

GENERAL TERMS AND CONDITIONS ViaFormance

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Definitions

1. ViaFormance: ViaFormance, established in Ermelo, Chamber of Commerce no. 08155394.
2. Customer: the party which ViaFormance has entered into an agreement with.
3. Parties: ViaFormance and customer together.
4. Consumer: a customer who is an individual acting for private purposes.

Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of services or products by or on behalf of ViaFormance.
2. Parties can only deviate from these conditions if they have explicitly agreed upon in writing.
3. The parties expressly exclude the applicability of supplementary and/or deviating general terms and conditions of the customer or of third parties.

Offers and quotations

1. Offers and quotations from ViaFormance are without engagement, unless expressly stated otherwise.
2. An offer or quotation is valid for a maximum period of 3 months from its date, unless another acceptance period is stated in the offer or quotation.
3. If the customer does not accept an offer or quotation within the applicable time frame, the offer or quotation will lapse.
4. Offers and quotations do not apply to repeated orders, unless the parties have agreed upon this explicitly and in writing.

Acceptance

1. Upon acceptance of a quotation or offer without engagement, ViaFormance reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the customer.
2. Verbal acceptance of the customer only commits ViaFormance after the customer has confirmed this in writing (or electronically).

Prices

1. All prices used by ViaFormance are in euros, are exclusive of VAT and exclusive of any other costs such as administration costs, levies and travel-, shipping- or transport expenses, unless expressly stated otherwise or agreed otherwise.
2. ViaFormance is entitled to adjust all prices for its products or services, shown in its shop, on its website or otherwise, at any time.
3. The parties agree on a total price for a service provided by ViaFormance. This is always a target price, unless the parties have explicitly agreed upon in writing on a fixed price, which cannot be deviated from.
4. ViaFormance is entitled to deviate up to 10% of the target price.
5. If the target price exceeds 10%, ViaFormance must let the customer know in due time why a higher price is justified.
6. If the target price exceeds 10%, the customer has the right to cancel the part of the order that exceeds the target price by 10%.
7. ViaFormance has the right to adjust prices annually.

8. ViaFormance will communicate price adjustments to the customer prior to the moment the price increase becomes effective.
9. The consumer has the right to terminate the contract with ViaFormance if he does not agree with the price increase.

Payments and payment term

1. ViaFormance may, at the conclusion of the agreement, require a down payment of up to 50% of the agreed amount.
2. The customer must have paid the full amount within 1 month, after delivery.
3. Payment terms are considered as fatal payment terms. This means that if the customer has not paid the agreed amount at the latest on the last day of the payment term, he is legally in default, without ViaFormance having to send the customer a reminder or to put him in default.
4. ViaFormance reserves the right to make a delivery conditional upon immediate payment or to require adequate security for the total amount of the services or products.

Consequences of late payment

1. If the customer does not pay within the agreed term, ViaFormance is entitled to charge an interest of 8% per month for commercial transactions from the day the customer is in default, whereby a part of a month is counted for a whole month.
2. When the customer is in default, he is also due to extrajudicial collection costs and may be obliged to pay any compensation to ViaFormance.
3. The collection costs are calculated on the basis of the Reimbursement for extrajudicial collection costs.
4. If the customer does not pay on time, ViaFormance may suspend its obligations until the customer has met his payment obligation.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the customer, the claims of ViaFormance on the customer are immediately due and payable.
6. If the customer refuses to cooperate with the performance of the agreement by ViaFormance, he is still obliged to pay the agreed price to ViaFormance.

Right of withdrawal

1. A consumer may cancel an online purchase during a cooling-off period of 14 days without giving any reason, provided that:
 - the product has not been used
 - it is not a product that can spoil quickly, like food or flowers
 - the product is not specially tailored for the consumer or adapted to its special needs
 - it is not a product that may not be returned for hygienic reasons (underwear, swimwear, etc.)
 - the seal is still intact, when the product is a data carrier with digital content (DVDs, CDs, etc.)
 - the product is not a (holiday)trip, a transportation ticket, a catering order or a form of leisure activity,
 - the product is not a separate magazine or a loose newspaper
 - the consumer has not renounced his right of withdrawal

The following are also excluded:

- social services and health care
- gambling activities
- financial services
- package holidays
- passenger transport services

- immovable property (house, land)
 - agreements that require a notary
 - agreements for an amount of less than € 50
2. The cooling-off period of 14 days as referred to in paragraph 1 commences:
 - on the day after the consumer has received the last product or part of 1 order
 - as soon as the consumer has received the first the product of a subscription
 - as soon as the consumer has confirmed the purchase of digital content via the internet
 3. The consumer can notify his right of withdrawal via info@viaformance.nl, if desired by using the withdrawal form that can be downloaded via the website of ViaFormance, www.viaformance.nl.
 4. The consumer is obliged to return the product to ViaFormance within 14 days after the notification of his right of withdrawal, after which period his right of withdrawal will lapse.

Right of recovery of goods

1. As soon as the customer is in default, ViaFormance is entitled to invoke the right of recovery with regard to the unpaid products delivered to the customer.
2. ViaFormance invokes the right of recovery by means of a written or electronic announcement.
3. As soon as the customer has been informed of the claimed right of recovery, the customer must immediately return the products concerned to ViaFormance, unless the parties agree to make other arrangements about this.
4. The costs for the collection or return of the products are at the expense of the customer.

Suspension of obligations by the customer

The customer waives the right to suspend the fulfillment of any obligation arising from this agreement.

Right of retention

1. ViaFormance can appeal to his right of retention of title and in that case retain the products sold by ViaFormance to the customer until the customer has paid all outstanding invoices with regard to ViaFormance, unless the customer has provided sufficient security for these payments.
2. The right of retention of title also applies on the basis of previous agreements from which the customer still owes payments to ViaFormance.
3. ViaFormance is never liable for any damage that the customer may suffer as a result of using his right of retention of title.

Settlement

The customer waives his right to settle any debt to ViaFormance with any claim on ViaFormance.

Retention of title

1. ViaFormance remains the owner of all delivered products until the customer has fully complied with all its payment obligations with regard to ViaFormance under whatever agreement with ViaFormance including of claims regarding the shortcomings in the performance.
2. Until then, ViaFormance can invoke its retention of title and take back the goods.
3. Before the property is transferred to the customer, the customer may not pledge, sell, dispose of or otherwise encumber the products.
4. If ViaFormance invokes its retention of title, the agreement will be dissolved and ViaFormance has the right to claim compensation, lost profits and interest.

Delivery

1. Delivery takes place while stocks last.
2. Delivery takes place at ViaFormance unless the parties have agreed upon otherwise.
3. Delivery of products ordered online takes place at the address indicated by the customer.
4. If the agreed price is not paid on time, ViaFormance has the right to suspend its obligations until the agreed price is fully paid.
5. In the event of late payment, the customer is automatically in default, and hereby he cannot object to late delivery by ViaFormance.

Delivery period

1. Any delivery period specified by ViaFormance is indicative and does not give the customer the right to dissolution or compensation if this period is not met with, unless the parties have expressly agreed otherwise in writing.
2. The delivery period starts after the customer has signed the agreement to ViaFormance and is confirmed in writing or electronically by ViaFormance to the customer.
3. Exceeding the specified delivery period does not entitle the customer to compensation or the right to terminate the contract, unless ViaFormance cannot deliver within 14 days after the customer has urged him to do so in writing or if the parties have agreed upon otherwise.

Actual delivery

The customer must ensure that the actual delivery of the products ordered by him can take place in time.

Transport costs

Transport costs are paid by the customer, unless the parties have agreed upon otherwise.

Packaging and shipping

1. If the package of a delivered product is opened or damaged, the customer must have a note drawn up by the forwarder or delivery person before receiving the product. In the absence of which ViaFormance may not be held liable for any damage.
2. If the customer himself takes care of the transport of a product, he must report any visible damage to products or the packaging prior to the transport to ViaFormance, failing which ViaFormance cannot be held liable for any damage.

Insurance

1. The customer undertakes to insure and keep insured the following items adequately against fire, explosion and water damage as well as theft:
 - goods delivered that are necessary for the execution of the underlying agreement
 - goods being property of ViaFormance that are present at the premises of the customer
 - goods that have been delivered under retention of title
2. At the first request of ViaFormance, the customer provides the policy for these insurances for inspection.

Storage

1. If the customer orders products later than the agreed delivery date, the risk of any quality loss is entirely for the customer.
2. Any extra costs as a result of premature or late purchase of products are entirely at the customer's expense.

Guarantee

1. When parties have entered into an agreement with services included, these services only contain best-effort obligations for ViaFormance, not obligations of results.
2. The warranty relating to products only applies to defects caused by faulty manufacture, construction or material.
3. The warranty does not apply in the event of normal wear and tear and damage resulting from accidents, changes made to the product, negligence or improper use by the customer, or when the cause of the defect cannot clearly be established.
4. The risk of loss, damage or theft of the products that are the subject of an agreement between the parties, will pass on to the customer when these products are legally and/or factually delivered, at least are in the power of the customer or of a third party who receives the product for the benefit of the customer.

Performance of the agreement

1. ViaFormance executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. ViaFormance has the right to have the agreed services (partially) performed by third parties.
3. The execution of the agreement takes place in mutual consultation and after written agreement and payment of the possibly agreed advance by the customer.
4. It is the responsibility of the customer that ViaFormance can start the implementation of the agreement on time.
5. If the customer has not ensured that ViaFormance can start the implementation of the agreement in time, the resulting additional costs and/or extra hours will be charged to the customer.

Duty to inform by the customer

1. The customer shall make available to ViaFormance all information, data and documents relevant to the correct execution of the agreement to in time and in the desired format and manner.
2. The customer guarantees the correctness, completeness and reliability of the information, data and documents made available, even if they originate from third parties, unless otherwise ensuing from the nature of the agreement.
3. If and insofar as the customer requests this, ViaFormance will return the relevant documents.
4. If the customer does not timely and properly provides the information, data or documents reasonably required by ViaFormance and the execution of the agreement is delayed because of this, the resulting additional costs and extra hours will be charged to the customer.

Intellectual property

1. ViaFormance retains all intellectual property rights (including copyright, patent rights, trademark rights, design and design rights, etc.) on all designs, drawings, writings, data carriers or other information, quotations, images, sketches, models, scale models, etc., unless parties have agreed otherwise in writing.
2. The customer may not copy or have copied the intellectual property rights without prior written permission from ViaFormance, nor show them to third parties and / or make them available or use them in any other way.

Confidentiality

1. The client keeps any information he receives (in whatever form) from ViaFormance confidential.
2. The same applies to all other information concerning ViaFormance of which he knows or can reasonably suspect that it is secret or confidential, or of which it can expect that its disclosure may cause damage to ViaFormance.

3. The customer takes all necessary measures to ensure that he keeps the information referred to in paragraphs 1 and 2 secret.
4. The obligation of secrecy described in this article does not apply to information:
 - which was already made public before the customer heard this information or which later became public without being the result of a violation of the customer's duty to confidentiality
 - which is made public by the customer due to a legal obligation
5. The confidentiality obligation described in this article applies for the duration of the underlying agreement and for a period of 3 years after the end thereof.

Penalties

1. If the customer violates the articles of these general terms and conditions about secrecy or intellectual property, then he forfeits on behalf of ViaFormance an immediately due and payable fine of € 1.000 if the customer is a consumer and € 5.000 if the customer is a company, for each violation and in addition an amount of 5% of the aforementioned amount for each day that this violation continues.
2. No actual damage, prior notice of default or legal proceedings are required in forfeiting the fine referred to in the first paragraph of this article.
3. The forfeiture of the fine referred to in the first paragraph of this article shall not affect the other rights of ViaFormance including its right to claim compensation in addition to the fine.

Indemnity

The customer indemnifies ViaFormance against all third-party claims that are related to the products and/or services supplied by ViaFormance.

Complaints

1. The customer must examine a product or service provided by ViaFormance as soon as possible for possible shortcomings.
2. If a delivered product or service does not comply with what the customer could reasonably expect from the agreement, the customer must inform ViaFormance of this as soon as possible, but in any case within 1 month after the discovery of the shortcomings.
3. Consumers must inform ViaFormance of this within two months after detection of the shortcomings.
4. The customer gives a detailed description as possible of the shortcomings, so that ViaFormance is able to respond adequately.
5. The customer must demonstrate that the complaint relates to an agreement between the parties.
6. If a complaint relates to ongoing work, this can in any case not lead to ViaFormance being forced to perform other work than has been agreed.

Giving notice

1. The customer must provide any notice of default to ViaFormance in writing.
2. It is the responsibility of the customer that a notice of default actually reaches ViaFormance (in time).

Joint and several Client liabilities

If ViaFormance enters into an agreement with several customers, each of them shall be jointly and severally liable for the full amounts due to ViaFormance under that agreement.

Liability of ViaFormance

1. ViaFormance is only liable for any damage the customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If ViaFormance is liable for any damage, it is only liable for direct damages that results from or is related to the execution of an agreement.
3. ViaFormance is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If ViaFormance is liable, its liability is limited to the amount paid by a closed (professional) liability insurance and in the absence of (full) payment by an insurance company of the damages the amount of the liability is limited to the (part of the) invoice to which the liability relates.
5. All images, photos, colors, drawings, descriptions on the website or in a catalog are only indicative and are only approximate and cannot lead to any compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

Expiry period

Every right of the customer to compensation from ViaFormance shall, in any case, expire within 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions in article 6:89 Dutch Civil Code.

Dissolution

1. The customer has the right to dissolve the agreement if ViaFormance imputably fails in the fulfillment of his obligations, unless this shortcoming does not justify termination due to its special nature or because it is of minor significance.
2. If the fulfillment of the obligations by ViaFormance is not permanent or temporarily impossible, dissolution can only take place after ViaFormance is in default.
3. ViaFormance has the right to dissolve the agreement with the customer, if the customer does not fully or timely fulfill his obligations under the agreement, or if circumstances give ViaFormance good grounds to fear that the customer will not be able to fulfill his obligations properly.

Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of ViaFormance in the fulfillment of any obligation to the customer cannot be attributed to ViaFormance in any situation independent of the will of ViaFormance, when the fulfillment of its obligations towards the customer is prevented in whole or in part or when the fulfillment of its obligations cannot reasonably be required from ViaFormance .
2. The force majeure situation referred to in paragraph 1 is also applicable - but not limited to: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, deliverymen or other third parties; unexpected disturbances of power, electricity, internet, computer or telecoms; computer viruses, strikes, government measures, unforeseen transport problems, bad weather conditions and work stoppages.
3. If a situation of force majeure arises as a result of which ViaFormance cannot fulfill one or more obligations towards the customer, these obligations will be suspended until ViaFormance can comply with it.
4. From the moment that a force majeure situation has lasted at least 30 calendar days, both parties may dissolve the agreement in writing in whole or in part.
5. ViaFormance does not owe any (damage) compensation in a situation of force majeure, even if it has obtained any advantages as a result of the force majeure situation.

Modification of the agreement

If, after the conclusion of the agreement and before its implementation, it appears necessary to change or supplement its contents, the parties shall timely and in mutual consultation adjust the agreement accordingly.

Changes in the general terms and conditions

1. ViaFormance is entitled to amend or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.
3. Major changes in content will be discussed by ViaFormance with the customer in advance as much as possible.
4. Consumers are entitled to cancel the agreement in the event of a substantial change to the general terms and conditions.

Transfer of rights

1. The customer cannot transfer its rights deriving from an agreement with ViaFormance to third parties without the prior written consent of ViaFormance.
2. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

Consequences of nullity or annulability

1. If one or more provisions of these general terms and conditions prove null or annulable, this will not affect the other provisions of these terms and conditions.
2. A provision that is null or annulable shall, in that case, be replaced by a provision that comes closest to what ViaFormance had in mind when drafting the conditions on that issue.

Applicable law and competent court

1. Dutch law is exclusively applicable to all agreements between the parties.
2. The Dutch court in the district where ViaFormance is established is exclusively competent in case of any disputes between parties, unless the law prescribes otherwise.

Drawn up on 03 January 2022.