

# General Terms and Conditions

Adopted on 1 January 2022

## 1. Parties and applicability

a. The following terms as used in these General Terms and Conditions will have the following meanings:

- WHITEVISION: WhiteVision B.V., having its registered office at Lage Mosten 57 in 4822 NK Breda, the Netherlands.
- Contracting Party: WHITEVISION's contracting party (natural person or legal entity) or the party to which WHITEVISION has directed its quotation.

b. These General Terms and Conditions will apply to all quotations issued by, and agreements entered into with, WHITEVISION for the sale by WHITEVISION of items or the provision by WHITEVISION of services, to the extent not agreed otherwise in writing. By signing its assignment, as well as by using online services, the Contracting Party accepts these General Terms and Conditions, even if the Contracting Party's own conditions provide otherwise. Any applicability of general terms and conditions or purchasing conditions of the Contracting Party is expressly rejected.

c. Any amendments to the agreement and derogations from these General Terms & Conditions will be valid only if agreed in writing between the Contracting Party and WHITEVISION.

d. Acceptance by WHITEVISION of the Contracting Party's offer will also be deemed to constitute an express rejection of the Contracting Party's general terms and conditions.

e. For purposes of the General Data Protection Regulation (GDPR), the Contracting Party will also enter into a Data Processing Agreement with WHITEVISION. In the event of conflict between any provisions of such Data Processing Agreement and these General Terms and Conditions, (subject to the purpose and purport of the GDPR), the provisions of the Data Processing Agreement will prevail.

## 2. Prices and price adjustments

a. All prices will be in euros. All prices will be exclusive of VAT, unless stated otherwise in the offer or the agreement.

b. WHITEVISION will be entitled to adjust the rates with effect from 1 January of each calendar year, unless three months have not passed since entering into the agreement. The adjustment of the rates will be communicated in advance, and the Contracting Party expressly agrees to these adjustments to the extent they do not exceed the Statistics Netherlands Consumer Price Index (2015 = 100) for the month of July of the preceding year.

c. Any additional services may be purchased at the then-current rates.

d. In the event of a change to an assignment accepted by WHITEVISION and implemented at the request of the Contracting Party, WHITEVISION will be entitled to pass on the additional costs as a result of such change to the Contracting Party.

e. In the event of suspension or delay of the implementation or optimization activities at the request of the Contracting Party, WHITEVISION will be entitled to pass on the additional costs as a result of such change to the Contracting Party.

f. Any unclear, extra labour-intensive text, faulty information carriers, computer software or data files, unsound method of supply of the items to be supplied by the Contracting Party, which require WHITEVISION to perform more work and/or incur more costs than reasonably foreseeable at the time of entering into the agreement, will constitute grounds for an increase of the agreed price.

## 3. Performance of the assignment, taking delivery, delivery period, risk

a. The Contracting Party will be required to lend its full assistance in the performance of the agreement.

b. Performance of an assignment will take place within the normal, applicable working hours. If an assignment must be accelerated, overtime and/or any additional costs incurred may be charged.

c. All delivery periods or delivery dates stated in the offer, quotation, or the agreement ensuing from same, by WHITEVISION will be indicative only and, thus, subject to contract, unless the parties have

expressly agreed in writing that the delivery period or delivery date is a firm deadline.

d. Any agreed delivery period will not commence for WHITEVISION until all information to be provided by the Contracting Party has been received by WHITEVISION and, if an advance payment has been agreed, such advance payment has been received by WHITEVISION.

e. In the event of late delivery by WHITEVISION, the Contracting Party will not be entitled simply to dissolve the agreement or delay or refuse to make payment, unless such late delivery is due to wilful misconduct or gross negligence on the part of WHITEVISION.

f. The following circumstances will suspend installation: (a) the Contracting Party's failure, or failure punctually, to supply necessary information and/or to perform any payment obligation, and (b) any and all situations of force majeure.

#### **4. Obligations of the Contracting Party**

a. Without the written consent of WHITEVISION, the Contracting Party will not be entitled to dispose of, encumber or otherwise bring WHITEVISION's software under the control of any third parties. In the event of the Contracting Party's violation of the foregoing prohibition, the Contracting Party will forfeit to WHITEVISION an immediately payable, non-recurring penalty in the amount of EUR 25,000, to be increased by the sum of EUR 2,000 per day for as long as the violation continues, without prejudice to WHITEVISION's right to claim compensation of the actual damage suffered.

b. Throughout the term of the agreement, WHITEVISION will have unhindered access to the software. To that end, the Contracting Party will lend its full assistance to WHITEVISION.

c. If any third parties should wish to create any right on the licence granted subject to a retention of title, the Contracting Party will be required to prevent this to the extent possible and promptly to notify WHITEVISION thereof. The Contracting Party undertakes, on WHITEVISION's demand, to assign to WHITEVISION such claims as the Contracting Party may obtain against its customers as a result of this.

d. The Contracting Party will be required to lend its assistance in all such reasonable measures as WHITEVISION may wish to implement to protect its rights in the software.

e. If WHITEVISION has any software of the Contracting Party in its possession, it will be entitled to retain such software until such time as all costs incurred by WHITEVISION in the performance of any assignments from the Contracting Party, whether relating to the aforementioned or to any other items of the Contracting Party, have been paid in full, unless the Contracting Party has provided adequate security in respect of those costs. WHITEVISION will have the same right of retention if the Contracting Party is declared bankrupt or has filed an application for bankruptcy or a moratorium on payment of its debts.

#### **5. Warranty, quality, discrepancies**

a. WHITEVISION warrants the soundness of the items and services provided by it in terms of conformity to the relevant specifications stated by WHITEVISION, minor discrepancies being permitted. In no event will WHITEVISION be liable for any printing, clerical and/or counting errors and/or ambiguities in any offers, quotations, pricelists and/or order confirmations, or for the consequences thereof. In the event of a difference in interpretation of offers, quotations, pricelists and/or order confirmations, WHITEVISION's interpretation will be accepted as binding.

b. The Contracting Party will at all times be responsible for the correctness and/or completeness of the information carriers, computer software and/or data files supplied.

c. The Contracting Party will be required to inspect the software installed for correctness upon implementation.

d. The warranty will expire if: (a) the maintenance- or subscription costs are not punctually paid, (b) the Contracting Party gives notice of termination of the maintenance of software, (c) the software is used in combination with incorrect or defective hardware, or if hardware is used in combination with inappropriate software.

#### **6. Time limits for lodging a complaint**

a. The Contracting Party will promptly, but within no more than 30 days of discovery or establishment, notify WHITEVISION of any inadequacy or defect in WHITEVISION's performance of the agreement, failing which WHITEVISION's liability in that respect will expire.

b. Any liability on WHITEVISION's part will in any event expire upon erasure by WHITEVISION of the personal data held by it for purposes of the agreement, after expiry of a period of 30 days following termination of that agreement, or transfer thereof to the Contracting Party.

## **7. Payment, debt collection**

a. All payments are to be made within 14 days of the date of the invoice by way of transfer to a bank account to be designated by WHITEVISION, without any deduction, discount or setoff.

b. Any payments made by the Contracting Party will at all times first go to reduce all interest and costs due, and subsequently any payable invoices which have been outstanding the longest, even if the Contracting Party states that the payment relates to a later invoice.

c. From the day following the day of expiry of the payment period, interest will be due by the Contracting Party, without any notice of default being required, on the (remaining) invoice amount, equal to the statutory interest on an annual basis, increased by 1% per month or part of a month, as well as all judicial and extrajudicial costs of debt collection and other costs relating to collection, the latter being set at no less than 15% of the relevant amount, subject to a minimum of EUR 750.

d. The provisions of the foregoing paragraph will apply without prejudice to WHITEVISION's right to suspend further performance of the agreement or, to the extent not yet performed, dissolution thereof by giving written notice, and without prejudice to its right to claim damages.

e. WHITEVISION may at all times require the Contracting Party to pay all or part of the agreed price in advance.

f. WHITEVISION may at all times require the Contracting Party to provide additional security.

## **8. Liability**

a. Without prejudice to any provisions elsewhere in these General Terms and Conditions, WHITEVISION's liability will be limited to compensation of direct damage, up to the amount paid by the Contracting Party to WHITEVISION under the agreement for the past 12 months. WHITEVISION's total liability will at all times be limited to the amount paid out under WHITEVISION's liability insurance (less the policy excess).

b. WHITEVISION disclaims any liability for indirect damage (including but not limited to lost turnover, lost profits, damage on the part of third parties involved in the assignment, and lost business opportunities).

c. WHITEVISION undertakes to retain the data made available by the Contracting Party with due care, but disclaims any liability for loss as a result of fire, theft or breakage, etc., to the extent not covered by the insurance.

d. WHITEVISION disclaims any liability for damage caused by incorrect use or performance of software.

e. Any advice is provided by WHITEVISION to the best of its knowledge and entirely in good faith, but it disclaims any liability for loss or damage as a direct or indirect result of the contents of its advice.

f. In the event of the Contracting Party's failure, or failure punctually, to supply information, WHITEVISION disclaims any liability for punctual and complete performance of the assignment, or for the consequences thereof for the Contracting Party.

## **9. Force majeure (non-attributable failure)**

a. Neither WHITEVISION nor the Contracting Party will be liable to the other party in the event of force majeure (i.e. non-attributable failure).

b. In the event of permanent or temporary force majeure on WHITEVISION's part, the latter will be entitled to suspend all or part of the agreement without any entitlement arising on the Contracting Party's part to claim performance and/or damages.

c. During force majeure, WHITEVISION's delivery and other obligations will be suspended. If the period of force majeure has exceeded 6 months,

either party may dissolve the agreement without any liability arising to pay damages.

d. If WHITEVISION has already partly performed, it will be entitled to payment of the costs of that performance as incurred by it up to the time of occurrence of the situation of force majeure.

#### **10. Termination of the agreement**

a. Without prejudice to WHITEVISION's other rights and the provisions elsewhere in these General Terms and Conditions, WHITEVISION may dissolve an agreement by giving written notice, without any notice of default being required, and promptly call in all its claims if (a) the Contracting Party has failed to perform any of its payment obligations, (b) the Contracting Party has made improper use of software provided by WHITEVISION, (c) the Contracting Party has applied for a moratorium on payment of its debts or its bankruptcy has been applied for, (d) the Contracting Party loses free control of all or part of its assets and/or income, (e) any part of the Contracting Party's assets or capital is attached, or (f) the Contracting Party sells or winds up its business, or there is a proposal for a merger or demerger. In such event, WHITEVISION will not be liable to pay damages to the Contracting Party.

c. Any agreement (maintenance or subscription) for services or software from WHITEVISION will be entered into for a period of one (1) year. After expiry of the period of one (1) year, the agreement will be automatically renewed for terms of one (1) month each, unless punctually terminated by either party. The agreement may be terminated by either party by giving written notice by registered letter with effect from the end of the initial or any renewal term, subject to a notice period of one (1) month.

#### **11. Third-party performance**

WHITEVISION will at all times be entitled to delegate performance of all or part of the order to third parties, in order to be able to perform its obligations under the agreement.

## 12. Intellectual Property Rights

a. The Contracting Party warrants vis-à-vis WHITEVISION that the performance of the agreement, and particularly the use or publication of the items supplied by the Contracting Party, such as designs, information carriers, computer software, systems and programme descriptions, documentation and/or data files, and any other data carriers, will not infringe any rights that third parties may assert pursuant to any national, supranational or international regulations in the field of copyright or industrial and intellectual property rights. The Contracting Party will indemnify WHITEVISION both in and out of court against any and all entitlements that third parties may assert pursuant to the aforementioned laws and regulations.

b. Any and all industrial or intellectual property rights, including but not limited to copyrights, in the licences, computer programmes, systems designs, working methods, advice, etc. originating from or used by WHITEVISION are and, for the duration of performance of the assignment and thereafter, will be the express and exclusive property of WHITEVISION, all irrespective of the share in the creation of the computer programmes, systems designs, working methods, advice, etc., of the Contracting Party itself or of any third parties engaged. The exercise of such rights - including disclosure or transfer of data - will be expressly and exclusively reserved to WHITEVISION, both during and after performance of the assignment.

c. The provision of software - whether or not as a subscription or as SAAS (Software as a Service) - will only give a non-transferable right to the non-exclusive use of the relevant software. WHITEVISION will own any and all other rights.

d. The provision of non-standard or customized software will only give a non-transferable right to the non-exclusive use of the software developed by WHITEVISION for purposes of the agreement. WHITEVISION will own any and all other rights.

e. Within 7 days of termination of the agreement (in any way whatsoever) with WHITEVISION, the Contracting Party will be required to discontinue the use of any and all software, licences, documents and data carriers provided by WHITEVISION. The

Contracting Party will not be permitted to make, retain or use any copies or otherwise of such data and/or give same, or the use thereof, to any third parties.

## 13. Applicable law and disputes

a. Any and all legal relationships governed by these General Terms and Conditions and all agreements ensuing from these will be governed exclusively by the laws of the Netherlands.

b. Any and all disputes that may arise between WHITEVISION and the Contracting Party will be decided by the competent court in the district where WHITEVISION has its registered office.