

# General Terms and Conditions of Delivery of Cito

Filed with the  
Central Gelderland  
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## I General provisions

### Article 1 Definitions

- 1.1 General Terms and Conditions of Delivery: the general terms and conditions of delivery of Cito applicable to all Agreements under which Cito supplies Products and/or Services to the Client.
- 1.2 Cito: Stichting Cito Instituut voor Toetsontwikkeling (Chamber of Commerce no. 09103470) or Cito B.V. (Chamber of Commerce no. 09151851), both with registered office at Amsterdamseweg 13 in (6814 CM) Arnhem, the Netherlands.
- 1.3 Client: the legal person with whom Cito enters into an agreement for the provision of Products and/or Services.
- 1.4 Agreement: the arrangements between Cito and the Client under which Cito provides Products and/or Services to the Client.
- 1.5 Parties: Cito and the Client jointly.

### Article 2 General

- 2.1 Additions to or deviations from these General Terms and Conditions of Delivery must be agreed in writing; these additions and deviations only apply to the Agreement in which they are made.
- 2.2 Without prejudice to the provisions in Article 2.1, Cito may unilaterally amend the General Terms and Conditions of Delivery. Amendments will enter into force thirty (30) days after they are notified to the Client and will apply to all new Agreements entered into between the Parties as well as all existing Agreements between the Parties, insofar as they are executed after the date of notification.
- 2.3 The Client may only transfer the rights and obligations ensuing from an Agreement between the Parties to a third party with the written consent of Cito.
- 2.4 If any provision in these General Terms and Conditions of Delivery should be partly or wholly void or be annulled at any time, the remaining provisions in these General Terms and Conditions of Delivery will remain fully applicable. Cito and the Client will then consult one another with the aim of agreeing new provisions to replace the void or annulled provisions, taking into account as much as possible the aim and purpose of the original provision(s).
- 2.5 The applicability of any purchase conditions or other terms and conditions of the Client is expressly rejected, unless they have been accepted in writing, in whole or in part, by Cito. Any acceptance will be binding upon Cito solely in respect of that specific Agreement.

### Article 3 Agreement formation and execution

- 3.1 All offers by Cito are valid for fourteen (14) days unless otherwise indicated in writing by Cito.
- 3.2 The Client warrants the accuracy and completeness of the requirements, specifications and other information given to Cito by it or on its behalf and on which Cito bases its offer.
- 3.3 Cito reserves the right to impose restrictions regarding the frequency of ordering Products and/or Services.
- 3.4 Cito reserves the right to set a credit limit, under conditions to be determined, per order or per delivery. Cito furthermore reserves the right at all times not to make delivery in the event a set credit limit is exceeded.
- 3.5 A delivery date will never constitute a strict deadline (*fatale termijn*).
- 3.6 Cito may have certain work carried out by third parties.  
The applicability of Sections 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is explicitly excluded.

- 3.7 The Client must provide Cito in a timely manner with all the information that it knows or ought to know is necessary for the performance of the order. The Client warrants the correctness of the information provided by it.
- 3.8 If Cito needs information from the Client for the execution of the Agreement, the execution period will not commence until the Client has made the information available to Cito correctly and completely.
- 3.9 Cito may take a phased approach to executing the Agreement and invoice separately for each phase thus completed.
- 3.10 If the Agreement is implemented by phases, Cito may suspend the execution of the parts belonging to a following phase until the Client has approved the results of the preceding phase in writing.
- 3.11 If it becomes apparent during the execution of the Agreement that it is necessary to amend or supplement the Agreement to ensure its proper execution, the Parties will alter the Agreement in a timely manner and in joint consultation.

#### **Article 4 Price and payment**

- 4.1 Unless otherwise indicated in writing, the prices stated in an offer are exclusive of VAT, other government levies as well as costs, if any, to be incurred in connection with the Agreement (including travel and accommodation expenses, delivery charges and administrative costs).
- 4.2 Prices are based on execution during normal working hours. If work must be performed outside normal working hours due to any cause attributable to the Client, the additional costs will be borne by the Client, unless otherwise provided in the offer or the order confirmation.
- 4.3 A quotation (whether combined or not) does not oblige Cito to perform part of the order for a corresponding part of the quoted price. Offers do not automatically apply to future Agreements.
- 4.4 If and to the extent that the Agreement between the Parties is a continuing performance agreement, Cito will have the right to adjust the price as from the commencement of a new period as provided in Article 5.2. A price increase will be announced at least three (3) months before its effective date in the manner specified in the Agreement or, failing that, will be announced in writing.
- 4.5 In the event of a subsequent increase in one or more cost price factors - such as for example, but not limited to, wage costs, taxes, national insurance contributions, insurance costs, change in exchange rates, housing costs, energy costs, etc., Cito will have the right to adjust prices during the term of an agreed period. Such a price increase will be announced in writing at least three (3) months prior to the effective date. If the Client does not wish to agree to the increase, the Client will be entitled to terminate the Agreement by giving notice in writing within thirty (30) days of the announcement of the new price, with effect from the date the new price would have become effective.
- 4.6 The payment term constitutes a strict deadline. If the Agreement does not specify any payment term, a payment term of thirty (30) days from the invoice date will apply.
- 4.7 If the Client has not paid before the expiry of the payment term, he/she/it will be in default by operation of law. The Client will then be liable for interest at a monthly rate of 1% as well as extrajudicial collection costs at 15% of the outstanding amount, with a minimum of €150.
- 4.8 Cito may apply the payments made by the Client firstly to settle the costs, then to meet the interest that has fallen due and finally to pay the principal, even if the Client makes contrary statements concerning such payments.
- 4.9 The Client may not suspend any payment obligation, nor may he/she/it claim or invoke setoff.

#### **Article 5 Duration of the Agreement**

- 5.1 If and to the extent that the Agreement between the Parties is a continuing performance agreement, the Agreement will be entered into for the agreed duration, in the absence of which the duration of one (1) year will apply.
- 5.2 After the agreed duration or, in the absence thereof, the duration of one (1) year, the Agreement will be automatically renewed for successive periods of one (1) year. The Agreement may be terminated subject to three (3) months' notice with effect from the end of an agreed period.

#### **Article 6 Confidentiality**

- 6.1 Both Parties must maintain secrecy regarding all confidential information they have obtained from one another in the context of the Agreement. Information is considered confidential if this has been communicated by the other Party, if one knows or can reasonably suspect that it is of a confidential nature or information of which one can expect that its dissemination could cause harm to the other Party.  
A Party receiving confidential information will only use such information for the purpose for which it was provided.
- 6.2 The provisions in Article 6.1 of these General Terms and Conditions of Delivery do not apply to information that:
  - a was already in the lawful possession of the receiving Party before it was obtained from the Party concerned;
  - b was developed independently by the receiving Party without using information or data of the Party concerned;
  - c is or becomes generally known or is made generally accessible, other than through an act or omission on the part of the receiving Party;
  - d is disclosed to the receiving Party by a third party, without any obligation of confidentiality toward the Party concerned being breached; or
  - e must be made public pursuant to the law, a regulation or a judicial order or by a decision of another public authority, on condition that the receiving Party makes every effort to restrict the scale of such publication or disclosure and notifies the Party concerned in advance of the proposed publication or disclosure.

#### **Article 7 Intellectual property rights**

- 7.1 All intellectual property rights relating to the Products and/or Services offered by Cito, including training, testing and examination materials or other materials such as manuals, analyses, designs, reports, will be vested exclusively in Cito, its licensors or suppliers.
- 7.2 Unless otherwise agreed in writing, payment by the Client of an amount to obtain the subject matter of an order placed by it with Cito will never constitute a transfer of any intellectual property right.
- 7.3 The Client warrants that it will respect the intellectual property right(s) of third parties and indemnifies Cito against claims from third parties against it relating to any (alleged or actual) infringement of such rights.
- 7.4 By making materials, works, etc. available to Cito in the context of the order, the Client unconditionally authorises Cito to use such materials, works, etc. in whatever manner, insofar as that is reasonably necessary for the proper execution of the order.
- 7.5 Cito reserves the right to use the knowledge and experience gained by it in the execution of an order for other purposes.
- 7.6 As soon as the Client becomes aware that a third party or third parties are infringing or threatening to infringe the intellectual property rights of Cito, the Client will inform Cito immediately and reasonably cooperate in terminating the unauthorised conduct of such third party or parties.

## **Article 8 Liability**

- 8.1 Cito is not liable for any loss, of whatever nature, caused by its reliance on inaccurate and/or incomplete data provided by or on behalf of the Client.
- 8.2 Cito's liability will be limited to direct loss. This will be limited in the following manner: (a) in case of prices on the basis of subsequent costing: up to the amount estimated by Cito, (b) in case of a fixed price: the agreed amount, or (c) if the Agreement has a term of more than one (1) year: the estimated or agreed amount for the period of one (1) year. However, in no event will Cito's total liability for direct loss, on any legal basis whatsoever, exceed five hundred thousand euros (€500,000).
- 8.3 Liability for indirect loss is excluded, such as, but not limited to, consequential loss, loss of profit, lost savings, reduced goodwill, loss due to business interruption, loss resulting from claims of customers of the Client, loss resulting from corruption or loss of data or documents.
- 8.4 The exclusions and limitations of Cito's liability will cease to apply if the loss is the result of wilful misconduct or gross negligence on the part of Cito.
- 8.5 Unless compliance by Cito is permanently impossible, Cito's liability due to an attributable shortcoming in the fulfilment of an Agreement will arise only if the Client immediately gives Cito written notice of default, giving a reasonable term for compliance, and Cito continues to imputably fail to fulfil its obligations. The notice of default must contain as complete and detailed a description of the failure as possible, so as to enable Cito to respond adequately.
- 8.6 A condition for the arising of any right to compensation is always that the Client reports the loss to the supplier in writing as soon as possible after it has arisen. Any claim for compensation will be barred by the mere lapse of twenty-four (24) months after the claim has arisen.
- 8.7 In the event that a claim is made against Cito by third parties, the Client will be obliged to assist Cito both extra-judicially and judicially and promptly do everything that may be expected from it in such case. In the event that the Client fails to take adequate measures, Cito will be entitled to do so itself, without any notice of default being required. All costs and loss incurred on the part of Cito and third parties as a result will be entirely at the Client's risk and expense.
- 8.8 The Client indemnifies Cito against claims from third parties that suffer loss in connection with the execution of the order.
- 8.9 The Client indemnifies Cito against loss caused by a third party engaged by Cito on the recommendation of the Client.

## **Article 9 Force majeure**

- 9.1 Cito will not be obliged to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure on the part of Cito includes war, terrorism, military action, government measures, fire, weather conditions, transport problems, electricity failure, failure of the Internet, failure of data network or telecommunication facilities, cyber and other crime, failure of Cito's suppliers to fulfil their obligations and strikes.
- 9.2 Once it is clear that a force majeure situation will last longer than sixty (60) days, both Cito and the Client will have the right to terminate the Agreement in writing. The Products and/or Services already provided by Cito under the Agreement prior to the occurrence of force majeure may be charged by Cito to the Client.

#### **Article 10 Termination of the Agreement**

- 10.1 Both Parties will only be entitled to terminate the Agreement if the other Party, even after written notice of default setting a reasonable term for compliance, imputably fails to comply with the Agreement.
- 10.2 Cito may terminate the Agreement with the Client with immediate effect and without notice of default being required if:
  - a fulfilment by the Client is permanently impossible;
  - b the Client is granted a provisional or definitive suspension of payment;
  - c the liquidation or bankruptcy of the Client is petitioned for or the Client is in liquidation or bankrupt;
  - d if the Client's business is liquidated or terminated other than for the purpose of reconstruction or merger of businesses.
- 10.3 If the Agreement is terminated, Cito's claims against the Client will be immediately due and payable.
- 10.4 If Cito terminates the Agreement, it will in no way be liable to compensate any resulting loss and costs incurred in whatever manner by the Client.

#### **Article 11 Applicable law and disputes**

- 11.1 All legal relationships between Cito and the Client will exclusively be governed by Dutch law. The applicability of the Vienna Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 11.2 Any dispute between the Parties arising from or related to these General Terms and Conditions of Delivery, or offers and quotations made and Agreements entered into hereunder, can be submitted in the first instance solely to the competent court in Arnhem, the Netherlands. The Parties will nonetheless attempt in all cases to achieve an amicable solution of the dispute so as to avoid legal proceedings.

## **II Delivery of Products**

*Where Cito delivers Products, the provisions contained in this section will apply in addition to the general provisions of these General Terms and Conditions of Delivery.*

*Products in this section are understood to mean, in any case: books, learning materials or tests and other educational materials offered on paper or on a physical carrier.*

#### **Article 12 Costs**

For each order, separate amounts may be charged for order handling, delivery charges and/or administrative costs. The applicable amounts will be notified through the usual sales channels, such as order forms, website, etc.

#### **Article 13 Payment**

Cito reserves the right to only deliver Products on the basis of advance payment, the issue of a direct debit mandate to debit the Client's bank account or via credit card payment.

#### **Article 14 Delivery**

- 14.1 Unless otherwise agreed in writing, delivery will take place ex Cito's warehouse. The Products will be at the Client's risk from the moment of delivery, even if ownership has not yet passed to the Client.



- 14.2 The Client is obliged to take delivery of the Products at a delivery date and time specified by Cito. If no delivery date and time are agreed, the Client will be obliged to take delivery of the Products immediately on Cito's request.
- 14.3 If the Client refuses to take delivery or neglects to provide information or instructions, Cito will be entitled to take any measures that it considers necessary (such as storage under third parties) at the Client's risk and expense.
- 14.4 Cito reserves the right to refuse to deliver Products without giving reasons, or to reserve them for particular target groups.

#### **Article 15 Retention of title**

- 15.1 All delivered Products and Products yet to be delivered will remain the sole property of Cito until all the sums owed or that will become owed to Cito by the Client, have been paid in full.
- 15.2 As long as ownership of the Products has not passed to the Client, he/she/it may not pledge the Products or grant third parties any other right thereto.
- 15.3 The Client is obliged to keep the Products delivered under retention of title with due care and clearly recognisable as Cito's property.
- 15.4 Cito may repossess, or arrange for the repossession of, the Products delivered under retention of title that are still held by the Client if the Client fails in the performance of his/her/its payment obligations.
- 15.5 The provisions of Article 15.1 up to and including 15.4 do not affect the other rights vested in Cito.

#### **Article 16 Inspection (complaint) and returns**

- 16.1 The Client is obliged to inspect the delivered Products, or have them inspected, immediately at the moment the Products are made available to him/her/it. Any defects must be notified in writing to Cito, and be received by Cito, within ten (10) days after their discovery, or after they could reasonably have been discovered, at the risk of any right in relation to defects lapsing.
- 16.2 If it is established that a delivered Product is defective and a complaint in that regard is submitted in good time, Cito will, at its discretion, replace the defective Product or arrange for it to be repaired within a reasonable period. In case of replacement, the Client must return the Product to be replaced to Cito.
- 16.3 Returns will only be accepted after prior written approval by Cito. Unless otherwise provided in writing, no crediting will be provided in respect of amounts charged for order handling, delivery charges and/or administrative costs.

#### **Article 17 Warranty**

Cito provides no further warranty than is stated in the information accompanying the Product.

### **III Provision of Services**

*Where Cito delivers Services, the provisions contained in this section will apply in addition to the general provisions of these General Terms and Conditions of Delivery.*

*In this section, the term 'Services' is in any case understood to mean: all Services to be provided by Cito, including the provision of courses and training programmes, the conduct of examinations, the provision of advice and the conduct of research.*

#### **Article 18 Execution**

- 18.1 Cito will provide the Service to the best of its knowledge and ability. All Cito's Services will be provided on the basis of a best-efforts obligation.

- 18.2 Cito may have the Service provided by a third party or parties without consent (whether prior or otherwise) from the Client.

#### **Article 19 Payment**

- 19.1 If no fixed price has been agreed, the time spent on a Service, plus all expenses incurred in the same period, will be invoiced after the end of each month.
- 19.2 If a fixed price has been agreed, Cito may invoice part of the total amount due in advance.

#### **Article 20 Changes and additional work**

- 20.1 Changes in the original Service(s) to be provided, of whatever nature, at the Client's request, must be accepted in writing by Cito.
- 20.2 If Cito has performed work or rendered other performances that fall outside the substance or scope of the agreed performance in the previous paragraph, such work or performances will be compensated by the Client at the agreed rates.
- 20.3 If it is evident that execution of the Service cannot lead to the result envisaged by the Client, Cito will notify this to the Client in writing at the earliest opportunity. The Parties will then consult one another regarding the next steps to be taken in respect of the Service. The Client will remain liable to pay Cito the agreed fee(s), unless the Parties agree otherwise in writing.

#### **Article 21 Cancellation of course/training programme/examination**

- 21.1 Cito will be entitled to cancel a course/training programme/examination, in which case the Client will have the option
- (a) to receive a refund of the amount paid for the course/training programme/examination or
  - (b) if the course/training programme/examination has been rescheduled, to participate on the newly established date.
- 21.2 The Client may cancel the course/training programme/examination only in writing (including by email). In that case, the Client will be liable to pay Cito the following costs:
- in case of cancellation up to fourteen (14) days before the agreed start: 50% of the full value of the order;
  - in case of cancellation between seven (7) and fourteen (14) days before the agreed start: 75% of the full value of the order;
  - in case of cancellation within seven (7) days before the agreed start: 100% of the full value of the order.
- The value of the order is the contract price (fee) for the order stated in the Agreement plus circumstances giving rise to increased costs.
- 21.3 If, at the moment of cancellation, the loss suffered by Cito is greater than the cancellation fee as included in Article 21.2, Cito may charge such higher amount to the Client.

#### **Article 22 Advice**

- 22.1 Advice provided by Cito at the Client's request is intended strictly for the specific situation for which the advice was given.
- 22.2 The Client is and will remain responsible himself/herself/itself for following the advice given by Cito.
- 22.3 No rights can be derived from any advice given by Cito.

## **IV Right of Use in respect of Products and Services**

*Where Cito grants a Right of Use in respect of Products and/or Services, the provisions in this section will apply in addition to the general provisions of these General Terms and Conditions of Delivery.*

### **Article 23 Definitions**

*Service*: an electronic service that Cito provides to the Client, including, but not limited to, the provision of information, software or 'remote' databases.

*Documentation*: the description of functionalities and usage possibilities of the Product and/or Service provided to the Client by Cito, in whatever manner, whether or not in electronic form.

*Right of Use*: the right granted by Cito to the Client under the Agreement to use a Product and/or Service, or allow it to be used, in his/her/its organisation, with due regard to the provisions of these General Terms and Conditions of Delivery.

*Product*: information ('content'), software, databases and/or other publications, recorded on and/or stored in electronic data carriers or otherwise made available by electronic means or in any kind of electronic form by Cito to the Client, including via a website, cloud environment or email message, or made accessible, in the broadest sense. As regards the scope and the restrictions of the Right of Use, the Product is also understood to mean the Documentation, Updates as well as other interim additions to the Product.

*Update(s)*: all subsequent versions and new releases of a Product that are made available by Cito to the Client and which include an extension, change or restoration of functionality or content.

### **Article 24 Specifications and use**

- 24.1 The Product and/or the Service will be made available to the Client in a version or, as in the case of provision by electronic means, in the manner provided in the specifications that are disclosed to the Client by Cito, and that are accepted upon the conclusion of the Agreement.
- 24.2 The Client will be obliged to use the Product and/or the Service – as well as any data carriers, support devices and electronic media on which the Product and/or the Service is recorded or with the aid of which the Product can be used – in a careful manner and manage the same in accordance with the directions and instructions given by or on behalf of Cito. The Client will allow the Product and/or Service to be used only by appropriately authorised persons in his/her/its organisation.
- 24.3 Cito may give the Client further (usage and other) directions or other instructions regarding the use of the Product and/or the Service, support devices or electronic media.
- 24.4 It is not permitted to archive, download, reproduce, distribute, amend, publish, grant a licence to or the use of the data, content or software of the Product and/or the Service, or to make derivative works thereof. In addition, it is prohibited to use the Product and/or Service for (a) sending or placing material thereby (potentially or actually) restricting the functioning of the Product and/or the Service, including a malicious computer code, (b) any form of external re-use or commercial re-use, (c) any form of modification or adjustment of the Product and/or Service, (d) any form of decompilation, manipulation, circumvention, obstruction or removal of the data, content, software or security measures, and (e) removing any indication or designation regarding conditions of use, privacy, copyright, trademarks, trade names or other (intellectual and other) property rights.
- 24.5 The Client is only permitted to access the Products and/or Services in the manner prescribed by Cito.
- 24.6 The Right of Use is not transferable and non-exclusive, unless the Parties have agreed otherwise in writing.

- 24.7 The Client is individually responsible for ensuring that the Products and/or Services can function on his/her/its hardware and operate with the other software.

#### **Article 25 Delivery and installation**

- 25.1 The Client will make his/her/its own arrangements for the installation of the Product and/or Service, including on the basis of the Documentation provided by or on behalf of Cito for that purpose, unless the Parties agree otherwise in writing.
- 25.2 Cito will never be liable for any loss incurred by the Client resulting from improper or incorrect installation/implementation of the Product and/or the Service by the Client.
- 25.3 The available content and functionality of the Product and/or Service can change from time to time, for which the Client's consent is not required. The content of the Agreement will remain fully applicable after the release of any such Update. If the Product is not provided as an online service, the Client will be responsible himself/herself/itself for installing the Product and/or Service Updates.
- 25.4 Cito may, during the term of the Agreement as well as after its expiry, inspect, or arrange for inspection, at the Client whether the Product and/or Service has been used in a manner consistent with the Agreement. The cost of the investigation will be payable by the party found to be in error.
- 25.5 Insofar as the Product and/or Service is provided as an online service, Cito will make the Product and/or Service available, and ensure they remain available, on Cito's server or that of third parties during the term of the Agreement. Cito will endeavour to ensure the optimum availability of the Product and/or Service during business hours, with the exception of Dutch national holidays. To the extent possible, work will be performed outside office hours.
- 25.6 Insofar as the Product and/or Service is provided as an online service, Cito will endeavour to make regular copies (back-ups) of the data stored in the Product and/or Service. If circumstances have occurred through action(s) attributable to Cito possibly resulting in processing operations being lost or becoming unusable, it will endeavour to ensure recovery, without being able to guarantee recovery will take place.
- 25.7 Insofar as the storage of data (including archive, backup and log files) outside the Product and/or Service is provided as a functionality by Cito or the Product and/or Service is not provided as an online service, the Client will be responsible for making back-ups of such data. Unless otherwise agreed in writing, Cito will not be liable for any loss of data.

#### **Article 26 Warranty and defect**

- 26.1 Cito does not warrant that the Product and/or Service is entirely error-free and can function without interruptions. Cito additionally does not warrant that the Product and/or Service will meet the objectives of the Client.
- 26.2 A defect or shortcoming will only be deemed to exist if the Product and/or Service systematically fails to function in accordance with the specifications in the Documentation provided or made known to the Client.



# General Terms and Conditions of Delivery of Cito

## Cito

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