General Terms and Conditions of Delivery of Cito

Registered at the Chamber of Commerce Centraal Gelderland at 19 June 2019
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I  General provisions

Article 1 Definitions

• General terms and conditions of delivery: the general terms and conditions of delivery of Cito, which apply to all agreements.
• Client: The legal person or natural person with whom Cito enters into an agreement for the provision of Products and/or Services.
• Cito: Stichting Cito Instituut voor Toetsontwikkeling (Chamber of Commerce reg. no. 09103470 and VAT reg. no. NL808299566B01) or Cito B.V. (Chamber of Commerce reg. no. 09151851 and VAT reg. no. NL814531842B01), both with registered office at Amsterdamseweg 13 in (6814 CM) Arnhem.
• Consumer: A Client that is a natural person, acting for purposes which are outside his/her trade, business or profession.
• Services: The services to be performed by Cito, which are defined in further detail and are laid down in writing, including courses, training programmes and examinations.
• Digital Products: Products consisting of a digital platform or digital content, whether or not provided as a web application or as a physical medium.
• Agreement: The joint decision by Cito and the Client to enter into a legal relationship, whereby Cito undertakes, subject to the applicability of the provisions in these terms and conditions, to provide certain Products and/or Services in return for a payment and/or performance to be rendered by the Client.
• Distance Contract: Order placed through Cito’s webshop or by the use of another Cito system, as referred to in Section 6:230g(1)(e) of the Dutch Civil Code.
• Parties: Cito and the Client jointly.
• Products: All Products developed by or on behalf of Cito, including books, digital publications/teaching materials or tests, licences, and all other (educational) resources published under the name Cito and/or other Cito brands.

Article 2 General

2.1 Additions to or deviations from these General Terms and Conditions of Delivery must be agreed in writing; the 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 shall enter into force thirty (30) days after they are notified to the Client and shall 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 null and void or be annulled at any time, the remaining provisions in these General Terms and Conditions of Delivery shall 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 and which as far as possible reflect the purpose and effect of the original provision(s).
2.5 Any purchasing conditions or other terms and conditions of the Client are expressly not applicable, unless they have been accepted in writing by Cito. Any acceptance shall be binding upon Cito solely in respect of that specific agreement.
Article 3 Quotations and offers
3.1 All quotations and offers by Cito are without obligation unless it is expressly stated that they constitute a binding offer.
3.2 Quotations and offers submitted by Cito are valid for fourteen (14) days, unless the quotation or offer specifies another term.
3.3 The Client warrants the accuracy and completeness of the requirements, performance specifications and other information given to Cito by it or on its behalf and on which Cito bases its quotation or offer.
3.4 Unless otherwise indicated in writing, the prices stated in a quotation or 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).
3.5 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 shall be borne by the Client, unless otherwise provided in the quotation or the order confirmation.
3.6 A combined quotation shall not oblige Cito to perform part of the order for a corresponding part of the quoted price. Offers or quotation do not automatically apply to future Agreements.
3.7 Cito reserves the right during the term of the Agreement to increase the price due to unforeseen situations, including external circumstances giving rise to increased costs.
3.8 In case of an Agreement between Cito and a Consumer, the Consumer may, in the event of a price increase as referred to in article 3.7, terminate (ontbinden) this Agreement within one (1) month after the price change if the price change is implemented within three (3) months of the conclusion of the Agreement.
3.9 In the case of a price increase as referred to in article 3.7, a Client, other than a Consumer, has no entitlement to terminate (ontbinden) the Agreement, unless the price increase is more than 5% (in the respective year).

Article 4 Acceptance, delivery dates, execution and amendment of Agreement
4.1 An Agreement shall only be concluded when accepted in writing by Cito, including by email.
4.2 Cito reserves the right to impose restrictions regarding the frequency of ordering Products and/or Services.
4.3 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. A delivery date shall never constitute a strict deadline. 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.
4.4 The Client shall 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.
4.5 If Cito needs information from the Client for the execution of the Agreement, the term of execution shall not commence until the Client has provided Cito with such information correctly and fully.
4.6 Cito may take a phased approach to executing the Agreement and invoice separately for each phase thus completed.
4.7 If the Agreement is implemented by phases, Cito may suspend the execution of those parts belonging to a following phase until the Client has approved the results of the preceding phase in writing.
4.8 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 5 Payment and collection costs
5.1 The payment term constitutes a strict deadline. If the quotation / Agreement does not specify any payment term, a payment term of thirty (30) days from the invoice date will apply.
5.2 If the Client has not paid before the expiry of the payment term, he/she/it shall be in default by operation of law. The Client shall 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 €150.00.
5.3 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. Cito may refuse full payment of the principal if this payment does not also include settlement of the interest that has fallen due and current interest as well as collection costs.
5.4 The Client may not suspend any payment obligation, nor may he/she/it claim or invoke setoff.

Article 6 Complaints
Any complaint must be made in writing and be received by Cito within eight (8) days after it became known, or could have been known. After this period the right to complain will lapse.

Article 7 Confidentiality
7.1 Both Parties shall maintain secrecy regarding all the confidential information they have obtained from one another in the context of the Agreement. Information is considered as confidential if this is communicated by the other party, or if this ensues from the nature of the information. A party receiving confidential information will only use such information for the purpose for which it was provided.
7.2 The provisions in article 7.1 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 generally known or enters the public domain 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 or duty 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 8 Liability
8.1 Cito is not liable for any loss and/or damage, of whatever nature, caused by its reliance and acting on inaccurate and/or incomplete data provided by or on behalf of the Client.
8.2 Cito is only liable for loss and/or damage (i) where such loss and/or damage is covered by its liability insurance to the maximum amount payable under its policy plus the policy excess, or (ii) in the event of wilful misconduct or gross negligence committed by it.
8.3 In the event (i) no wilful misconduct or gross negligence has been committed, or (ii) the insurance does not pay out while Cito’s liability is nonetheless established, such liability shall be limited to direct loss or damage alone (with liability for indirect loss or damage being expressly excluded). This shall 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 year.

8.4 All rights of action and other powers, of whatever nature and for whatever reason, which the Client has vis-a-vis Cito, must be received in writing by Cito within three (3) months after the Client became aware or could reasonably have become aware of their existence, failing which such rights of action and other powers shall lapse.

8.5 In the event that a claim is made against Cito by third parties, the Client shall be obliged to provide Cito with assistance at law and otherwise and promptly to do everything that may be expected from it in that case. Should the Client fail to take adequate measures, Cito shall be entitled, without notice of default being required, to take such measures itself. All resulting costs and loss or damage sustained by Cito and third parties shall be for the account and risk of the Client in their entirety.

8.6 The Client indemnifies Cito against claims from third parties that sustain loss or damage in connection with the execution of the order.

8.7 The Client indemnifies Cito against loss or damage caused by a third party engaged by Cito on the recommendation of the Client.

Article 9 Intellectual property rights

9.1 Cito is or will become the sole party entitled to all existing and future intellectual property rights attached to or ensuing from works (in whatever form, including developed or elaborated ideas, proposals and concepts) which it has already developed or is yet to develop in connection with the order.

9.2 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 shall never constitute a transfer of any intellectual property right.

9.3 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) infringement or breach of such right(s).

9.4 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.

9.5 Cito reserves the right to use the knowledge and experience gained by it in the execution of an order for other purposes.

Article 10 Termination of the Agreement

10.1 Cito may terminate (ontbinden) the Agreement with the Client with immediate effect and without notice of default being required if:
   a the Client fails to perform the obligations under the Agreement, or fails to do so fully or in a timely manner;
   b circumstances that came to Cito’s attention after the conclusion of the Agreement give it good reason to fear that the Client will not fulfil his/her/its obligations;
   c the Client’s assets are attached, or he/she/it is granted suspension of payments, or the Client is declared bankrupt.

10.2 Any and all sums owed by the Client to Cito will become immediately due and payable upon termination (ontbinding) of the Agreement.

10.3 If Cito terminates the Agreement, it shall in no way be liable to compensate any resulting loss and/or damage or costs sustained in whatever manner by the Client.
Article 11 Communication
All notifications, messages and, in general, all contacts regarding the order will be communicated by the Client to or shall be channelled through the contact person designated by Cito.

Article 12 Applicable law and disputes
12.1 All legal relationships between Cito and the Client shall be governed by and construed solely in accordance with Dutch law. The applicability of the Vienna Sales Convention (CISG) is excluded.
12.2 Any dispute between the Parties arising from or related to these General Terms and Conditions of Delivery, or offers and quotations submitted and Agreements entered into under these terms and conditions, can be submitted in the first instance solely to the competent court in Arnhem. The Parties will nonetheless attempt in all cases to achieve an amicable resolution of the dispute so as to avoid legal proceedings.

II Delivery of Products (including via the webshop (online))
The provisions in this section apply in addition to the general provisions of these General Terms and Conditions of Delivery, where Cito delivers Products.

Article 13 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, internet, etc.

Article 14 Payment
Cito reserves the right only to 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 15 Delivery
15.1 Unless otherwise agreed in writing, delivery will take place ex Cito’s warehouse. The Products shall be for the Client’s risk from the moment of delivery, even if ownership of them has not yet passed to the Client.
15.2 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 is agreed, the Client is obliged to take delivery of the Products on first demand by Cito.
15.3 If the Client refuses to take delivery or neglects to provide information or instructions, Cito may take any measures that it considers necessary (such as storage under third parties) at the Client’s risk and expense.
15.4 Cito reserves the right to refuse to deliver Products without giving reasons, or to reserve them for particular target groups.

Article 16 Retention of title
16.1 All delivered goods and goods yet to be delivered shall remain the sole property of Cito until all the sums owed or that will become owed to Cito by the Client, including at a minimum the sums owed (claims) referred to in Section 3:92(2) of the Dutch Civil Code, have been paid in full.
16.2 As long as ownership of the goods has not passed to the Client, he/she/it may not pledge the goods or grant any other right to them to any third party.
16.3 The Client is obliged to keep the goods delivered under retention of title with due care and clearly recognisable as the property of Cito.
16.4 Cito may repossess, or arrange for the repossession of, the goods that have been delivered under retention of title and are still held by the Client if the Client fails in the performance of its payment obligations.

16.5 The aforementioned provisions in articles 16.1 to 16.4 above do not affect the remaining rights vested in Cito.

**Article 17 Inspection (complaint) and returned goods**

17.1 The Client shall inspect the delivered goods, or have them inspected, immediately upon taking delivery of the goods. Any defects must be notified in writing to Cito, and be received by Cito, within no more than ten (10) days after their discovery, or after they could reasonably have been discovered. After this period any right in relation to defects will lapse.

17.2 If it is established that a delivered Product is defective and a complaint is submitted in that regard 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 shall return the Product to be replaced to Cito.

17.3 Returned goods will only be accepted after prior approval in writing 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 18 Warranty**

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

**Delivery of Products to Consumers (including via the webshop (online))**

**Article 19 Distance purchases**

19 In case of a Distance Contract, the following shall apply:

a Cito will execute the accepted order with due dispatch and in any event within no more than thirty (30) days after receiving the order, unless a longer delivery period has been agreed. If the delivery is delayed or if an order cannot be executed or only partially executed, this will be notified to the Client within no more than fourteen (14) days after it placed the order. The Client may in that case cancel (ontbinden) the Contract at no charge, without being entitled to any compensation.

b In case of cancellation in accordance with article 19(a) above, Cito will repay the amount paid by the Client as soon as possible, and in any event within thirty (30) days after cancellation.

c If delivery of an ordered Product proves to be impossible, Cito will endeavour to provide a replacement Product. The fact that a replacement Product is being supplied will be stated clearly and in a comprehensible way at the latest upon delivery. The Client retains the right of withdrawal in the case of replacement Products. The costs of return delivery shall be for the Client’s account.

**Article 20 Right of withdrawal on delivery of Products**

20.1 Where the Product is purchased under a distance purchase transaction, the Client may cancel (ontbinden) the Contract without giving reasons within fourteen (14) days (cooling-off period) from the day after receiving the Product. Any amount paid by the Client will be returned by Cito as soon as possible, and in any event within fourteen (14) days after the cancellation, unless the delivered Product has yet to be returned to Cito.
20.2 During the period of fourteen (14) days referred to in article 20.1, the Client will handle the Product and the packaging with care. He/she/it will only unpack or use the Product to the extent necessary to be able to assess whether he/she/it wishes to keep the Product. If he/she/it exercises his/her/its right of withdrawal, he/she/it will return the Product complete with all the accessories delivered and, where reasonably possible, in the original condition and packaging to Cito in accordance with the reasonable and clear instructions given by Cito. The costs of return delivery of the Product shall be for the Client’s account.

20.3 If the Client exercises his/her/its right of withdrawal, which he/she/it may do by using the model form on Cito’s website, the Client will return the Product complete with all accessories to Cito within fourteen (14) days after invoking the right of withdrawal.

Article 21 Deviating provisions

21.1 By way of derogation from article 4.1 above, an Agreement is concluded upon acceptance by the Client of the offer made by Cito.

21.2 By way of derogation from article 5.4 above, the Client may invoke suspension or set-off, provided that there are good grounds for doing so.

III Provision of Services

The provisions in this section apply in addition to the general provisions of these General Terms and Conditions of Delivery, where Cito provides Services.

Article 22 Execution

22.1 Cito will provide the Service to the best of its knowledge and ability. All Cito Services will be provided on the basis of an obligation to use best endeavours.

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

Article 23 Payment

23.1 If no fixed price has been agreed, the time spent on a Service, plus all the expenses incurred during the same period, will be invoiced after the end of each month.

23.2 If a fixed price has been agreed, Cito may invoice part of the total amount due in advance.

Article 24 Changes and additional work

24.1 Changes in the original service(s) to be provided, of whatever nature, at the Client’s request must be accepted in writing by Cito.

24.2 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.

24.3 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 remains liable to pay Cito the agreed fee(s), unless the Parties agree otherwise in writing.

Article 25 Cancellation of course / training programme / examination

25.1 Cito may cancel a course / training programme / examination, with the Client then having the choice between (a) repayment of the amount paid for the course / training programme / examination, or (b) if the course / training programme / examination has been moved, taking part on the new date set.
25.2 The Client may cancel the course/training programme/examination, although only in writing (also including by email). In that case, the Client shall 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.

25.3 If, at the moment of cancellation, the loss sustained by Cito is greater than the cancellation fee referred to in article 25.2 of these General Terms and Conditions of Delivery, due to payment obligations for which Cito is (or will be) liable in connection with the cancellation by the Client, such as obligations toward the third parties engaged in relation to the execution of the Agreement and/or other third party claims, Cito may charge this greater amount to the Client.

**Article 26 Advice**

26.1 Advice provided by Cito at the Client’s request is intended strictly for the specific situation for which the advice was given.

26.2 The Client is and remains responsible himself/herself/itself for following the advice given by Cito.

26.3 No rights may be derived from advice given by Cito.

**IV Right of use in respect of Products and Services**

The provisions in this section apply in addition to the general provisions of these General Terms and Conditions of Delivery, where Cito grants a right of use in respect of Products and/or Services.

**Article 27 Definitions**

*Service:* An electronic service that Cito provides to the Client, also including, but not confined to, the provision of information, computer programs or ‘remote’ databases.

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

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

*Product:* Information (‘content’), computer programs, databases and/or other publications, recorded on and/or stored in electronic storage media or otherwise made available by electronic means or in any kind of electronic form by Cito to the Client, including via a website 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 to the Client by Cito and which include an extension, change or restoration of functionality or content.
**Article 28 Specifications and use**

28.1 The Product 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 supplied to the Client by Cito, and that are accepted upon the conclusion of the Agreement.

28.2 The Client shall use the Product or the Service, as well as the storage media, support devices and electronic media, if any, on which the Product or the Service is recorded and/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 or Service to be used only by appropriately authorised persons in his/her/its organisation.

28.3 Cito may give the Client further directions (for use) and/or other instructions regarding the use of the Product or the Service, support devices and/or electronic media.

28.4 The Right of Use includes only the authorisations explicitly granted in the description and Agreement. If these authorisations are not granted, 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 or the Service, or to make derivative works thereof. It is additionally prohibited to use the Product or Service for (a) sending or placing material thereby (potentially) restricting the functioning of the Product or the Service, including malicious computer code, (b) any form of external re-use or commercial re-use, (c) any form of modification or adjustment of the Product or Service, (d) any form of decompilation or disassembly (unless allowed by law), 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, brands, trade names or other (intellectual) property rights.

28.5 The Client is only permitted to access the Product or Services in the manner prescribed by Cito.

28.6 The Right of Use is not transferable and non-exclusive, unless the Parties have agreed otherwise in writing.

28.7 The Client is individually responsible for ensuring that the Product or Service can function on his/her/its hardware and operate with the other software.

**Article 29 Delivery and installation**

29.1 The Client shall make his/her/its own arrangements for the installation of the Product 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.

29.2 Cito shall never be liable for any loss and/or damage sustained by the Client resulting from improper or incorrect installation/implementation of the Product or the Service by the Client.

29.3 The available content and functionality of the Product or Service can change from time to time, for which the Client’s consent is not required. The content of the Agreement shall remain fully applicable after the release of any such Update. If the Product is not provided as an online service, the Client shall be responsible himself/herself/itself for installing Product or Service Updates.

29.4 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 or Service has been used in a manner consistent with the Agreement, with costs payable by the party found to be in error.

29.5 Insofar as the Product or Service is provided as an online service, Cito will make the Product or Service available, and ensure they remain available, on Cito’s server or that of third parties during the term of the Agreement, and Cito will endeavour to ensure the optimum availability of the Product or Service during business hours, with the exception of Dutch national holidays. To the extent possible, work will not be carried out during the aforementioned times.
29.6 Insofar as the Product or Service is provided as an online service, Cito will endeavour to make a regular copy (back-up) of the data stored in the Product 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.

29.7 Insofar as the making of back-ups or storage of data outside the Product or Service is provided as a functionality by Cito or the Product or Service is not provided as an online service, the Client shall be responsible for making back-ups of such data. Unless otherwise agreed in writing, Cito shall not be liable for any loss of data.

**Article 30 Warranty and defect**

30.1 Cito does not warrant that the Product or Service is entirely error-free and can function without interruptions. Cito additionally does not warrant that the Product or Service will meet the objectives the Client may have.

30.2 A defect or shortcoming shall only be deemed to exist if the Product or Service systematically fails to function in accordance with the specifications in the Documentation given or notified to the Client.
General Terms and Conditions of Delivery of Cito

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