

## **General Terms and Conditions of Delivery, FC Video Analyse (FCVA)**

**1<sup>st</sup> January 2022, [www.fcvideoanalyse.nl/contact/](http://www.fcvideoanalyse.nl/contact/)**

### **Article 1. General**

1. These Terms and Conditions apply to all offers, quotations, and agreements between **FC Video Analyse**, hereinafter referred to as: "**FCVA**", and a Counterparty hereinafter referred to as: "**Other Party**" to which FCVA has declared these conditions applicable, insofar as the parties have not explicitly and in writing deviated from these Terms and Conditions.
2. The present Terms and Conditions also apply to agreements with FCVA, for the execution of by FCVA involved third parties.
3. These Terms and Conditions are also written for the employees of FCVA and its management.
4. The applicability of any purchase or other conditions of the Other Party is explicitly rejected and shall not apply under any circumstances whatsoever.
5. If any provision in this general Terms and Conditions is null and void or is declared void the other provisions of these general Terms and Conditions will remain fully applicable. FCVA and the Other Party will then consult to agree on new provisions to replace the null and void provisions, whereby as far as possible the aim and purport of the original scope is observed.
6. If any uncertainty exists regarding the interpretation of one or more provisions of these general Terms and Conditions, then the interpretation must take place 'in the spirit' of these provisions.
7. If a situation arises between the parties that is not regulated in these general Terms and Conditions, then this situation should be assessed according to the spirit of these general Terms and Conditions.
8. If FCVA does not always demand strict compliance with these Terms and Conditions, this does not mean that the provisions thereof do not apply, or that FCVA into any extent is waiving the right to demand strict compliance in any case with the provisions of these Terms and Conditions.

### **Article 2 Quotations and offers**

1. All FCVA's quotations and offers are without obligation unless the offer contains a deadline for acceptance. An offer or quotation offer expires if the product to which the offer relates to is no longer available.

2. FCVA cannot be held to his quotes or offers if the Other Party can reasonably understand that the quotations or offers, or apart thereof, contain an obvious mistake or error.
3. The prices mentioned in a quotation or offer are exclusive of VAT and other government levies, and any other costs to be incurred in the context of the agreement, including travel and accommodation, shipping, and administration costs, unless indicated otherwise.
4. If the acceptance (whether or not on minor points) deviates from the one in the quotation or offer then FCVA is not bound by it. The agreement will not be concluded in accordance with this deviating acceptance, unless FCVA specifies otherwise.
5. A quotation consisting of several parts does not oblige FCVA to perform a portion of the contract against a corresponding part of the quoted price. Offers or quotations do not apply automatically to future orders.

### **Article 3 Contract duration; delivery periods, execution, and amendment agreement**

1. The agreement between FCVA and the Other Party is entered into for an indefinite period time, unless otherwise follows from the nature of the agreement or if the parties expressly agree otherwise in writing.
2. Is for the completion of certain work or for the delivery of certain matters agreed on a term, then this is never a fatal term. If a term is exceeded, the Other Party must declare FCVA in writing to be in default. FCVA must thereby be given a reasonable period to still implement the agreement.
3. If FCVA requires information from the Other Party for the execution of the agreement, the execution period will not commence until the Other Party has made these correct and complete available to FCVA.
4. Delivery shall be made from FCVA company premises. The Other Party will be obliged to accept the goods when they are made available to him. If the Other Party refuses the purchases or is negligent in providing information or instructions that are necessary for the delivery, FCVA is entitled to store items at the expense and risk of the Other Party.
5. FCVA has the right to let third parties do certain work activities.

6. FCVA is entitled to execute the agreement in several phases and to invoice the executed part separately.

7. If the agreement is executed in phases, FCVA may postpone the execution of the parts belonging to a following phase until the Other Party has approved the results of the preceding phase in writing.

8. If during the execution of the agreement shows that for a proper implementation thereof it is necessary to change, modify or supplement it, then the parties will in time and in mutual consultation adapt the agreement. If the nature, scope, or content of the agreement, whether at the request or indication of the Other Party, of the competent authorities et cetera, is amended, and the agreement therefore in qualitative and/or quantitative aspect changed, this may have consequences for what was originally agreed on. As a result, the originally agreed upon can be increased or decreased. FCVA will quote as much as possible in advance. By an amendment of the agreement the originally specified period of execution may be changed. The Other Party accepts the possibility of amending the agreement, including the change in price and period of execution.

9. If the agreement is amended, including an addition, then FCVA is entitled to first execution only after approval given by the within FCVA authorized person and the Other Party has agreed with the price quoted and other conditions, including the time when it will be executed. If the amended agreement is not or not immediately executed this does not constitute a breach of contract by FCVA, nor is it ground for the Other Party to terminate the contract. Without being in default, FCVA may refuse a request to amend the agreement, if this is in qualitative and/or quantitatively respects could result in consequences, for example, for the work to be performed or goods to be delivered.

10. If the Other Party is in default of the proper fulfillment of which he is obliged towards FCVA, then the Other Party will be liable for all damage (including costs) on the part of FCVA that arises directly or indirectly.

11. If FCVA agrees with the Other Party a fixed price, then FCVA is nevertheless entitled to increase the price without that the Other Party is being entitled to terminate the agreement for that reason, if the increase in the price arises from a power or obligation under law or

regulation or is caused by an increase in the price of raw materials, wages et cetera or on other grounds that when entering into the agreement where reasonably not foreseeable.

12. If the price increase other than because of an amendment to the agreement exceeds 10% and takes place within three months after entering the agreement, then only the Other Party which is entitled to an appeal to title 5 section 3 of Book 6 of the Dutch Civil Code is entitled to terminate the agreement by means of a written statement, unless FCVA is still willing to fulfill the agreement based on the original agreed, or if the price increase results from a power or an obligation resting on FCVA pursuant to the law or if it has been stipulated that the delivery will take place more than three months after purchase.

#### **Article 4 Suspension, termination, and early termination of the agreement**

1. FCVA is authorized to suspend the fulfilment of the obligations or to terminate the agreement, if:

- the Other Party does not fulfill the obligations under the agreement, or not fully or not on time.

- after the conclusion of the agreement FCVA learns about circumstances that give good grounds to fear that the Other Party will not fulfill its obligations.

- the Other Party at the conclusion of the agreement has been requested to provide security for the fulfillment of his obligations under the agreement and this security is not provided or is insufficient.

- If due to the delay on the part of the Other Party it can no longer be demanded from FCVA that he fulfills the agreement on the originally agreed conditions, FCVA is entitled to terminate the agreement.

2. FCVA is authorized to cancel the agreement if circumstances arise of such a nature that fulfillment of the agreement is impossible or if there arise other circumstances that are of such a nature that unaltered maintaining of the agreement by FCVA cannot reasonably be required.

3. If the agreement is canceled, the claims of FCVA on the Other Party are immediately due and claimable. If FCVA suspends fulfilment of its obligations, he will retain his claims from the law and the agreement.

4. If FCVA suspends or terminates, he is in no way obliged to compensate damage and costs thereby that arise in any way.
5. If the Other Party is imputable to the termination, then FCVA is entitled to compensation for the damage, including the costs that arise directly and indirectly.
6. If the Other Party does not fulfill the obligations arising from agreement and the non-compliance termination justifies, then FCVA is entitled to cancel the agreement immediately and with immediate effect without any obligation on his part to pay any compensation, while the Other Party, on account of breach of contract, is obligated to pay compensation or indemnity.
7. If the agreement is terminated prematurely by FCVA, FCVA will, in coordination with the Other Party ensure the transfer yet to be made work to third parties. This is unless the Other Party is accountable of the termination. If the transfer of the work adds additional costs for FCVA, then these will be charged to the Other Party. The Other Party is obliged to pay these costs within the aforementioned period, unless FCVA specifies otherwise.
8. In case of liquidation, of (application of) suspension of payment or bankruptcy, of seizure - if and insofar as the seizure has not been lifted within three months – at the expense of the Other Party, of debt restructuring or another circumstance that causes the Other Party to no longer freely dispose of his assets, FCVA is free to terminate the agreement immediately and with immediate effect or cancel the order or cancel the agreement, without any obligation on its part to pay any compensation. The claims of FCVA on the Other Party are in that case immediately due and payable.
9. If the Other Party cancels an order that is placed in whole or in part, then the therefore ordered items or prepared for that purpose, plus any supply, discharge, and delivery costs thereof and for the execution of the agreement reserved working time, integral be charged to the Other Party.

#### **Article 5 Force Majeure**

1. FCVA is not obliged to comply with any obligation to Other Party if he is prevented from doing so as a result of a circumstance which is not due to fault, and which is not attributed to him by virtue of law, a legal act or in a legal opinion.

2. In these general Terms and Conditions, force majeure is understood, in addition to what about this in the law and jurisprudence is understood, all from external causes, foreseen or not foreseen, on which FCVA cannot exert any influence, but through which FCVA is not able to fulfill his obligations. This includes strikes at FCVA or at third parties. FCVA is also entitled to invoke force majeure if the circumstance preventing (further) compliance with the agreement, occurs after FCVA should have fulfilled its obligation.
3. FCVA can during the period that the force majeure lasts, suspend the obligations from the agreement. If this period lasts longer than three months, then each of the parties is entitled to terminate the agreement, without any obligation to pay compensation of damages to the other party.
4. Insofar as FCVA at the time of the occurrence of the force majeure has already partially fulfilled its obligations from the agreement or will be able to fulfill these, and the part fulfilled respectively to the be fulfilled has independent value, FCVA is entitled to separately invoice the already fulfilled, respectively the to be fulfilled part. The Other Party is obliged to pay the invoice as if there was a separate agreement.

#### **Article 6 Payment and collection costs**

1. Payment of the entire invoice amount must be made prior to delivery within 14 days after the invoice date, in a manner to be indicated by FCVA in the currency in which is invoiced, unless indicated otherwise in writing by FCVA. FCVA is entitled to invoice periodically.
2. If the Other Party fails to comply with the timely payment of an invoice, then the Other Party is legally in default. The Other Party shall then owe interest of 1% per month, unless the legal interest is higher, in which case the legal interest is owed. The interest on the amount due and payable will be calculated from the moment the Other Party is in default until the moment of payment of the full amount owed.
3. FCVA has the right to allow payments made by the Other Party to stretch. In the first place to the reduction of the costs, then to the deduction of the interest and finally in the reduction of the principal sum and current interest.
4. FCVA can, without being in default, refuse an offer of payment if the Other Party chooses a different order of allocation of the payment. FCVA is entitled to refuse full payment of the

principal sum, if not also the open and current interest and collection costs are paid.

5. The Other Party is never entitled to settle the amount owed by him to FCVA.

6. Objections to the amount of an invoice do not suspend the payment obligation. The Other Party that is not entitled to appeal to **Section 6.5.3 (Articles 231 up to and including 247, book 6 of the Dutch Civil Code)** is also not entitled to suspend the payment of an invoice for another reason.

7. If the Other Party is in default of the (timely) fulfillment of its obligations, then all reasonable costs to obtain extrajudicial settlement are for account of the Other Party. The extrajudicial costs are calculated based on what in the Dutch debt collection practice is customary, currently the calculation method according to Report Voorwerk II. However, if FCVA has incurred higher costs for collection that were reasonably necessary, then the actual costs incurred for reimbursement will be charged. Any possible court and enforcement costs will also be recovered from the Other Party. The Other Party shall also owe interest on the collection costs owed.

#### **Article 7 Retention of title**

1. All by FCVA in the context of the agreement delivered items, remain property of FCVA until the Other Party has properly fulfilled all its obligations towards FCVA.

2. Goods delivered by FCVA, which pursuant to paragraph 1. under the retention of title may not be resold and may never be used as means of payment. The Other Party is not authorized to pledge or otherwise use the property subject to retention of title.

3. The Other Party must always do everything that can be reasonably expected to safeguard the property rights of FCVA.

4. If third parties seize the under the retention of title delivered goods or wish to establish or assert rights thereon, then the Other Party will be obliged to inform FCVA immediately.

5. The Other Party is obliged to insure and keep insured the under retention of title delivered goods against fire, explosion, and water damage as well as against theft, and will at FCVA's first request make the policy of insurance available for inspection. In the event of any payment from the insurance, FCVA is entitled to these tokens. As far as necessary, the Other Party commits itself in advance towards FCVA to cooperate in

everything that might (appear to) be necessary or desirable within that framework.

6. In the event that FCVA wishes to exercise its ownership rights as set out in this article the Other Party will give FCVA and any third parties to be appointed by FCVA, in advance, unconditional and irrevocable permission to enter all those places where FCVA's property is located and repossess these goods.

#### **Article 8 Warranties, investigations and complaints, limitation period**

1. The items to be delivered by FCVA comply to the usual requirements and standards that at the time of delivery may reasonably be expected and for which they with normal use in the Netherlands are intended. The warranty mentioned in this article applies to items that are intended for use in the Netherlands. When used outside the Netherlands, the Other Party must itself verify whether it is suitable for use there and that it meets the conditions attached to it. In that case, FCVA can implement other warranty and other conditions in respect of the goods to be delivered or the work, activities to be performed.

2. The guarantee mentioned in paragraph 1 of this article is limited to the warranty provided by the manufacturer of the delivered product, Endzone Video Systems, located in Sealy, Texas, USA. Unless the parties have agreed different.

3. All forms of warranty lapse if a defect is caused as a result of or resulting from injudicious or improper use, thereof, incorrect storage or maintenance by the Other Party and/or by third parties when, without written permission from FCVA, the Other Party or third parties have made changes to the equipment or have tried to do so, other items were attached to it which should not be attached or if they have been used in a manner other than that prescribed. The Other Party is also not entitled to warranty if the defect is caused by or is the result of circumstances beyond FCVA's control, including weather conditions (such as, for example, but not limited to, extreme wind, extreme rainfall, or temperatures) et cetera.

4. The Other Party is obliged to inspect the delivered goods or have them inspected immediately the moment the goods are made available to him, respectively the relevant work has been carried out. In doing so, the Other Party must examine whether the quality and/or quantity of the delivered goods corresponds to

what was agreed on and meets the requirements that the parties have agreed in this respect. Any visible defects must be notified in writing to FCVA within seven days after delivery. Any not visible defects must be reported in writing to FCVA immediately, but in any case, within fourteen days, after discovery thereof. The report must contain a detailed description of the defect, so that FCVA is able to respond adequately. The Other Party must give FCVA the opportunity to investigate the complaint or have it investigated.

5. If the Other Party submits a claim in time, this does not suspend its payment obligation. In that case, the Other Party remains obliged to take delivery of and pay for the other items ordered.

6. If a defect is reported later, the Other Party is no longer entitled to repair, replacement, or compensation.

7. If it has been established that an item is defective and a complaint has been made in this regard in good time, then FCVA shall return the defective item within a reasonable period of time after receiving it back or, if return is not reasonably possible, written notification of the defect by the Other Party, at the discretion of FCVA, replace or ensure the repair thereof or pay a replacement fee to the Other Party. In the event of replacement, the Other Party will be obliged to return the replaced item to FCVA and to transfer ownership thereof to FCVA, unless FCVA indicates otherwise.

8. If it is established that a complaint is unfounded, then the costs incurred by FCVA, including research costs, will be borne in full by the Other Party.

9. After expiry of the warranty period, all costs for repair or replacement, including administration, shipping, and call-out charges, will be charged to the Other Party.

10. Contrary to the legal limitation periods, the limitation period for all claims and defenses towards FCVA and the third parties involved by FCVA in the execution of an agreement, is one year.

#### **Article 9 Liability**

1. If FCVA should be liable, then this liability is limited to what is regulated in this provision.

2. FCVA is not liable for any damage, of whatever nature, that has arisen as a result of the fact that FCVA has made use of incorrect and/or incomplete data provided by or on behalf of the Other Party.

3. If FCVA is liable for any damage, the liability of FCVA is limited to a maximum of the invoice value of the order, or at least to that part of the order to which the liability relates.

4. FCVA's liability is in any case always limited to the amount paid out by its insurer in the case in question.

5. Notwithstanding this clause 9, FCVA is only liable for direct damage.

6. Direct damage is exclusively understood to mean the reasonable costs for determining the cause and scope of the damage, insofar as the determination relates to damage within the meaning of these Terms and Conditions, any reasonable costs incurred to have FCVA defective performance fulfil the agreement, insofar as these can be attributed to FCVA, and reasonable costs incurred to prevent or limit damage, insofar as the Other Party demonstrates that these costs have led to the limitation of direct damage as referred to in these general Terms and Conditions.

7. FCVA is under no circumstances whatsoever liable for indirect damages, including consequential damages, lost profit, lost savings, penalties, and damage due to business interruption.

8. The limitations of liability included in this article do not apply if the damage is due to willful intent or intentional misconduct on the part of FCVA or his managerial subordinates.

#### **Article 10 Risk transition**

1. The risk of loss, damage or depreciation will pass to the Other Party at the moment when goods are brought under the control of the Other Party.

#### **Article 11 Indemnification**

1. The Other Party indemnifies FCVA against any claims from third parties, who suffer damage in connection with the performance of the agreement and whose cause is attributable to parties other than FCVA.

2. If FCVA should be addressed by third parties for that reason, the Other Party will be obliged to assist FCVA at law and otherwise and immediately do everything that may be expected of it in that case. If the Other Party fails to take adequate measures, FCVA will be entitled, without notice of default, to do so himself. All costs and damages on the part of FCVA and third parties caused by this, are fully at the Other Party's expense and risk.

**Article 12 Intellectual property**

1. FCVA reserves the rights and powers he is entitled to under the Copyright Act and other intellectual laws and regulations. FCVA has the right to use the increased knowledge by the execution of an agreement for other purposes, so long as no strictly confidential information of the Other Party is brought to the knowledge of third parties.

**Article 13 Applicable law and disputes**

1. Dutch law applies exclusively to all legal relationships to which FCVA is a party, even if an obligation is fully or partially implemented abroad or if the party involved in the legal relationship has its place of residence there. The applicability of the Vienna Sales Convention is excluded.

2. Any disputes between FCVA and the Other Party arising from or related to all legal

relationships (any offer or agreement) shall be exclusively submitted to a court of law in Amsterdam.

3. The parties will only submit the dispute to court after they have made every effort to settle a dispute by mutual agreement.

**Article 14 Location and modification Terms and Conditions**

1. A digital version of these Terms and Conditions are available on our website: [www.fcvideoanalyse.nl](http://www.fcvideoanalyse.nl) in the Dutch language with an English translation.

2. FCVA shall be entitled to amend these Terms and Conditions. An amendment shall take effect four weeks after its announcement.

3. The Dutch text of the general Terms & Conditions shall always be decisive for the interpretation thereof.