

COM'CERT BVBA – General Terms and Conditions – August 2016

1. Applicability

All our services and supplies are subject to the terms and conditions of sale set out below. The applicability of these terms and conditions shall constitute a decisive precondition for COM'CERT BVBA in deciding to conclude contracts. Each order placed by the customer shall entail acceptance of the terms and conditions of sale of COM'CERT BVBA. If the parties should depart from these terms and conditions or a part thereof for one or more particular orders, the terms and conditions shall remain in force between the parties with regard to other or further offers, orders and agreements. If one or more clauses or part of the terms and conditions should turn out to be invalid or unenforceable, they shall not affect the validity and applicability of the other provisions.

2. Acceptance and orders

No commitment undertaken by representatives of COM'CERT BVBA or by persons acting in the name of COM'CERT BVBA will be valid if not confirmed in writing by the management of COM'CERT BVBA. Specifications and offers shall be based on the values of wages and materials in force. If they are changed, COM'CERT BVBA reserves the right to adjust the prices in a proportional manner. Unless expressly stipulated otherwise, COM'CERT BVBA offers shall in each case be valid for only 30 days as of the quotation date. All prices are net prices, exclusive of VAT. All travel expenses shall be at the customer's expense and shall be charged separately.

3. Delivery and execution period

Services shall be provided and supplies delivered according to availability and in the order in which orders come in. Any delivery or execution period mentioned by COM'CERT BVBA in the quotation and/or any other document shall be given for information only, without any obligation and without constituting an essential condition of the contract. A late execution or delivery shall under no circumstances warrant the refusal of the services or merchandise nor constitute a reason to claim compensation.

4. Acceptance by the customer

The ordered products shall be delivered and accepted, or deemed to be so, at the time that the products are delivered to the customer. Works shall be deemed to be accepted at the time of the completion and delivery thereof and if there is no explicit and reasoned refusal to proceed to acceptance at that time.

5. Transfer of risk and ownership

The delivered products (including hardware) shall remain the property of COM'CERT BVBA until payment in full of the invoice pertaining thereto, without prejudice to the right to compensation for loss of profit and consequential loss arising out of the fact that it has become impossible to sell those products again as new products. This prejudice shall be estimated on a flat rate basis at 40% at least of the invoiced value, without prejudice to the right to prove and to claim higher damages from the customer. The customer shall nonetheless always accept the risk of the delivered products from the moment of delivery.

6. Cancellation

Cancellation of the order by the customer shall be considered as breach of contract. In such a case, flat rate compensation of 10% of the agreed price may be charged by COM'CERT BVBA, without prejudice to the right of COM'CERT BVBA to prove and claim higher damages. COM'CERT BVBA reserves the right to consider the agreement to be terminated as of right and without prior notice, in the case of bankruptcy, manifest insolvency, (application for) legal composition or suspension of payments.

7. Obligations of the customer for implementation

The customer shall, exclusively at his expense and in due course, provide the necessary facilities for the computer infrastructure. If he fails to do so, COM'CERT BVBA shall be entitled to postpone the execution of the works and to claim from the customer all provable costs incurred as a result of the latter's failure(s). The customer shall also use the products and works in accordance with the instructions for use, technical specifications and licensing conditions communicated by COM'CERT BVBA, which the customer shall acknowledge to have received and to have become cognisant thereof. The customer shall hold COM'CERT BVBA harmless against all claims or demands by third parties for the incorrect use of products or works by the customer.

8. Conditions of payment

All COM'CERT BVBA invoices shall be payable at the latest on the 30th day after the date of invoice. In the event of late payment, interest on arrears of 1% per month shall accrue as of right and without prior notice. COM'CERT BVBA may work with prepayment invoices. Furthermore, flat rate compensation of 10% of the invoice amount, with a minimum of €60, shall be chargeable as of right and without prior notice, for damages. If one invoice is not paid on the due date, all other open invoices shall become due also. Upon every late payment, as well as every non-compliance with a (specific) obligation on the part of the customer, COM'CERT BVBA shall moreover be entitled to suspend the performance of any works or services, as of right and without prior notice, and to resume only after payment or compliance with all obligations.

9. Liability

COM'CERT BVBA shall under no circumstances be held liable for the complete or partial non-execution of the order as a result of restrictions relating to the object of the order and/or restrictions imposed by an authority which may reasonably be deemed to be competent. All orders carried out by COM'CERT BVBA shall entail an obligation of means, whereby COM'CERT BVBA shall endeavour at all times to carry out the order to the best of its ability and in accordance with the rules of the trade in the field of information technology.

COM'CERT BVBA, its bodies, subordinates, representatives and subcontractors shall, as regards the services provided, not be held liable for any loss or damage, caused by or arising out of an incorrect or late performance, or a complete or partial non-performance, unless the customer can prove that this is due to intent or gross negligence. In such a case, the prejudice shall be limited to the replacement or completion of the products or works in accordance with the order or the agreement or, according to the choice of COM'CERT BVBA, the payment of compensation to be determined by and between the parties, which shall in any event be limited to the amount of the order concerned maximum. Under no circumstances may COM'CERT BVBA be held liable for any indirect or consequential damages, damage inflicted on third parties, loss of earnings or lost investments.

Cases of force majeure, irrespective of whether they make the performance of the agreement impossible temporarily or definitively, shall suspend or extinguish the obligations of COM'CERT BVBA as of right and shall absolve COM'CERT BVBA of any liability or damages that might arise as a result. Cases of force majeure for COM'CERT BVBA shall include wars and similar situations, decisions by the public authorities, strikes, floods, fire as well as any cause beyond the control of COM'CERT BVBA which makes the delivery and/or performance of goods/works impossible. This list is not exhaustive.

10. Complaints

The protest of invoice shall, on pain of forfeiture of the right to protest, be lodged, with indication of reasons, by registered letter within eight days of the date of invoice. Without prejudice to the foregoing, no complaint for visible defects, missing goods or works, or non-compliant delivery can be lodged after the day of acceptance as stipulated in Article 6 of these terms and conditions. Any other demand or claim against COM'CERT BVBA shall be admissible only if lodged in writing by registered letter within 72 hours following the event which could engage the liability of COM'CERT BVBA. If the customer fails to accept the delivery or makes it impossible, the 72-hour term shall start to run upon receipt of the delivery note or in the absence thereof, of the date of invoice. If no complaint is lodged within the aforementioned periods, any use and even a partial commissioning of the goods or works shall without more ado be considered as an act of approval or acceptance.

A dispute concerning a service or delivery is no reason for refusing to make the payment.

11. Intellectual and industrial property rights

The customer recognises the intellectual and/or industrial property rights of COM'CERT BVBA on products or works developed by COM'CERT BVBA (including, but not limited to, website, courses, documents, work methods), and shall take no action to challenge or restrict said rights. The customer shall be prohibited from copying the products or works fully or partially with a view to deliver to third parties or to have third parties use part or all of the products or works. The customer shall moreover not be authorised to remove or change in any way any indication concerning copyright, trademarks, logos, commercial names or other intellectual or industrial property rights from the products, software, texts, drawings, courses, or other materials supplied by COM'CERT BVBA. Violations of the obligations described in this article on the part of the customer shall, as of right and without prior notice, entail flat-rate compensation of €3,000 (three thousand euros) per ascertained violation, payable upon first request by COM'CERT BVBA, without prejudice to the right of COM'CERT BVBA to show and claim higher damages.

12. Prohibition of poaching

The customer shall be prohibited from recruiting COM'CERT BVBA staff for 6 months after the end of the order, without the prior, written consent of COM'CERT BVBA. Breach of this article shall entail, as of right, the payment of contractual flat-rate compensation to COM'CERT BVBA equal to the gross annual salary of the COM'CERT BVBA staff member poached.

13. Confidentiality

The customer and COM'CERT BVBA shall treat all confidential data obtained in connection with the execution of the order strictly as such, and shall spare no effort to maintain said confidentiality, including after the termination of the order.

14. Settlement of disputes

Any and all disputes shall be referred exclusively to the Brussels court, without prejudice to our right to refer the matter to the territorial competent authority under common law. Only Belgian law shall apply to agreements with COM'CERT BVBA.