



## **General Terms and Conditions of Cito**

The General Terms and Conditions of Cito, having its registered office at Arnhem, Nieuwe Oeverstraat 50, enrolled on the Commercial Register of Central Guelders in Arnhem, shall apply starting from June 1st., 2005, to the following legal entities:

- Stichting Cito Instituut voor Toetsontwikkeling in Arnhem (09103470)
- Cito B.V. in Arnhem (09151851)
- Cito Certification B.V. in Arnhem (32042943)
- Cito International B.V. in Arnhem (09126173)
- Cito Evaluation Services BV in Arnhem (09126169)

Chamber of Commerce Centraal Gelderland, registered june 17th, 2005.

### **A GENERAL PROVISIONS**

#### **A.1 Definitions**

A.1.1 For the purpose of these General Terms and Conditions, the following terms shall have the meanings indicated below:

Cito:

The company forming part of Cito that has declared these terms and conditions to be applicable to an offer made to or an agreement entered into with the Client;

Client:

The person to whom Cito supplies products or services on the basis of an agreement, or to whom a user licence has been granted;

Order:

The order to perform services, supply products or to grant licence rights.

#### **A.2 Scope of application**

A.2.1 These General Terms and Conditions shall be applicable to all offers of Cito and agreements between Cito and the Client.

A.2.2 Additions or deviations from these General Terms and Conditions must be agreed in writing; these additions and deviations only apply to the agreement in which the same have been made.

A.2.3 The Client may only transfer the rights and obligations that arise under the agreement(s) mentioned in Article A.2.1 to third parties with the written consent of Cito. Similarly, the rights and obligations shall not be amenable to transfer by action of law.

### **A.3 Offers/agreements**

- A.3.1 All offers shall be non-binding and shall have a validity of one month, unless otherwise agreed in writing. An offer that is subject to a deadline may be revoked by Cito even after receiving the order, provided this is done within 5 working days.
- A.3.2 The documentation sent along with the offer is only for information and shall not be binding on Cito, unless otherwise agreed.
- A.3.3 The agreement shall come into existence for the purposes of the law after the client accepts the offer of Cito within the period specified for the same, taking into account the provisions of Article A.3.1, or after Cito confirms the client's order in writing or if work on the execution of the order is commenced. The content of the agreement shall be determined by the offer and/or the order confirmation of Cito.

### **A.4 Prices – general**

- A.4.1 If the provision of services is subject to Value Added Tax (VAT), the prices quoted shall be exclusive of Value Added Tax (VAT). If Value Added Tax (VAT) is payable, this shall be mentioned in the offer or in the order confirmation. The fact that a mention to this effect is missing shall not affect the liability to pay Value Added Tax (VAT).
- A.4.2 The prices are based on execution during normal working hours. If on account of reasons for which the client is to blame, work has to be done outside normal working hours, the client shall bear the extra costs unless the same is taken into account in the offer or the order confirmation.

### **A.5 Invoicing and payment**

- A.5.1 The client should settle all invoices without any deductions or set-offs within 30 days of the date of the invoice by payment into a (post) bank account to be specified by Cito.
- A.5.2 The payment obligations of the client shall not be suspended if and to the extent that he intends to enforce claims against Cito.
- A.5.3 Incoming payments shall first be applied to settle the oldest outstanding items, including interest and costs, even if the client makes contrary declarations concerning the same.

### **A.6 Non-performance**

- A.6.1 If the payment deadline is exceeded, the client shall be deemed to be in default without the need to issue a notice of default, irrespective of whether the surpassing of the deadline is due to his fault or not. This shall be without prejudice to the other rights to which Cito is entitled (suspension of delivery, damage compensation claims etc.), Cito shall also be entitled to charge statutory late payment interest, to be calculated from the relevant due date.
- A.6.2 All the extra-judicial and judicial costs incurred by Cito in connection with the dispute with the client, whether as plaintiff or defendant, shall be borne by the client; the extra-judicial collection costs, to be determined in accordance with the collection rates of the Nederlandse

Orde van Advocaten (Netherlands Bar), the judicial collection costs on the amounts actually spent by Cito for the proceedings, even where this exceeds the liquidated cost of the proceedings.

## **A.7 Delivery and delivery periods**

A.7.1 Cito shall deliver or make available the products to the client as soon as possible after the receipt of the order, respectively, shall commence the execution of the work and/or services, if the product ordered is in stock and the commencement of the work and/or provision of services is possible and agreed. All the delivery periods and data specified by Cito are target periods and data.

A.7.2 If delivery or making available of the products or the performance of the work and/or provision of services cannot be done within the deadlines expected by Cito, Cito shall insofar as this is reasonably possible, communicate the expected date of making available the goods or commencement of work and/or provision of services as soon as possible after the receipt of the order.

## **A.8 Force majeure**

A.8.1 Force majeure for the purpose of these General Terms and Conditions shall mean every circumstance outside the control and power of Cito due to which performance cannot be reasonably expected of Cito. Circumstances such as the above may include the following: war, governmental measures, transport disturbances of any nature whatsoever, strikes, lock-outs or shortage of personnel, non-performance by third parties that have been engaged by Cito for the execution of the agreement.

A.8.2 Force majeure shall give Cito the following rights:

- To terminate the agreement in whole or in part;
- To suspend the performance of its obligations, without being liable to pay damage compensation on account of the same.

## **A.9 Complaints**

A.9.1 The client should make complaints if any concerning the execution of an order in writing within 8 days of the execution of the relevant order, giving a detailed description of the complaint(s). If the client does not do so, the right to make complaints shall lapse. Complaints relating to the amount of the invoice should be submitted to Cito in writing within 8 days of the date of the invoice.

A.9.2 The fact that a complaint is taken up does not mean that the payment obligations of the client are suspended.

A.9.3 Complaints shall not be possible if the damage is caused due to the negligence of the client or because the client has not acted in conformity with the express instructions of Cito, or if the client has not fulfilled his obligations toward Cito (both financial and otherwise).

A.9.4 If the relevant government regulations change after the signing of the agreement, this cannot be ascribed to Cito, and the client shall not obtain a right to complain on the basis of same.

A.9.5 If the client makes a complaint in terms of Articles A.9.1 to A.9.4, and Cito finds the complaint to be well-founded, Cito may, at its option, modify the execution of the order, or grant a price reduction.

A.9.6 If in a case other than the ones mentioned above a complaint is taken up, this shall be without obligation. No rights may be obtained for other legal relationships on the basis of the same.

#### **A.10 Intellectual property rights**

A.10.1 Cito reserves to itself all the intellectual property rights in the broadest sense of the term, in particular, copyright as mentioned in Article 10 of the Copyright Act, on the product and services that arise from and/or associated with the order, unless otherwise agreed in writing. The client acknowledges Cito shall be that the copyright owner in such cases.

A.10.2 The client shall have the right to use the products and services supplied by Cito for his own use, provided he has fulfilled his financial obligations vis-à-vis Cito. No other use of the same shall be permissible without the permission of Cito in writing. The client undertakes vis-à-vis Cito in a general manner (with the exception of permissible use) not to violate or injure the intellectual property rights whether directly or indirectly through his use or otherwise.

A.10.3 It shall not be permissible for the client to transfer these rights in whole or in part to third parties without the permission of Cito in writing, or to bring the same into a community of ownership, company or partnership or a legal entity, or to give the products and services supplied by Cito to third parties for use.

A.10.4 Cito reserves to itself the right to use the knowledge and experience gained by it in the execution of an order for other purposes.

#### **A.11 Confidentiality**

A.11.1 The parties undertake to maintain complete confidentiality with respect to everything that may come to their knowledge in relation to the order in the broadest sense of the term, in other words including but not limited to the following: ideas, products, processes, method of working, work, know how and intellectual property rights. This obligation to maintain confidentiality shall continue unchanged even after the termination of the contract and the end of the relationship between the parties.

A.11.2 The confidentiality obligations shall not relate to the following information and data:

- That are part of public domain otherwise than through the fault of one of the parties (directly or indirectly);
- That have been published in view of a statutory obligation or the decision of a court, against which no further appeal is possible;
- In respect of which the other party has given written discharge from the confidentiality obligation.

## **A.12 Violation/fine**

- A.12.1 The party that violates the obligations/prohibitions mentioned Articles A.10.1, A.10.2, A.10.3 and A.11.1, must pay the other party an immediately claimable fine of € 10,000,- per violation, along with an immediately claimable fine of € 500,- for each day that the violation continues, without prejudice to its right to claim damage compensation.
- A.12.2 The violation of the above mentioned obligations/prohibitions by third parties with whom the party in question is associated (for example through direct or indirect ownership of shares or through a position that makes possible the direct or indirect exercise of control) or by an employee, shall be regarded as the violation of such provisions by the party itself.

## **A.13 Agreements with employees of the opposite party**

- A.13.1 During the execution of the agreement and for a period of six months thereafter, neither of the parties shall, whether directly or indirectly, employ employees of the other party, or employ third parties mentioned in Article C.3.4 who were concerned with the execution of the order, or enter into a contractual relationship through an agreement or the issue of an order, except with the written permission of the opposite party in writing.

## **A.14 Liability**

- A.14.1 The liability of Cito for damage due to any shortcoming in the performance of its obligation(s) vis-à-vis the client shall be limited in the following manner:

- in case of prices on the basis of subsequent costing, upto the amount estimated by Cito
- in case of a fixed price, the agreed price.

If the agreement has a duration of more than one year, the estimated or agreed amount mentioned in the previous sentence shall be limited to a period of one year. Cito shall in no case be liable for consequential damages.

- A.14.2 The client indemnifies Cito against the claims of third parties concerning damage arising due to products and services supplied by Cito, if and to the extent that the damage is caused by the negligence of the client, employees of the client or others that the client may have engaged in connection with the agreement(s) entered into with a third party.
- A.14.3 If Cito collaborates with a third party on the client's request, or if on his request as per Article C.3.4, it engages a third party in the execution of the order, Cito shall only be liable for the part of the order executed by such third party if and to the extent that Cito has accepted such liability in writing. The liability in the case of damage caused by a third party shall in all cases be limited to the maximum of the amount that Cito can recover in this connection from such third parties.

## **A.15 Termination/suspension of contract**

- A.15.1 Cito shall have the right to terminate or suspend the agreement in whole in part with immediate effect and without judicial intervention, by letter or by fax, due to grave reason(s), if:
- The client violates any provision of the agreement between the parties and a default

of this kind is not made good within 14 days of the date of sending a notice of default, without the client having right to damage compensation;

- The client dies, applies for suspension of payments or declares himself bankrupt;
- Application is made for declaring the client bankrupt;
- The activities of the client are suspended or the business is wound up;
- Any of the assets of the client are attached;
- An offer is made for private settlement.

In such cases, all claims against the client shall be immediately claimable including the entire amount of the invoice, without Cito being bound to pay damage compensation, without prejudice to its rights to specific performance and/or damage compensation.

- A.15.2 In all cases in which the client realises that he cannot fulfil his obligations vis-à-vis Cito, he should inform Cito immediately over the telephone and should confirm the same in writing.

#### **A.16 Communication**

- A.16.1 All modifications and messages, and in general all contacts concerning the order between the parties should be communicated by the client via the contact person designated by Cito for this purpose.

#### **A.17 Partial voidness**

- A.17.1 If one or more provisions of the agreement with the client are void in law in whole or in part, the remaining provisions shall not be affected thereby. The invalid provision/s shall be replaced by a suitable provision that as closely as possible reflects the intention of the parties and the financial result striven for by them in a legally effective manner.

#### **A.18 Applicable law**

- A.18.1 The law of The Netherlands alone shall apply to agreements to which these General Terms and Conditions apply and any other agreements that may arise under the same.

#### **A.19 Court having jurisdiction**

- A.19.1 All disputes that may arise in connection with the agreements entered into with the client and Cito, or the other agreements arising under the same, shall be laid before the appropriate court having jurisdiction in Arnhem.
- A.19.2 Before one of the parties places a dispute before the court for adjudication, the parties should try to resolve the dispute at the management level through negotiations aimed at solving the problem.
- A.19.3 The parties shall regard disputes arising between them as strictly confidential and shall not make any statements concerning the same to third parties.

## **B SUPPLY OF PRODUCTS OTHER THAN ELECTRONIC PRODUCTS AND SERVICES**

### **B.1 Scope of application**

B.1.1 The provisions contained in the present section B shall apply in addition to the General Provisions (Section A) of these General Terms and Conditions, if Cito sells the client certain products, other than electronic products and services.

### **B.2 Prices and rates**

B.2.1 For each order and/or delivery, different amounts may be charged for order handling, delivery and/or administrative costs. The applicable amounts shall be announced via the conventional sales channels such as price lists, order forms, internet, etc. Changes shall not come into force earlier than one month after they are announced.

B.2.2 The prices of products may be modified, but the changes shall not come into force earlier than one month after they are announced.

B.2.3 If modifications as per B.2.1 and B.2.2 are made after placing the order, but before delivery, the client shall have the right to terminate the agreement at no cost, no later than 8 days after receipt of the invoice.

### **B.3 Invoicing and payment**

B.3.1 Invoicing shall be done at the time of or after despatching products unless otherwise specified. Cito reserves to itself the right to only make deliveries on the basis of advance payments, the issue of a direct debit authorisation to a (post) bank account of the client or via credit card payment.

### **B.4 Returned goods**

B.4.1 Returned goods shall only be accepted after prior approval of Cito. Unless otherwise provided, there shall be no credit with respect to, amongst others, charges for order handling, despatch costs and/or administration costs.

### **B.5 Refusal**

B.5.1 Cito reserves to itself the right to refuse delivery of products without assigning any reason, or to reserve the same in connection with specific target groups.

## **C PROVISION OF SERVICES**

### **C.1 Scope of application**

C.1.1 The provisions contained in the present Section C shall apply in addition to the General Provisions (Section A) of these General Terms and Conditions, if Cito sells the client certain services.

## **C.2 Invoicing**

- C.2.1 If a fixed price has not been agreed, the time that has been spent on an order, plus the costs incurred during the said period shall be invoiced after the end of each month.
- C.2.2 If a fixed price has been agreed, 25% of the total amount due shall be invoiced at the commencement of the order and the remaining 75% shall be invoiced proportionately per month in advance.

## **C.3 Execution of the order**

- C.3.1 Cito shall execute the order according to the best of its knowledge and ability.
- C.3.2 The deadline for execution for the order mentioned in the offer and/or the order confirmation shall not be a fatal deadline, even if the same has been expressly agreed by the client. If Cito shall only be deemed to be in default, if it does not render performance after notice of default in writing giving one week for performance.
- C.3.3 The above-mentioned or agreed period of execution shall in each case, but not exclusively, be extended automatically by the period(s) for which:
- There is delay, as a consequence of any circumstance that stands in the way of timely execution, irrespective of whether the same can be attributed to Cito;
  - The client fails to fulfil one or more obligations vis-à-vis Cito for any reason whatsoever, irrespective of whether the reasons for the same are justified or not, or if there is ground to believe that the client will fail to fulfil his obligation/s;
  - The client fails to place Cito in a position to execute the agreement; this situation shall occur, among others, if the client continues in default of providing Cito with the required information, things or facilities (in which case Cito shall have the right to charge the client the extra costs incurred due to the same).
- C.3.4 Cito shall have the right to have the contract executed by (a) third party (parties) without the permission of the client, if this does not violate against the agreed quality.

## **C.4 Modifications in the order**

- C.4.1 Modifications in the original order of any nature whatsoever should be accepted in writing by Cito. If this results in a higher price than was foreseen in the offer or the order confirmation, Cito shall be entitled to increase the price accordingly. Modifications to the order that lead to a reduction in the costs shall result in a corresponding modification in the agreed price. The originally agreed deadline for execution shall no longer apply after the modification.
- C.4.2 If it appears that the execution of the order cannot lead to the result intended by the client, Cito shall immediately inform the client concerning the same and discuss the steps to be taken thereafter. Cito shall in such cases reserve its right to the agreed price unless a contrary agreement is made in writing.

## **C.5 Training courses, courses and training**

- C.5.1 Unless otherwise provided or agreed, amounts due in connection with a training course, course or training or exam should be paid before the commencement of such training course, course or training or exam. In case of cancellation upto 14 days before commencement, 50% of the amount shall be due. In the case of cancellation within 14 days, the full amount shall be due.
- C.5.2 If the number of persons reporting for the course, training, training course or exam, etc. justifies the same, Cito shall be entitled to cancel the course, training, training course or exam or to combine the same with other courses, training, training courses or exams, or to reschedule the same to a later date.

## **C.6 Termination of contract**

- C.6.1 In the case of termination of contract by the client, through no fault of Cito, all the costs incurred by Cito in connection with the order and the loss of profit shall become immediately payable, subject to minimum of 10% of principal amount, to which shall be added the damage incurred by Cito in consequence of the termination of contract.

## **D LICENCE RIGHTS FOR ELECTRONIC PRODUCTS AND SERVICES**

### **D.1 Scope of application**

- D.1.1 The provisions contained in the present Section D shall apply in addition to General provisions (section A) of these General Terms and Conditions if Cito confers user licence rights on the client on electronic products and services, which shall include but not be limited to information products, computer programs and databases.

### **D.2 Definitions**

- D.2.1 In this Section, the following terms shall have the meanings indicated below:

**Documentation:**

The description of the functionality and application possibilities of the product or service given by Cito to the client in any manner whatsoever, whether in electronic form or otherwise;

**Licence right:**

The right given by Cito to the client on the basis of the licence agreement to use a product and/or a service in his organisation taking into consideration the provisions of these General Terms and Conditions;

**Licence agreement:**

The agreement entered into by Cito with the client in any form whatsoever in relation to the making available of a product or service;

**Product:**

Information ("content"), computer programs, databases and/or other publications, recorded and/or stored in electronic data carriers such as diskettes, CD-ROM's, tapes or other electronic data carriers, among others, or otherwise made available by electronic means or in any kind of electronic form by Cito to the client, including via website or e-mail message or

otherwise made available within the broadest sense of the term. As regards the scope and the limitations of the licence right, the product shall include the documentation, updates as well as additions to the product from time to time;

**Update(s):**

All subsequent versions and new releases of a product that are made available by Cito to the client;

**Service:**

An electronic service that Cito provides to the client which includes but shall not be limited to the offer of information, computer programs or databases 'by remote'.

### **D.3 Specifications and use**

- D.3.1 The product or the service shall be made available to the client in a version or, as in the case of making available by electronic means, in the manner laid down in the specifications that are notified by Cito to the client and that are accepted with the coming into existence of the licence agreement.
- D.3.2 The client shall be bound to use the product and the service as well as the data carriers, support devices and electronic media if any, on which the product is recorded and/or stored with the help of which the product can be used, and to handle the same in accordance with the instructions and stipulations specified by or on behalf of Cito. The client shall only allow the product and/or service and the above-mentioned support devices and/or electronic media to be used by persons within his organisation who are authorised to do so.
- D.3.3 Cito is authorised to give the client further instructions (for use) and/or other instructions concerning the use of the product and/or the service and the above-mentioned support devices and/or electronic media.
- D.3.4 Notwithstanding other provisions contained in these General Terms and Conditions, the client is only permitted to allow access to the information forming part of a product or service in accordance with the provisions of the relevant licence agreement relating to the product or services. The information obtained in this manner shall be limited to the internal management of the client. The range of application of the licence right for the product or the service may be different for each product and service and may be included in the licence agreement together with other terms and conditions. The licence right is non-transferable and non-exclusive, unless parties agree otherwise.
- D.3.5 It shall not be permissible for the client to modify or remove indications appearing in/on the product or the service concerning the authorship and/or the confidential nature of the product or service and/or any reference to Cito.

### **D.4 Delivery and installation; risk**

- D.4.1 The client shall make his own arrangements for the installation of the product or service, on the basis of the documentation made available by or on behalf of Cito unless the parties agree otherwise.
- D.4.2 Cito shall never be liable for any of the damages incurred by the client resulting from improper installation/implementation of the product or the service by the client.

## **D.5 Guarantee and product liability**

- D.5.1 As regards the liability for defects in the product, the provisions of the present article shall apply, in deviation from the provisions of Article A.14. In terms of this Article, a violation shall be deemed to exist only if the product or service does not function in accordance with the specifications mentioned in the documentation.
- D.5.2 Cito does not guarantee that the product or service is fully without defects and that it can work without interruptions. Cito also does not guarantee that the product or service shall satisfy the objectives of the Client.