

# General conditions MyVideoAnalyser B.V.

## ARTICLE 1. | DEFINITIONS

In these general conditions, the following terms are defined in the manner below, to the extent it does not result otherwise from the nature or tenor of the provisions.

1. **MyVideoAnalyser:** MyVideoAnalyser B.V., the user of these general conditions, established on Eerste Morgendreef 7, 5233NC in 's-Hertogenbosch, listed in the Trade Register under Chamber of Commerce number 68350783.
2. **Counterparty:** every natural or legal person with whom MyVideoAnalyser has concluded an agreement or intends to do so.
3. **Consumer:** a counterparty as intended in the preceding section, natural person, not acting from a profession or business.
4. **Agreement:** every agreement concluded between the counterparty and MyVideoAnalyser, through which MyVideoAnalyser has committed itself towards the counterparty to give in use (under license) software and/or the provision of services. The agreement which provides for the licensing of software is also referred to in the general conditions as 'license agreement'.
5. **Software:** the whole of computer programs, including updates and upgrades thereof, which in the context of the agreement is given in use by MyVideoAnalyser to the counterparty and for which the counterparty, in the context of the agreement, obtains the non-exclusive user's right.
6. **Services:** the services to be provided in the context of the agreement by or on behalf of MyVideoAnalyser, including in a non-exhaustive sense: support services with regard to the use of the software, learning courses, masterclasses, minors and the provision of advice.
7. **Written:** communication in writing, communication by e-mail, or any other manner of communication which, considering the state of the art and commonly held opinion, can be equated with it.

## ARTICLE 2. | GENERAL PROVISIONS

1. These general conditions are applicable to every offer of MyVideoAnalyser and to each agreement which is concluded.
2. The applicability of any possible general conditions of the counterparty is emphatically rejected.
3. From what is stipulated in these general conditions can only be deviated from expressly in writing. If and to the extent what parties have established emphatically in writing differs from what is stipulated in these general conditions, what parties have established emphatically in writing applies.
4. The annulment or nullity of one or more of the provisions from these general conditions leaves unaffected the validity of the other provisions. In such case as may occur, parties are obligated to enter into mutual consultations with the purpose of making an alternative arrangement with regard to the impaired provision. The purpose and tenor of the original provision is thereby observed as much as possible.

## ARTICLE 3. | OFFER AND ADOPTION OF AGREEMENTS

1. Every offer of MyVideoAnalyser is non-committal, also in case it states a term for acceptance. An offer of MyVideoAnalyser can still be revoked, until immediately after its acceptance by the counterparty, by MyVideoAnalyser.
2. Apparent errors and mistakes in an offer of MyVideoAnalyser do not bind them.
3. From an offer of MyVideoAnalyser based on incorrect or incomplete information provided by counterparty, the counterparty cannot derive any rights.
4. Every agreement is adopted, without prejudice to the provisions in section 1, through offer and acceptance. If the acceptance by the counterparty deviates from the offer of MyVideoAnalyser, the agreement is not concluded in conformity with this deviating acceptance, unless MyVideoAnalyser indicates otherwise.

5. If the counterparty concludes the agreement (also) in name of another natural or legal person, it declares by entering into the agreement that it is authorised to do so. The counterparty, besides this (legal) person, is jointly and severally liable for all obligations flowing from that agreement.

#### **ARTICLE 4. | OBLIGATION OF THE COUNTERPARTY IN GENERAL**

1. The counterparty is obligated to provide all information requested by MyVideoAnalyser which is of importance for the preparation and implementation of the agreement within a reasonable time, completely and correctly, to MyVideoAnalyser. For the implementation of the agreement, MyVideoAnalyser also bases itself on the information provided by the counterparty. If MyVideoAnalyser implements the agreement in accordance with inaccurate or incomplete information provided by the counterparty, this cannot be considered a shortcoming on the part of MyVideoAnalyser.

2. Furthermore, the counterparty must always forthwith inform MyVideoAnalyser on facts and circumstances which could be important in connection with the implementation of the agreement. The counterparty takes all reasonable measures to optimize the implementation of the agreement by MyVideoAnalyser.

#### **ARTICLE 5. | LICENSE AGREEMENTS**

1. During the effective time of the license agreement, MyVideoAnalyser offers a limited, non-exclusive, non-transferable, and non-sublicensable user's right with regard to the software. All (intellectual) property rights to the software continue to lie with MyVideoAnalyser or its licensor. After adoption of the license agreement, the counterparty receives the license key through electronic channels, to activate the software.

2. Installation of the software must be carried out by the counterparty, such in accordance with the installation instructions furnished with the rest. The software can exclusively be installed and used, unless it is emphatically indicated otherwise by MyVideoAnalyser, on Mac computers, under the proviso that older versions of Mac computers or older versions of their operating systems, may not be compatible.

3. The license agreement may comprise multiple licenses. Each license can be installed on a single Mac computer simultaneously. The counterparty is able during the effective time of the license agreement to decouple the license key and thereby the software from a Mac computer to install the software, in accordance with the provisions in the preceding section, on another Mac computer.

4. Use of the software is exclusively permitted in accordance with the purpose for which the software was developed and intended.

5. The counterparty is obligated to keep the license key for the activation of the software secret. The counterparty must inform MyVideoAnalyser immediately of the circumstance, if it arises, in which the counterparty knows or has a suspicion that the license key associated with the license agreement, has become known to third parties. MyVideoAnalyser is authorised in such cases to take effective measures to avoid or limit illegitimate use of the software.

6. The counterparty is fully liable for the use of the software by persons to whom it leaves the software to be used. All actions by the intended persons with regard to the use of the software are attributed to the counterparty.

7. The software is made available for use *as is* at the moment of adoption of the license agreement. Barring the extent to which it has been expressly established with the counterparty that the software unmistakably has certain functionalities, or that the counterparty could reasonably assume that certain functionalities were included in it, the software is given in use without any type of warranty. The counterparty cannot appeal to a shortcoming of MyVideoAnalyser on grounds of the contention that the software does not contain the functionalities which were not expressly established, or of which the counterparty could not reasonably have expected that they would be included.

8. It is not permitted to the counterparty to reverse engineer the source code of the software, nor to decompile it or to otherwise apply changes to the software. It is prohibited to attempt to decompile or forge the software, to in any other manner manipulate it, or to develop software which violates the software used by MyVideoAnalyser and/or the intellectual property rights regarding it as intended in article 14.

9. The counterparty and any other persons to whom it leaves the use of the software, also determine what content and information is stored and/or exchanged by way of the software. The counterparty is therefore responsible that such content and data are legitimate and do not violate third party rights. MyVideoAnalyser does not accept any responsibility for content and data stored and/or exchanged by or on behalf of the counterparty with the aid of the software. The counterparty safeguards MyVideoAnalyser against all third party claims based on the contention that content and/or data stored and/or exchanged by or on behalf of the counterparty are illegitimate or violate third party rights.

## **ARTICLE 6. | PROVISION OF SERVICES: CONTENT OF AGREEMENTS IN GENERAL**

1. The agreement which arranges for the provision of services, such as learning courses, masterclasses, minors, and consultation, exclusively comprises the performances to be delivered by MyVideoAnalyser which have been expressly established between parties. Without prejudice to the possibility of making further arrangements between parties, MyVideoAnalyser is never obligated to deliver performances which fall outside the content or scope of what has been emphatically established.
2. The applicability of the articles 7:404 and 7:407 section 2 of the Netherlands Civil Code ('BW').
3. MyVideoAnalyser will implement the services to the best of their insight and abilities and in accordance with the requirements of good workmanship. To the extent the nature and/or tenor of the contract does not oppose this, MyVideoAnalyser however commits itself exclusively to a best-effort contract. This means that MyVideoAnalyser cannot guarantee, for example with regard to learning courses, masterclasses, minors, and consultancy that the results which the counterparty aims to realise by entering into the agreement will also be achieved.
4. If in the context of the agreement services are provided at the location of counterparty, or at another location indicated by the counterparty and agreed on by parties, the counterparty makes sure that MyVideoAnalyser can make use, free of charges, of the matters and facilities which are available at that location and which they reasonably desire.

## **ARTICLE 7. | TERMS**

1. The possible implementation and delivery terms to which MyVideoAnalyser has committed itself towards the counterparty are merely indicative, non-fatal terms. For compliance with these terms, MyVideoAnalyser may be co-dependent on the counterparty or third parties. If the non-timely compliance is the result of a circumstance which cannot be attributed to MyVideoAnalyser, that is, force majeure in the sense of article 10, the obligations of MyVideoAnalyser are suspended for the duration of the situation of force majeure. What is stipulated in the remainder of article 10 will in such case be correspondingly applicable.
2. If the non-timely compliance is the consequence of a circumstance which can, on the other hand, be attributed to MyVideoAnalyser, the default of MyVideoAnalyser will enter into effect no sooner than after the counterparty has declared the default of MyVideoAnalyser in writing, in which default notice a reasonable term for compliance is stated, and MyVideoAnalyser after expiry of the latter term has still failed to comply.
3. If MyVideoAnalyser depends for the implementation of the agreement on information to be provided by the counterparty or on efforts otherwise to be made, and this information is not timely supplied and/or these efforts are not timely made, MyVideoAnalyser has the right to suspend the implementation and/or delivery for the duration of the delay.
4. Default of MyVideoAnalyser as a consequence of a circumstance attributable to MyVideoAnalyser, all matters as intended in section 2, grants the counterparty the right to rescind such part of the agreement which the default is in regard to, though never to additional compensation of damage.

## **ARTICLE 8. | DURATION OF AGREEMENTS AND PREMATURE CANCELLATION**

1. Unless emphatically agreed otherwise, a license agreement is adopted for an effective time of 12 months, coming into force on the day that the license key is delivered to the counterparty in accordance with article 5.1. The license agreement legally ends through the expiry of the fixed effective time. Parties can agree to expressly extend the license agreement.
2. An agreement arranging for the provision of services ends through the completion of the established performances.
3. In case of the full or partial cancellation by the counterparty of an agreement as intended in the preceding section, it is bound to compensate to MyVideoAnalyser all expenses reasonably incurred and still to be incurred with an eye on the implementation of the agreement, supplemented by the fee of MyVideoAnalyser in proportion to the part of the agreement which has already been implemented, and all matters without prejudice to the right of MyVideoAnalyser to demand compensation on account of loss of profit, as well as of the other damage resulting from the cancellation. Mandatory legislation is not deviated from to the detriment of a consumer, however, in the matter of premature cancellation by the consumer of an assignment agreement in the sense of article 7:400 BW.

## **ARTICLE 9. | COMPLAINTS**

1. The counterparty is obligated to communicate any complaint regarding the implementation of the agreement by MyVideoAnalyser forthwith upon discovery, or at least after being reasonably able to identify the shortcoming it alleges, to MyVideoAnalyser, and in any event to confirm it within two business days afterwards to MyVideoAnalyser in writing, in the absence whereof the counterparty will not be able to make an appeal to any shortcoming on the part of MyVideoAnalyser.
2. Complaints regarding the amount of invoices must be submitted within seven days after invoice date to MyVideoAnalyser in written form, in the absence of which the right of the counterparty to file complaint has lapsed.

3. Also if the counterparty files complaint in time, the obligation of the counterparty to pay and further comply with the agreement remains effective.

#### **ARTICLE 10. | FORCE MAJEURE**

1. MyVideoAnalyser is not bound to comply with any obligation from the agreement if and to the extent they are impeded from doing so by a circumstance which, according to the law, a legal action, or commonly held opinion, cannot be attributed to them.

2. If compliance with the agreement becomes permanently impossible due to force majeure, parties have the right to rescind the agreement with immediate effect.

3. If MyVideoAnalyser upon occurrence of the situation of force majeure has already partially fulfilled its obligations or can only partially fulfil its obligations, they have the right to separately invoice the part already implemented or the implementable part respectively, as if it regarded an autonomous agreement.

4. Damage due to force majeure is never eligible, without prejudice to the preceding section, for compensation.

#### **ARTICLE 11. | SUSPENSION AND RESCISSION**

1. In case the circumstances of the case reasonably justify such, MyVideoAnalyser is authorised, without judicial intervention, to suspend the implementation of the agreement or to partially or completely rescind the agreement with immediate effect, if and to the extent the counterparty does not, does not timely, or does not completely comply with its obligations from the agreement, or in the event that after conclusion of the agreement circumstances which have come to the cognisance of MyVideoAnalyser constitute valid grounds to fear that counterparty will not comply with its obligations. If compliance with the obligations of the counterparty with regard to which it falls short or threatens to do, is not permanently impossible, the power to rescind only arises after counterparty has been declared in default by MyVideoAnalyser in writing, in which default notice a reasonable term is stated within which the counterparty will (still) be able to comply with its obligations and compliance has still failed to occur after expiry of the latter term.

2. If the counterparty is in a state of bankruptcy, has applied for (temporary) suspension of payment, legislation for the debt restructuring for natural persons has been declared applicable to it, any of its assets have been seized, or in cases in which the counterparty cannot freely dispose of its assets, MyVideoAnalyser has the right to rescind the agreement with immediate effect and without judicial intervention, unless the counterparty has already lodged sufficient security for payment.

3. The counterparty is never entitled to any type of compensation of damage in connection with the right of suspension or rescission exercised by MyVideoAnalyser on grounds of this article.

4. The counterparty is obligated to compensate the damage which MyVideoAnalyser incurs as a consequence of the suspension or rescission of the agreement.

5. If MyVideoAnalyser rescinds the agreement on grounds of this article, all claims on the counterparty become immediately payable.

#### **ARTICLE 12. | PRICES AND PAYMENTS**

1. Unless expressly stated otherwise, all prices listed by MyVideoAnalyser are exclusive of VAT, under the proviso that an offer addressed to a consumer also states prices inclusive of VAT.

2. The price associated with a license agreement is invoiced upon adoption of the license agreement. Also in the context of agreements which arrange for the provision of services, MyVideoAnalyser has the right to demand that the established price is completely or partially settled by way of advance payment.

3. If the counterparty is negligent in the settlement of a payment obligation towards MyVideoAnalyser which is already payable, MyVideoAnalyser has the right to suspend the agreement, without prejudice to what is stipulated in the remainder of article 11.

4. Unless indicated otherwise by MyVideoAnalyser, payments must take place by way of bank transfer, within 30 days after invoice date, in the manner prescribed by MyVideoAnalyser on the invoice. MyVideoAnalyser has the right to solely provide the invoices due to the counterparty through electronic channels.

5. If the counterparty is in a state of bankruptcy, has applied for (temporary) suspension of payment, the law regarding the debt restructuring for natural persons has been declared applicable to it, its

assets have been seized in any way, or in those cases in which the counterparty is otherwise unable to freely dispose of its assets, the claims on the counterparty become immediately payable.

6. If no timely payment takes place, the default of the counterparty legally enters into effect. From the day that the default of the counterparty enters into effect, it owes interest over the outstanding amount of 2% per month, whereby a part of a month will be considered as an entire month. In derogation to the preceding sentence, instead of the contractual interest intended there, the statutory interest rate applies if the counterparty acts in the capacity of a consumer.

7. All reasonable costs, both judicial, extrajudicial, and enforcement costs, incurred to obtain the amounts owed by the counterparty, are borne by the counterparty.

#### **ARTICLE 13. | LIABILITY AND SAFEGUARDS**

1. Without prejudice to what is stipulated elsewhere in these general conditions, MyVideoAnalyser bears no responsibility for damage in connection with or damage caused by an inaccuracy or incompleteness in the information provided by the counterparty, another shortcoming in compliance with the obligations of the counterparty flowing from the law or the agreement or otherwise another circumstance which cannot be attributed to MyVideoAnalyser.

2. Bugs in the software may occur and to the extent possible are resolved as soon as possible after they have come to the knowledge of MyVideoAnalyser. For the presence of bugs in the software, MyVideoAnalyser cannot reasonably bear any liability, which is therefore hereby rejected.

3. To the extent the use of the software depends on the proper functioning of servers or other systems of MyVideoAnalyser connected with the internet, MyVideoAnalyser will exert itself to realise their uninterrupted availability, but MyVideoAnalyser cannot always guarantee this. In the matter of the temporary unavailability of servers or other systems of MyVideoAnalyser connected with the internet, for example as a consequence of malfunctions or maintenance, MyVideoAnalyser does not accept any liability.

4. MyVideoAnalyser is never liable for damage which has occurred because the counterparty has not, has not timely, or has not correctly installed updates of the software.

5. MyVideoAnalyser is never liable for indirect damage, also including loss, loss of profit, and damage resulting from operational stagnation. Without prejudice to what is stipulated in the remainder of these general conditions, MyVideoAnalyser can only be liable for direct damage which the counterparty incurs as a consequence of an attributable shortcoming of MyVideoAnalyser in compliance with its obligations from the agreement. By attributable shortcoming is intended a shortcoming which a good and diligent peer can and should avoid, and all matters with due regard for normal attentiveness and the professional knowledge and means which are required for implementation of the agreement. Intended by direct damage exclusively is:

- the reasonable cost to determine the cause and extent of the damage, to the extent the determination regards damage which is eligible for compensation in the sense of these general conditions;
- the possible reasonable costs incurred to have the faulty performance of MyVideoAnalyser comply with the agreement, to the extent those can be attributed to MyVideoAnalyser;
- reasonable costs, incurred to prevent or limit damage, to the extent the counterparty proves that these costs have led to the limiting of the direct damage in the sense of these general conditions.

6. In the event that MyVideoAnalyser, despite what is stipulated in these general conditions, is liable for any damage towards the counterparty, then MyVideoAnalyser has the right at all times to restore this damage. The counterparty must enable MyVideoAnalyser to do so, failing which any liability of MyVideoAnalyser in the matter lapses.

7. The liability of MyVideoAnalyser is limited to a maximum of the invoice value of the agreement, or rather to that part of the agreement which the liability of MyVideoAnalyser regards, under the proviso that the liability of MyVideoAnalyser will never amount to more than the amount which is effectively disbursed in such case on grounds of the liability insurance taken out by MyVideoAnalyser, increased by the possible deductible of MyVideoAnalyser which is applied pursuant to that insurance.

8. The counterparty safeguards MyVideoAnalyser against any possible claims by third parties which incur damage in connection with the implementation of the agreement and the cause of which is attributable to (an)other(s) than MyVideoAnalyser.

#### **ARTICLE 14. | INTELLECTUAL PROPERTY/COPYRIGHT**

1. MyVideoAnalyser or their licensor reserve themselves the copyright and all other rights of intellectual property to the software, the design, and the functioning of the software, the methods applied by MyVideoAnalyser, the advice offered, as well as the information and documentation which have been made available in the context, for instance, of learning courses, masterclasses, and minors. The exercise of these rights, disclosures, or transfers of data therein included, is reserved, without prejudice to what is stipulated in the following section, both during and after the implementation of the agreement, to MyVideoAnalyser and/or its licensor exclusively.

2. The counterparty commits itself to only use the goods as intended in the preceding section and to only make them available to third parties to the extent this corresponds with the apparent intentions of both parties upon the adoption of the agreement, or that it is necessary considering the nature and tenor of the agreement. It is, therefore, prohibited to the counterparty to multiply, alter, in any way reproduce, distribute, exploit, or make derivative works from the goods which are subject to the intellectual property rights of MyVideoAnalyser and/or its licensor. The counterparty will not make available said goods, in whatever manner, whether against payment or for naught, to third parties, nor act in any other manner or fail to act with the result that third parties are able to dispose of them in another manner than in connection with the application of the preceding sentence.

#### **ARTICLE 15. | FINAL PROVISIONS**

1. To each agreement and all legal relationships flowing therefrom, Netherlands legislation is exclusively applicable.

2. Before appealing to the court of law, parties are obligated to exert themselves optimally so as to resolve the dispute by mutual agreement.

3. To the extent the law does not deviate here in the mandatory sense, only the competent court within the district of the place of establishment of MyVideoAnalyser is designated to take into consideration any possible legal disputes.