

## Algemene Verkoop- en Leveringsvoorwaarden Versie 1.0

Via B.V. (Chamber of Commerce number: 160 68 457), Rembrandterf 1, 5261 XS Vught, The Netherlands

### Article 1 Definitions

1. VIA: the private company with limited liability VIA B.V., established in Vught, the Netherlands, having its principal place of business at Rembrandterf 1, 5261 XS Vught, the Netherlands. Registered at the Chamber Of Commerce under number: 160 68 457.
2. Agreement: any agreement which is formed between VIA and the customer, any change or supplement thereto, as well as all (legal) activities for the preparation and/or execution of said agreement.
3. Services: the supply of VIA Software, goods and other services (including organisational and IT advice, feasibility studies, consultancy, educational programmes, courses, training, support, secondment, the design or development of software or Information Systems or the provision of related assistance and service with regard to networks, development, use and maintenance of software).
4. VIA Software: the applications (services) offered by VIA (or its commercial agent on behalf of VIA).
5. Goods: the goods which VIA sells and supplies to the customer pursuant to the agreement, such as certain traffic data from third parties.
6. Subscription: the agreement between the customer and VIA in which the access to and use of the VIA Software and applicable conditions are laid down.
7. Customer: any legal entity/natural person that enters and/or has entered into an agreement with VIA and/or is in discussions with VIA regarding the conclusion of an agreement.
8. User: the party that acquires personal access to VIA Software pursuant to a subscription.
9. Delivery deadline: the deadlines issued by VIA relating to the delivery of services and/or goods.
10. Partner: the legal entity/natural person that VIA collaborates with, for example with regard to collecting data, the development of VIA Software, the accessing of knowledge and/or the use of customer network.
11. Commercial agent: the legal entity/natural person that, pursuant to an agreement with VIA, is allowed to agree a subscription with the customer on behalf of VIA.

### Article 2 Applicability

1. These general terms and conditions apply to all offers, deliveries and services to be performed by VIA to the customer and all subscriptions and other agreements between VIA and the customer, as well as the sale of goods by VIA.
2. The applicability of other general terms and conditions is explicitly rejected.
3. If any provision in these general terms and conditions is invalid or null and void, the other provisions of these general terms and conditions will continue to apply in full.
4. Not only VIA, but also all persons engaged by VIA in the execution of any agreement, as well as the commercial agent, can invoke these general terms and conditions.
5. These general terms and conditions have been prepared in Dutch and English. In the event of any contradictions, the Dutch version will prevail.

### Article 3 Formation and execution of the agreement

1. All offers by VIA are without obligation and should be interpreted as a single whole.
2. Agreements are only formed if and insofar as VIA has confirmed them in writing or after VIA has started execution.
3. If due to circumstances, including the nature, scope or urgency of the customer's order, no order confirmation has been sent, the invoice will be regarded as the order confirmation.
4. The customer must issue to VIA on time any details which VIA indicates as being essential, or with regard to which the customer reasonably ought to understand are essential for the execution of the agreement. If the details required for the execution of the agreement have not been received by VIA on time, VIA will be entitled to suspend execution of the agreement and/or to charge the customer the resulting extra costs and extra fees in accordance with the usual rate.
5. The customer guarantees the accuracy, completeness and reliability of the details issued to VIA (such as requirements, specifications or the performance and other details on which VIA bases its offer), including if these have come from third parties. VIA is not liable for any damage which arises due to VIA having used inaccurate and/or incomplete data, unless VIA should have been aware of said inaccuracy or incompleteness.
6. VIA will perform the services referred to in the agreement with the care and expertise which may be reasonably expected of it in the given circumstances, but does not guarantee that the intended result will be achieved.

### Article 4 Prices, rates and payment

1. All prices and rates apply in euros and do not include turnover tax and/or other levies.
2. The rates relating to a subscription can be adjusted annually by VIA. This adjustment will never be higher than the index which applies to the services issued by Statistics Netherlands (CBS). VIA can deviate from this in the context of the execution or actual effect of the subscription in countries other than the Netherlands.
3. Incidentally VIA is entitled, in the event of circumstances which lead to increased cost prices, to change the prices and rates it uses. In the event that the change implies an increase of more than 10%, or if this change takes place within three months after concluding the agreement with the customer, the customer will be entitled to dissolve the agreement with VIA. This entitlement lapses on the 15th day after the date of the first invoice which was sent to the customer after the increase in prices and rates.
4. If the agreement is executed over a period longer than one month, work performed will be charged in the interim.
5. In the event of a subscription, invoicing and payment will take place before the subscription period in question commences.
6. VIA is always entitled to demand a payment in advance, or the payment of an advance, from the customer. Any advance received will be set off against the final commission invoice.
7. Invoices must be paid, without suspension or set-off, within 30 days after the invoice date. If this deadline is exceeded, the customer will be legally in default and late payment interest equal to the applicable statutory (commercial) interest will be payable and the work may be suspended.
8. The customer will only be regarded as having paid if the amount is transferred to one of the bank accounts in the name of VIA.
9. In the event of late payment, the customer will owe the actually incurred extrajudicial costs, albeit an amount of at least 15% of the

outstanding amount with a minimum applying of € 40.00. The customer will also owe the actually incurred judicial costs which are not limited to the costs of proceedings to be settled which are allocated to VIA. Payments made will first be deducted from the payable interest and (extra)judicial costs and then from the oldest outstanding amounts.

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#### **Article 5 Delivery deadlines**

1. The delivery deadlines issued by VIA will have been determined to the best of its knowledge on the basis of the data known to VIA when the agreement was concluded, but are only approximated and are only an indication, unless explicitly agreed otherwise in writing. VIA undertakes to observe the delivery deadlines wherever possible. The simple violation of delivery deadlines will not cause VIA to be in default and VIA will always – even if the parties have agreed a final deadline – have to be placed in default at least in writing and given a reasonable time to comply.
2. In the event of violation of delivery deadlines as a consequence of force majeure the provisions of Article 15 of these conditions will apply.

#### **Article 6 Complaints**

1. The customer is obliged to check goods supplied and/or services provided immediately after they have been delivered and put to use, or work once it has been completed, for any defects and to notify VIA in writing of any defects found as quickly as possible, but by no later than 8 days after the work has been completed.
2. The customer must notify VIA of any hidden defects in writing within 8 days after the day on which the defects were discovered, or reasonably could have been discovered.
3. If the customer has not complained by the deadlines referred to in the previous paragraphs, it will be considered to have approved the deliveries and to have relinquished all rights and authorities available on the grounds of the law and/or the agreement.

#### **Article 7 Retention of title upon delivery of goods**

1. Although all goods delivered to the customer will continue to be the property of VIA or its suppliers, they will still be for the customer's account and risk, until the customer has paid in full all amounts and claims payable pursuant to the agreement due to failures in fulfilment by the customer of this or similar agreement(s), including interest and collection costs.

#### **Article 8 Intellectual property and confidentiality**

1. All intellectual property rights to all VIA Software made available pursuant to the agreement, including upgrades and supplements, and/or analyses, reports, designs, drawings, (data) models, formulas, software, documents and goods, developed or made available pursuant to the agreement, as well as related preparatory material, with the exception of the data analysed by the customer itself, (collectively to be referred to as: 'the information') are vested exclusively in VIA or its licensors.
2. The VIA Software and the ideas behind it are and will remain the (intellectual) property of VIA. VIA is entitled to include ideas put forward by the customer and/or the user in the VIA Software without owing anything in return to the customer and/or the user and without the latter being able to derive any rights. VIA also reserves the right to use the knowledge which has increased through delivery of the services for other purposes, insofar as no confidential information is communicated to third parties while doing so.
3. VIA is and will remain the owner of the data models in the VIA Software. Unless otherwise agreed, the customer is and will remain the owner of the data entered into those data models. Upon termination of the subscription or the agreement VIA will return that data to the customer at its request in ASCII after the customer has fulfilled all its obligations pursuant to said subscription or said agreement. The customer must submit this request to VIA within 1 month after termination of the subscription or the agreement, with failure to do so meaning that VIA can demand payment for making said data available and/or can refuse to make it available.
4. The customer will only acquire non-exclusive, non-transferable rights of use and authorities which are explicitly allocated to it under the agreement/subscription.
5. The information is exclusively intended to be used by the customer pursuant to the agreement/subscription. The customer is not permitted to make information available to third parties, nor to reproduce it or make copies of it, nor to have it reproduced or have copies made.
6. The customer is obliged to observe secrecy with regard to all information made available to it by, or on behalf of, VIA.

#### **Article 9 Violation of third-party rights**

1. If, in a legal action against VIA, a competent court irrevocably establishes that a service or good supplied by VIA violates a third-party intellectual property right, VIA will, at its own discretion, replace the service or good involved with a service or good which does not violate the right in question, attempt to acquire a relevant right of use, or repay the customer the price paid for the service or good, minus a reasonable amount for depreciation and – in the case of goods – on the condition that the original good is returned.
2. With regard to any violation of third-party rights, VIA does not have any obligations other than those referred to in the first paragraph.
3. If an agreement is executed according to the design, drawings, formula, specifications or instructions issued by, or on behalf of, the customer, the customer indemnifies VIA against all claims relating to alleged violations of third-party intellectual property rights.

#### **Article 10 Privacy**

1. The customer guarantees that all statutory regulations concerning the processing of personal data will be observed and that all the prescribed registrations have been made and all permissions acquired with regard to processing personal details. The customer will issue all relevant information to VIA at the first request.
2. The customer indemnifies VIA against all third-party claims which might be brought against VIA due to violation of the statutory regulations concerning the processing of personal data by the customer and/or the users that obtain access to the VIA Software pursuant to the agreement/subscription.
3. With regard to any violation of third-party rights, VIA does not have any obligations other than those referred to in the first paragraph.

#### **Article 11 Liability; indemnification**

1. The total liability of VIA due to attributable failure in the fulfilment of the agreement/subscription is limited to payment of the material and direct damage up to a maximum of the amount of the individual price stipulated for the services and/or goods concerned.

2. VIA is not liable for indirect damage and consequential loss, such as missed savings, damage due to operational delays and damage as a consequence of claims against the customer and/or the user.
3. VIA is not liable due to deformation, destruction or loss of data or documents.
4. A claim against VIA for compensation or otherwise will lapse twenty-four months after it has been lodged.
5. The customer indemnifies VIA against all third-party claims which might be brought against VIA due to non-fulfilment of the agreement/subscription by the customer and/or users that obtain access to the VIA Software pursuant to the agreement/subscription. The customer is liable for all damage which VIA suffers as a consequence of this non-fulfilment.

#### **Article 12 Third parties**

1. VIA is free to engage third parties in the execution of the agreement, with the costs being charged on to the customer. VIA is entitled to accept the conditions which third parties stipulate, including any limitations of liability and to invoke such conditions vis-à-vis the customer insofar as it concerns the execution of the agreement by third parties. VIA is not liable for shortcomings of any third parties it engages, except in the event of intent or gross negligence on the part of VIA.
2. The assignment will be executed exclusively on behalf of the customer. Third parties cannot derive any rights from this. The customer indemnifies VIA and the third parties it engages against third-party claims which relate to the work performed by VIA on behalf of the customer, and the costs of putting up a defence against those claims.
3. The customer cannot restrict VIA as regards concluding agreements with other customers and/or users of VIA Software and/or limit or block the use of VIA Software by those other customers and/or users in any other way.

#### **Article 13 Non-competition**

1. The customer is not permitted, during the agreement and during a period of 1 year after termination thereof, to engage VIA employees who are/were involved in the execution of the work, either directly or indirectly, to employ them or to negotiate with these people with regard to employment, other than in consultation with, and with the approval of, VIA.

#### **Article 14 Transfer of rights and obligations**

1. The customer is not entitled to transfer the rights and obligations resulting from the agreement to third parties without written permission from VIA.

#### **Article 15 Force majeure**

1. Any obligation of VIA to fulfil the agreement is to be suspended for the period of time that fulfilment is not (properly) possible as a consequence of force majeure.
2. Force majeure is taken to include government measures, war and natural disasters, work-related unrest (such as occupations and strikes), power cuts, Internet malfunctions and malfunctions affecting the telephone network, company malfunctions, company malfunctions, shortcomings on the part of suppliers, subcontractors or partners of VIA or other third parties, such as unsatisfactory fulfilment of subscription obligations and licences prescribed to the customer and/or the user, including any defects in the deliveries they make to VIA, and the non-availability, late availability, or insufficient availability of materials, data, transport, fuels, power and manpower.
3. If the fulfilment has been suspended for more than three months due to a situation referred to in the second paragraph, or as soon as it is certain that this is going to last at least three months, either of the parties can demand, in a registered letter, that the agreement is either adapted to the circumstances, or is dissolved with immediate effect for the party in question, without the parties being mutually obliged to pay compensation.

#### **Article 16 Dissolution of the Agreement**

1. If the customer does not fulfil one or more of its obligations vis-à-vis VIA, or does not do so on time or properly, applies for a suspension of payments, is declared bankrupt, or if its company is terminated, VIA will be entitled to dissolve the agreement wholly or partially, with immediate effect, without a notice of default being required, without prejudice to the entitlement to compensation for all damage and its other statutory rights. VIA is never obliged, due to a dissolution on the grounds of this paragraph, to refund any monies that have already been received or to pay compensation. As a consequence of this dissolution the right to use that which VIA has made available to the customer pursuant to the agreement will lapse.
2. Amounts which VIA invoiced before the dissolution in connection with previous deliveries of services and/or goods will become immediately due and payable at the moment of dissolution.
3. At the moment of dissolution the customer is obliged to return immediately to VIA all that which VIA is made available to it pursuant to the agreement.

#### **Article 17 Amendment of the general terms and conditions**

1. VIA is always entitled to amend these general terms and conditions and to communicate this to the customer in writing, by email or by posting the amended general terms and conditions on the login page or in another clear manner on the VIA website. The customer must object to an amendment to the general terms and conditions within 10 days after it has been notified of the amended conditions, with failure to do so resulting in the assumption that it has accepted the amended general terms and conditions.

#### **Article 18 Applicable law and competent court**

1. The legal relationship between the customer and VIA is exclusively subject to Dutch law. The applicability of the Vienna Sales Convention (CISG), if applicable, is expressly excluded.
2. The parties will attempt to resolve disputes which might arise in connection with the agreement first and foremost by means of mutual consultation and, if they fail to reach mutual agreement, through the intervention of a mediator affiliated to the Netherlands Mediation Institute [Nederlands Mediation Instituut] (NMI). Remaining disputes, including disputes about the existence and validity of the agreement will, in the first instance, be submitted exclusively to the competent court in the district of East Brabant.

These General Terms and Conditions of Sale and Delivery of VIA B.V. have been published on the VIA Internet site ([www.via.nl](http://www.via.nl)) and will be sent to



customers free of charge at the first request.

