is not delivered within 4 weeks after delivery of the Film Material to the Customer.

**10. Subsequent Acquisition of Additional Rights, Charges**

The Customer may offer to Framepool the acquisition of additional Rights of Use, in particular the extension of the License Term and/or License Territory, and/or an increase in the number of broadcasts/re-runs, by referencing the original Order Form and giving the information required under Clause 1 for the additional use.

Framepool shall then check the availability of the requested rights and name the License Fee for the additional use. A Licensing Agreement for the additional use shall become effective in accordance with Clause 1.

**11. Unlicensed use of the Film Material**

If the Customer uses the Film Material outside the scope stated in the form of confirmation (Clause 8) or fails to acquire additional Rights of Use (Clause 10) or uses it in any other non-licensed manner (this includes the recreation of an already existing Picture and the use before payment of the agreed upon fees), he owes the two-fold amount of the License Fee he would have owed if he had acquired the appropriate licence from the outset. Further claims for damages remain unaffected.

**12. Due date of the Licensing Fee**

The licensing becomes due for payment upon invoicing it to the Customer.

**13. Taxes**

The Customer declares that he is registered as a commercial enterprise in the country of his registered office, that the Film Material and the acquired rights are used for commercial purposes of his own company and that he is entitled to deduct input-VAT from his VAT payment charge account. Taxes and Duties to be paid due to the licensing and/or exploitation of the Picture in the License Territory have to be born by Customer.

**14. Original Sound Track, Atmospheric Sound**

The Film Material only comprises original sound track or atmospheric sound if this is indicated in the ordering process.

**15. Credits**

If the Customer uses Film Material brokered by Framepool in a Motion Picture, Feature Film, Documentary or TV-magazine (Clause 4.3 or 4.4) having a length of 20 minutes or more exceeding 5% of the total

length of the Motion Picture, the name of Framepool and its cinematographer have to be shown in the final credits in a way to be agreed upon.