

Ungraded Terms of Use (As of April 01, 2020)

Welcome to Ungraded. These Terms of Use govern the access and use of our Website, our Platform and our Services. The Terms of Use agreement is between you and Ungraded. By using our Services you accept the Terms of Use as set forth in this agreement.

Article 1 Definitions

In these Terms of Use the terms below, written with a capital letter and used in both the singular and the plural, are given the following meaning:

- a. Account _____ The section the User creates on the Platform in order to enable him to purchase licenses for Footage and/or to provide Footage to the Platform;
- b. Agreement _____ The agreement between Ungraded and the User for access to, use of the Service and the purchase of licenses to Footage, including these Terms of Use;
- c. Content _____ All content provided by Ungraded and/or its suppliers through the Service, including but not limited to Footage, images, blogs, (sponsored) articles, reports, interviews, and comments;
- d. Consumer _____ The natural person who does not act in the exercise of a profession or business;
- e. Credentials _____ The User's Account name and password that are required to access the Account and use the Service;
- f. Footage _____ The video footage available in the Platform;
- g. General Purchase Conditions _____ the general purchase conditions that apply to any and all provision of Footage by User to the Platform. The General Purchase Conditions can be downloaded through <https://www.ungraded.video/files/purchase-conditions.pdf>;
- h. Graded Footage _____ Footage where the colour palate is enhanced or edited and baked into the Footage;
- i. Intellectual Property Rights _____ All the intellectual property rights including but not limited to rights such as copyrights, database rights, domain names, model rights, neighboring rights, patents,

- trade mark rights, trade name rights,
as well as the rights to know-how and trade secrets;
- j. License Agreement The agreement concluded between Ungraded and User under which Ungraded provide User with (a) license(s) to Footage and User pays (a) fee(s) to Ungraded, under the terms and conditions of the Agreement;
- k. Parties The User and Ungraded;
- l. Personal Data Any data that directly or indirectly relates to a natural person, as meant in the General Data Protection Regulation;
- m. Platform The Ungraded platform available at the Website on which Users can purchase licenses to Footage and/or to provide Footage to the Platform;
- n. Privacy Statement Ungraded's privacy statement available at <https://www.ungraded.video/privacy-policy>;
- o. Service All services provided by Ungraded including but not limited to the access to and use of the Website and the Platform;
- p. Terms of Use These terms of use that apply to any and all use of the Service. The Terms of Use can be downloaded through: <https://www.ungraded.video/files/ungraded-terms-of-use.pdf>;
- q. Ungraded The Dutch company Ungraded B.V., having its office at Tolsteegplantsoen 19 2 (3523 AG), Utrecht in the Netherlands;
- r. Ungraded Footage Footage where the colour palate of the Footage is not enhanced or edited which is (made) suitable for color grading;
- s. User The natural person or legal entity concluded the Agreement with Ungraded;
- t. User Content Any content provided by the User by means of the Service, including but not limited to Account information, Footage, reviews and comments;

- u. Website _____ The website on which the Platform is exploited, available at <https://www.ungraded.video>.

Article 2 Scope

1. The Terms of Use apply to the Agreement and all use that User makes of the Service, including but not limited to the use of the Platform, to the purchase of licenses to Footage and to provide Footage to the Platform.
2. Ungraded may amend these Terms of Use at any time. The User will be notified of any amendments by email and/or private message and/or upon logging in to the Service through the Website and/or upon using the Website. The new version of the Terms of Use will be available for viewing and downloading on the Website. If the User continues to use the Service after these Terms of Use have been amended or supplemented, the User thereby irrevocably accepts the amended or supplemented Terms of Use. If the User does not agree with the amended or supplemented Terms of Use, the User's exclusive remedy is to no longer use the Service and to terminate its Account and the Agreement.
3. If any provision in these Terms of Use shall be held to be (partly) void or unenforceable, the other provisions of these Terms of Use will remain in full force and effect. In such a case, Ungraded will replace the void or unenforceable provisions with new ones. In doing so, the purpose and meaning of the void or unenforceable provisions will be taken into account as far as possible.
4. These Terms of Use have been prepared in English and contain Dutch legal terms (which are quoted in inverted commas: "..."). These Terms of Use may have been translated into other languages. In case of a dispute, the English version shall have precedence and must be interpreted in accordance with the laws of the Netherlands.

Article 3 Account

1. Through the Service, licenses for Footage can be purchased by User and Footage can be provided to the Platform. In order to be able to purchase licenses for the Footage and/or to provide Footage to the Platform, the User has to create an Account to use the Service in the way as described on the Website.
2. The User warrants that the information provided by the User when creating the Account is, and remains during the use of the Service, complete, up-to-date and accurate. If the information is no longer complete, up-to-date and/or accurate, the User will update the information in order to comply with the aforementioned warranty.
3. Ungraded is entitled to impose additional requirements on Users, including but not limited to requirements for the minimum or maximum age. These requirements are stated in the Service.
4. User is not allowed to create an Account in the name of another person or in the name of a fictional person.
5. During registration of the Account, the User must provide Credentials.
6. User is responsible for keeping his Credentials secret.

7. The Account is strictly personal. User shall not provide his Credentials to others or give others access to his Account.
8. The User is liable for the use of the Service through the Account. Ungraded assumes that the User is actually the one who logs in to the Account with his Credentials.
9. As soon as the User knows or should know that his Credentials have fallen into the hands of unauthorized persons, the User must immediately inform Ungraded thereof. The User must also immediately take effective measures himself, such as changing his Credentials.
10. Ungraded accepts no liability for any damages resulting from unauthorized access to or use of the Service by the User or third parties.
11. Ungraded reserves the right to change the login procedure and / or User's Credentials if it deems this necessary in the interest of the functioning of the Service.

Article 4 Use of the Service

1. Ungraded hereby grants the User a non-exclusive, non-transferable, limited right to access and use the Service by means of the Website and the Platform solely to consult the offered Footage by means of watching the previews thereof, to purchase a license for (parts of) the Footage and/or to provide Footage to the Platform.
2. Ungraded shall have the right (but not the obligation), at its sole discretion, to review, edit, limit or refuse User Content posted or transmitted by means of the Service and/or to limit and/or refuse a User access and/or use of the Service, to remove any User Content that, according to Ungraded, violates these Terms of Use and/or that it deems to be otherwise objectionable. Ungraded may disclose your Personal Data and/or User Content to third parties where it believes, in good faith, that it is necessary to comply with a court order, ongoing judicial proceeding, criminal or civil subpoena, or other legal process or request by law enforcement authorities, or to exercise its legal rights to defend against legal claims.
3. Notwithstanding any other provisions of these Terms of Use, the use of the Service shall not be used to:
 - a. include software such as viruses or Trojans that can damage or erase computers or data of Ungraded and/or third parties or make it unavailable or inaccessible;
 - b. bypass technical security measures of the computer systems of Ungraded or third parties;
 - c. involve unreasonable or disproportionate use of the infrastructure of the computer systems of Ungraded or third parties or impede the functionality or functionalities of the Service;
 - d. involve manual or automated software, devices, or other processes to "crawl", "spider" or "scrape" any content of the Service;
 - e. constitute unauthorized or unsolicited advertising, junk, spam, bulk email, scam and/or phishing;
 - f. infringe any Intellectual Property Rights, privacy rights or any other rights of Ungraded or a third party;
 - g. involve any illegal activities or activities that are contrary to morality or public order;
 - h. involve false or misleading information;
 - i. involve otherwise inappropriate use;

- j. breach these Terms of Use; and/or
 - k. be unlawful in any way whatsoever;
4. The User acknowledges and accepts that Ungraded merely offers the Platform on which Users can purchase licenses to Footage and/or to provide Footage to the Platform.
 5. The use of the Service is at the User's own expense and risk. The User is responsible for meeting the technical and functional requirements and using the electronic communication facilities that are necessary to be able to access and use the Service. The risk of loss, theft or damage to any of its data will at all times be borne by the User.
 6. When User provides Footage to the Platform, the General Purchase Conditions of Ungraded apply.

Article 5 Fees and payment

1. The offer for the licenses for Footage may contain a description, pictures, photographs, and/or other graphical displays such as the Ungraded logo.
2. Prices for the Footage will be quoted through the Service and/or in the offer. Prices are in euros and are inclusive of VAT, unless expressly provided otherwise.
3. The User has the obligation to inform Ungraded immediately about any inaccuracies in the offer provided or the payment details described, including the price. The User cannot hold Ungraded to any offer for Footage and/or price if the User should in all reasonableness have known that this offer and/or the price are/is an obvious mistake or obvious error in writing.
4. Ungraded is entitled to adjust its prices at all times.
5. Ungraded uses the services of Mollie (<https://www.mollie.com>) and/or other third parties to process the payment. The conditions of Mollie and/or other third parties may apply. Ungraded is not liable for use of those third party services.

Article 6 Intellectual Property Rights

1. The Intellectual Property Rights on all Content on the Platform, as well as the selection and arrangement of the Content, belong to Ungraded and / or its suppliers.
2. Ungraded and/or its suppliers reserve all rights not expressly granted to the User in these Terms of Use. The User acknowledges and agrees that – except as specifically set forth in these Terms of Use – Ungraded and its suppliers retain all rights, title and interest, including the Intellectual Property Rights, in and to the Service and/or Content as well as any modifications, adaptations or translations thereof. The User acknowledges and agrees that he does not acquire any rights therein, express or implied, except for the rights expressly granted under these Terms of Use.
3. The User is not permitted to sell, rent out, transfer, give away or grant restrictive rights Service and/or Content, or to make it available to third parties in any way or for any purpose. The User will also refrain from granting third parties access – remotely or otherwise – to the Service or to provide the Service to a third party.
4. In principle, the User retains all Intellectual Property Rights, if any, that vest in him with regard to any User Content he posts by means of the Service. The User agrees and acknowledges that by posting any User Content by means of the Service he automatically

grants Ungraded a royalty-free, unencumbered, world-wide, sub-licensable, non-exclusive right, if protected by any Intellectual Property Rights at all, to use, reproduce, circulate and make public the content in connection with the Service.

5. The collection of data by means of the Service is to be regarded as a database within the sense of Directive 96/6/EC on the legal protection of databases and the Dutch Databases Act (in Dutch: "*Databankenwet*"). Ungraded and/or its licensors are the producer(s) of this database and in that capacity has/have the exclusive right to grant consent for the use of data from this database. The User may only use data from the database insofar as use is allowed pursuant to these Terms of Use. The User is not allowed, without the prior written consent of Ungraded and/or its licensors, to retrieve and re-use a substantial part of the data of the database and/or retrieve and repeatedly and systematically re-use non-substantial parts of the data of the database within the sense of the Directive 96/6/EC and the Dutch Databases Act.

Article 7 Footage license

1. The following article applies to all use of the Footage by User, including but not limited to any downloads, display, publication and copying thereof.
2. Unless User enters into a License Agreement with Ungraded, User shall not download, display, publish and/or copy any Footage.
3. When User purchases a license for Footage, User receives a link to download the Footage.
4. When User purchased a license to the Footage, User obtains the worldwide, limited, non-exclusive, non-sublicensable and non-transferable right to download and use the Footage for private and commercial purposes only, under the terms and conditions of these Terms of Use. The licenses includes the right to edit the Footage.
5. Ungraded and / or its suppliers retains all other rights to, or in connection with, the Footage. These Terms of Use do not entail a transfer of Intellectual Property Rights.
6. The User who entered into a license agreement with Ungraded is not permitted to sell, rent out, transfer, give away or grant restrictive rights to the Footage.
7. The User is not permitted to use the Footage in any unlawful way, including but not limited, to the use of the Footage in any threatening, sexually-intimidating, racist, defamatory or in any (other) offensive way. The User warrants this.
8. The User is not permitted to use the Footage to promote products and / or services in a improper way, including but not limited to, use incorrect and / or misleading information.
9. The User is not permitted to use the content or a part thereof as a trademark, service mark, logo or any other indication of an original design or part thereof.
10. A preview of the Footage is available in the Platform, for preview purposes only. The User is not allowed to download, publish, copy and / or make available the preview of the Footage.

Article 8 Footage delivery

1. The Footage shall be delivered to the User after the User obtains a license from Ungraded through a temporary download link, which will be made available to the User through email after payment is received.

2. The download link delivered by email shall be active for a period 24 hours.
3. User has the possibility to generate new temporary download links in the Account provided that the Footage is still available on the Platform. The in the Account generated download links shall be active for a period of 5 minutes.
4. The Footage can be downloaded by User for a (total) maximum of 5 downloads.
5. The download links are strictly personal. User is not entitled to send download links to third parties, to publish download links or to make the download links available to the public in any way whatsoever.
6. The Footage that will be delivered will consist of the Graded Footage and Ungraded Footage, unless stated otherwise in the Service.
7. Ungraded shall deliver Footage in the highest quality available for Ungraded. Ungraded does not guarantee any level of quality of the Footage nor does Ungraded guarantee that the Footage fits the (intended) purposes of User. The risk of the Footage delivered User will be transferred to User after the temporary download link is sent by email.

Article 9 Right of revocation

1. If the User is a Consumer who purchased (a) license(s) to Footage, Consumer agrees that Ungraded immediately starts delivering the digital content by providing the temporary download link(s) to Consumer. The Consumer waives his right of revocation.
2. A User who acts in the exercise of a profession or business is in no way entitled to invoke a right of revocation.

Article 10 Indemnities and interruptions

1. Ungraded does not warrant that the Platform will be error free, complete or up-to-date at all times.
2. The User agrees that the Platform only provides the functionality and other features as found in the Platform at the time of use ("as is"). Ungraded does not guarantee that the Platform or any part thereof will be accessible at all times and without any interruptions or failures. Failures in the Platform can occur as a result of failures in the internet connection or as a result of viruses and/or faults/defects. Ungraded is not liable towards the User for any damage, loss or costs resulting or arising from the Platform being (temporarily) unavailable, including but not limited to the loss of data or inability to access or use the Platform.
3. Ungraded is entitled to change and/or update the Platform and replace the design and layout and/or any of the functionalities of the Platform without any prior notification and without being obliged to pay any compensation whatsoever to the User.
4. Ungraded is entitled to put the Platform (temporarily) out of service and/or to reduce the use of it without any prior notification and without being obliged to pay any compensation whatsoever to the User, if in the opinion of Ungraded this is necessary, for instance in connection with the reasonably required maintenance of the Platform or due to force majeure. Force majeure includes – but is not limited to – site or building blockades, strikes, riots, civil disruption, war, terrorist acts, inclement weather, epidemic, specific work interruptions, delay in transportation, earthquake, virus outbreaks, pandemics, epidemics

fire, storm, flood, or water damage, delay in or cancellation of the delivery to Ungraded of parts, goods or services ordered from third parties, or governmental, legal or regulatory restrictions, and all (other) external causes, foreseen or unforeseen, which Ungraded cannot influence.

5. The User is responsible and liable for all use he makes of the Platform, including but not limited to the use of his Account. The User indemnifies and holds Ungraded harmless against any and all claims by third parties in connection with or resulting from the use that the User makes of the Platform, a violation by the User of these Terms of Use, and/or any unlawful activities.

Article 11 Limitation of liability

1. Ungraded's liability for attributable failure (in Dutch: "*toerekenbare tekortkoming*") to perform the Agreement or any other unlawful act (in Dutch: "*onrechtmatige daad*") shall be excluded, to the extent allowed by a mandatory or peremptory rule of law.
2. The User's only remedy in the event of an attributable failure or an unlawful act of Ungraded, is to discontinue the use of the Service and/or to delete his Account and to terminate the Agreement.
3. In the event that Ungraded is liable for damages under a mandatory or peremptory rule of law, the damage will be limited to an amount of EUR 100.00 per event (a series of connected events being considered as one event). In no event will Ungraded's total, aggregate liability, exceed EUR 200.00.
4. Ungraded's liability for consequential damages (in Dutch: "*indirecte schade*", "*gevolgschade*") arising out of, or in connection with the Agreement or these Terms of Use, such as, but not limited to, loss of profit, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, or other incidental, indirect, punitive or exemplary damages of any kind, independent of whether the User provides notice to Ungraded of such potential injury, damages or loss, is excluded.
5. In any event, the User's right to claim under the Agreement, these Terms of Use, for an unlawful act or otherwise shall lapse one (1) year after the occurrence giving rise to the claim or action.
6. The limitations mentioned in the preceding paragraphs of this article 11 shall not apply if and insofar as the damage or injury is the result of intent (in Dutch: "*opzet*") or gross negligence (in Dutch: "*bewuste roekeloosheid*") by Ungraded or its managers.
7. Ungraded shall not be held liable for any infringing Content on its Platform, including infringements on privacy rights and / or Intellectual Property Rights.

Article 12 Notice and takedown

1. Ungraded respects the Intellectual Property Rights of others, and requires its User(s) to do the same.
2. If a User, a visitor or a third party believes that its work has been copied or used in a way that violates its Intellectual Property Rights or his other rights, he has to notify Ungraded in writing through the contact details available in article 18.
3. The notice shall include, at least, the following information:

- a. the contact details of the notifier;
 - b. all relevant information Ungraded needs to evaluate the User Content, including the location of the User Content on the Platform (URL);
 - c. a description of why the User Content is unlawful or undesirable according to the criteria published by Ungraded; and
 - d. a statement of the reason why Ungraded is approached as the most appropriate intermediary to deal with the matter;
4. Notifier can request that Ungraded deals with the report as a matter of urgency. The reasons for urgency must be explained by notifier. Ungraded will determine whether the report is dealt with as a matter of urgency on the basis of the explanation of the reasons.
 5. Ungraded shall evaluate the notice made by notifier. If Ungraded determines that the User Content is not unequivocally unlawful or undesirable Ungraded will inform the notifier of this and the reasons thereof. If Ungraded determines that the User Content is unlawful or undesirable the User Content will be removed from the Platform immediately or within a reasonable period of time. The User acknowledges and accepts that Ungraded is not liable for the removal or otherwise making the relevant User Content inaccessible.
 6. In the case that Ungraded is unable to come to an unequivocal judgement as to whether the User Content concerned is unlawful or undesirable, Ungraded will inform the User, who uploaded the User Content, about the report made by notifier and will request to remove content or to contact the notifier. If notifier and the User do not reach an agreement, the notifier can choose to take legal action that is open to him. If User chooses to not make himself/herself known to the notifier, Ungraded may decide to provide the notifier with the User's name and content details, or to remove the User Content.
 7. The procedure in the previous paragraphs is based on the Notice-and-Takedown Code of Conduct as described on noticeandtakedowncode.nl.

Article 13 Privacy

1. By using the Platform, the User may provide Personal Data to Ungraded. These Personal Data will be saved and processed in accordance with the Privacy Statement and the General Data Protection Regulation.

Article 14 Penalty

1. If User fails to meet one or more of the obligations under the Agreement and / or the Terms of Use and / or it does not fully comply with this, it forfeits to Ungraded – without imputability and / or a notice of default being required – an immediately payable fine of € 1,000.00 (thousand euros) per violation and € 100.00 (hundred euros) per day that the violation continues, all without prejudice to all other rights of Ungraded including but not limited to the right to (additional) compensation and / or fulfillment of the Agreement and / or the Terms of Use.

Article 15 Termination and remedies

1. The User is entitled to terminate the Agreement at any time by discontinuing the use of the Service and/or by terminating the Account.

2. In addition to the other remedies available to Ungraded, Ungraded is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the User, entitled to:
 - a. temporarily or permanently terminate the User's Account and his use of the Service in the event that Ungraded, at its sole discretion, deems such termination necessary;
 - b. temporarily or permanently restrict or suspend the User's activities in connection with the Service;
 - c. partly or wholly edit, delete or refuse any User Content or services within the Service.
3. Each Party is authorised to rescind (in Dutch: "ontbinden") the Agreement due to an attributable failure (in Dutch: "toerekenbare tekortkoming") in the performance of the Agreement if the other Party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the attributable failure has been issued, is attributable failing to fulfill its obligations under the Agreement.
4. If, at the time of rescission, Ungraded has already provided Licenses and/or (other) services under the Agreement, these Licenses and/or services shall not be subject to an obligation to undo (in Dutch "ongedaanmakingsverplichting", "ongedaanmakingsverbintenis").
5. All provisions which are meant to survive the termination of the Agreement, including but not limited to all of the User's representations, warranties, indemnification obligations, the penalties and Ungraded's limitation of liability, shall survive such termination.

Article 16 Third parties

1. Ungraded reserves its right to commission third party service providers and their authorized agents to perform any of the services under the Agreement and/or these Terms of Use, either in whole or in part.
2. The User is not entitled to transfer his rights and/or obligations under the Agreement or these Terms of Use to a third party.

Article 17 Applicable law and competent court

1. These Terms of Use, the Agreement and the use of the Service are governed by the laws of the Netherlands. The applicability of the Vienna Convention on the Sale of Goods is expressly excluded.
2. All controversies, disputes or claims arising out of or relating to these Terms of Use, the Agreement and the use of the Service shall exclusively be subject to mediation by the Stichting Geschillen Oplossing Automatisering (SGOA.eu). In the event Parties cannot resolve the controversies, disputes or claims through mediation within sixty (60) calendar days from the beginning of the mediation process, they shall be exclusively be subject to arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering, SGOA), which has its registered office in The Hague, The Netherlands.
3. This does not affect the right of either Party to obtain interim or provisional measures through the competent court of Midden-Nederland in Utrecht, the Netherlands.

4. In the event User is a Consumer, and the Consumer prefers legal proceedings through the national court, the Consumer must make this known in writing within one (1) month after Ungraded invoked article 17.2. In that event the controversies, disputes or claims shall be exclusively and finally settled by the competent court of Midden-Nederland in Utrecht, the Netherlands, unless a mandatory or peremptory rule of (international) law prescribes another competent court.

Article 18 Contact

1. Any and all correspondence and communication between the User and Ungraded may be undertaken in the Dutch or English language. In case the User does not understand the Dutch and/or English language, he must immediately inform Ungraded of this.
2. Ungraded can be contacted by means of the following contact details:

Ungraded
Tolsteegplantsoen 19 2
3523 AG Utrecht
jan@ungraded.video
