



**kenter**

**GENERAL TERMS  
AND CONDITIONS  
KENTER B.V.**

**2020**

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## 1 Definitions

Capitalised terms used in these General Terms and Conditions shall have the following meanings:

### Offer

Any Written offer by Kenter, which may include a draft agreement.

### General terms and conditions

These General Terms and Conditions, as amended from time to time.

### BW

Dutch Civil Code.

### Codes & Conditions

Secondary regulations stipulated by the Authority for Consumers and Markets for the energy market, including any amendments thereto.

### Leased Infrastructure

The Infrastructure that the Client leases from Kenter.

### Infrastructure

The infrastructure mentioned in the Agreement, including any installations such as transformers, switchgear, etc.

### Kenter

Kenter B.V., having its registered office in Arnhem and registered with the Chamber of Commerce under number: 58246312.

### Client

The party with whom Kenter enters into an Agreement.

### Agreement

The Agreement between Kenter and one or more Client(s), which is concluded in accordance with these General Terms and Conditions and Product Terms and Conditions. The General Terms and Conditions and the applicable Product Terms and Conditions apply to and form an integral part of the Agreement.

### Products

All goods and services in the broadest sense of the word that Kenter supplies or will supply to the Client pursuant to the Agreement.

### Product Terms and Conditions

Kenter's specific set(s) of product terms and conditions applicable to the Agreement with the Client, as amended from time to time.

### In Writing

By letter or digitally (including e-mail).

### Work

All activities and related acts performed or to be performed by Kenter for the benefit of the Client under the Agreement.

If the above words are given a defined meaning in the plural form, they shall also include the singular form and vice versa.

## 2 General terms and conditions

### 2.1

The General Terms and Conditions and the Product Terms and Conditions, including any amendments or additions thereto, apply to and form an integral part of all Offers and (negotiations regarding) Agreements.

### 2.2

The Client has (digitally) received the General Terms and Conditions and the Product Terms and Conditions prior to or at the time of the conclusion of the Agreement, has been able to take cognizance of the content thereof, and agrees to it. The General Terms and Conditions and the Product Terms and Conditions can also be consulted on Kenter's website ([www.kenter.nu](http://www.kenter.nu)) and can be easily downloaded and saved.

### 2.3

Any agreements or arrangements that deviate from these General Terms and Conditions and the Product Terms and Conditions shall only apply if they have been agreed In Writing with Kenter or confirmed In Writing by Kenter; other than that these General Terms and Conditions shall remain in full force and effect. In the event of a conflict between provisions of the Agreement and the General Terms and Conditions and/or the Product Terms and Conditions, the provisions of the Agreement shall prevail over those of the General Terms and Conditions or the Product Terms and Conditions.

### 2.4

The General Terms and Conditions and the Product Terms and Conditions may be amended by Kenter. Amendments to the General Terms and Conditions and/or the Product Terms and Conditions shall enter into force thirty days after the day on which Client has been notified thereof. Unless the amendment is of such a substantial nature that continuation of the Agreement cannot reasonably be demanded of the Client, the Client is not authorised to terminate the Agreement in the event of an amendment to the General Terms and Conditions or Product Terms and Conditions.

**2.5**

If any provision of the Agreement, the General Terms and Conditions and/or the Product Terms and Conditions is invalid, void or voidable in whole or in part, the other provisions shall remain in full force and effect. The parties shall make every effort to replace the invalid, void or annulled provision with a provision which, as much as possible, has the same legal and commercial meaning as the original provision. In the event of a conflict between the General Terms and Conditions and the Product Terms and Conditions, the provisions of the Product Terms and Conditions shall prevail.

### 3 The offer

**3.1**

All Offers from Kenter:

- are addressed to the Client;
- shall not be disseminated;
- cannot be accepted in part; and
- are entirely noncommittal.

**3.2**

The period of validity of an Offer is one month. Kenter has the right to revoke an Offer during the period of validity.

**3.3**

Kenter may charge costs for the preparation of an Offer if the Client has been informed of and agreed to this in advance.

**3.4**

Kenter's Offer is based on the data and information provided by, on behalf of or for the benefit of the Client. The Client guarantees the correctness and completeness of this data and information.

### 4 (Performance of) the agreement

**4.1**

The Agreement between the Client and Kenter shall become effective as soon as the Client accepts Kenter's Offer, either by signing it or by another manner specified by Kenter and after Kenter has received this Offer.

**4.2**

In the absence of an Offer, the Agreement shall become effective by the Client(s) having Work done by Kenter or using Kenter's Products. In that case, when performing one-off Work or delivering Products on a one-off basis, Kenter's invoice shall be deemed to be the correct representation of the Agreement between the Client and Kenter. In the event of periodic Work, the Client and Kenter shall enter into a Written Agreement.

**4.3**

Amendments or additions to the Agreement must be agreed in Writing.

**4.4**

Kenter may make use of the services of third parties in the performance of the Agreement. The Client agrees to this in advance and unconditionally.

**4.5**

Kenter is entitled to transfer its rights and obligations under the Agreement to a third party. The Client agrees to such a transfer in advance and unconditionally, and acknowledges that it no longer has any claim against Kenter.

**4.6**

The Client may transfer its rights and obligations under the Agreement to a third party, but only with the prior written consent of Kenter.

**4.7**

If the Agreement is entered into with two or more Clients, Kenter may require joint and several liability to perform the Agreement.

**4.8**

If it emerges that the data and information referred to in Article 3.4 is incorrect, Kenter may require a related adjustment to the Agreement. Kenter shall inform the Client of this as soon as possible.

**4.9**

Kenter shall perform the Work to the best of its ability and in accordance with the Agreement. Kenter shall at all times be entitled to change the Work or replace certain parts thereof with other parts on condition that the essential character of the Work in question, or parts thereof, shall be maintained.

**4.10**

Kenter shall make every effort to comply with the delivery or completion dates mentioned by it in the Offer or agreed with the Client, but these shall never be regarded as strict deadlines within the meaning of Article 6:83 (a) of the Dutch Civil Code. If such a term is exceeded, Kenter shall, if possible, inform the Client of the new term of delivery or time of performance of the Agreement.

**4.11**

If Kenter requires any data and/or information to be provided by the Client for the performance of the Agreement, the delivery period shall not commence until the day that all necessary data is in the possession of Kenter or the Client has fulfilled the aforementioned obligation(s) towards Kenter.

**4.12**

In the event that the Work must be halted due to unforeseen circumstances, the delivery period will

be extended by the period equal to the period during which the Work is halted.

## 5 Duration and termination

### 5.1

The duration and effective date of the Agreement and the right of the Client to terminate the Agreement are regulated in the Agreement and the Product Terms and Conditions.

### 5.2

Kenter is entitled to suspend the (commencement of the) performance of the Agreement until it has received all information, data and resources or goods necessary for the performance of the Agreement.

### 5.3

Without prejudice to its other statutory rights, Kenter shall be entitled, without being liable for damages as a result, without judicial intervention and without any notice of default being required, to dissolve the Agreement in whole or in part with immediate effect or to suspend or discontinue its obligations under the Agreement if:

- a. Client files for bankruptcy;
- b. Client is declared bankrupt;
- c. Client proceeds to waive the estate;
- d. Client is admitted to the Statutory Debt Restructuring Scheme for Natural Persons;
- e. Client submits a request for suspension of payments or is granted a suspension of payments;
- f. (part of) the Client's goods are seized and/or when the Client is placed under legal restraint or otherwise loses the authority to dispose of its assets or parts thereof;
- g. Client fails to fulfil any of its obligations to Kenter under the Agreement, these General Terms and Conditions, Product Terms and Conditions or statutory regulations (including Codes & Conditions, NEN standards); and/or
- h. Client ceases, terminates or transfers its business activities or proceeds to dissolution or liquidation.

### 5.4

Upon termination of the Agreement as referred to in Article 5.3, the amounts Client owes Kenter under the Agreement, including compensation for any costs incurred in connection with the early termination, shall become immediately due and payable.

### 5.5

The Client shall remain bound by the Agreement until it has fulfilled all its obligations arising therefrom. If, upon termination of the Agreement, Kenter does not have the opportunity to take the

steps necessary for termination, the Client shall remain bound by the Agreement until Kenter has had the opportunity to take these steps.

### 5.6

In the event of termination of the Agreement, Kenter shall be entitled to repossess the Leased infrastructure and any other property it owns. In that case, the Contractor shall grant Kenter unhindered access to the Leased Infrastructure goods and any other property it owns. In addition, the Client shall provide Kenter with all assistance to enable Kenter to exercise its property rights. In that context, the Contractor grants Kenter an irrevocable and unconditional power of attorney to take all steps necessary, or arrange that those necessary steps are taken, for the return to Kenter of the Leased Infrastructure and any other property owned by Kenter.

### 5.7

If the Client fails to provide its cooperation in accordance with the provisions of Article 5.6, Kenter shall be entitled (without prejudice to its other (statutory) rights) to charge the Client a termination fee equal to the residual value of the Leased Infrastructure at the time of termination of the Agreement.

## 6 Confidentiality and intellectual property

### 6.1

Without prejudice to the provisions of Article 6.2, both Kenter and the Client shall keep all information and data relating to the Agreement or its content and performance confidential. Any information and data exchanged between Kenter and the Client that is classified as confidential or confidential by nature, will be treated confidentially unless Kenter and/or the Client obliged to disclose this information pursuant to a statutory obligation. These obligations shall remain in full force and effect after the termination of the Agreement.

### 6.2

If Kenter uses the services of any third parties in the performance of the Agreement, Kenter shall be permitted to share the information and data required for that purpose with those third parties.

### 6.3

All (intellectual) property rights belonging to Kenter with regard to the documents issued under the Agreement, such as drawings, designs, models, advice and reports, technical information and logos, shall continue to belong to Kenter. The Client is not permitted to provide or disclose these documents to any third parties without the prior written consent of Kenter.

## 7 Obligations of the client

### 7.1

The Client shall cooperate with Kenter as necessary for the performance of the Agreement and is in any event obliged to:

- a. provide, at the request of Kenter, all information, data and resources or goods that Kenter needs from the Client in order to perform the Agreement. Client guarantees that all information, data, documents and/or materials provided are up to date, complete and correct;
- b. render its cooperation in the performance of the Agreement by Kenter free of charge;
- c. notify Kenter of all circumstances that may be relevant to the performance of the Agreement, and do so as soon as possible, but at the latest within (14) days of the Client becoming aware of them. This shall include any (suspected) damage, shortcomings in the performance delivered by Kenter or the performance not complying with the Agreement, irregularities, as well as any case as referred to in Article 5.3;
- d. inform Kenter no later than fourteen (14) days in advance about any address changes and changes in the (trade) name;
- e. grant employees of Kenter (or third parties designated by Kenter) who can identify themselves as such, access on first request to the location of the Leased Infrastructure or the place where the Work is performed and enable them to perform their work undisturbed. The client is responsible for the accessibility of the aforementioned location and for the condition and suitability of the access roads;
- f. ensure, at its expense and in a timely manner, that all permits, approvals and exemptions with regard to the Leased Infrastructure, the Products and/or the Work, as well as any changes to those, are arranged, including the timely and complete submission of the relevant information;
- g. ensure that, for the purpose of performing the Agreement, all legal requirements regarding safety, working conditions and other applicable government regulations are met, so that the work can be carried out by Kenter in a safe manner;
- h. if a party other than the Client is the owner of the location referred to in part e of this paragraph, to ensure that the owner cooperates free of charge in the performance of the Agreement and agrees to all work that Kenter, or any third

parties designated by Kenter, must perform under the Agreement. Upon request, the Client shall provide written proof of the aforementioned consent or cooperation;

- i. Inform Kenter of any situations where third party interests are involved in (the performance of) the Agreement.

### 7.2

If the permits, approvals and exemptions or changes to the permits, approvals and exemptions referred to in Article 7.1(f) have not been obtained in time, or have not become irrevocable at the time at which the Leased Infrastructure is delivered or the Work is performed, the consequences thereof will be at the expense and risk of the Client.

## 8 Rates, fees and payment

### 8.1

The Client owes Kenter the fees as specified in the Agreement.

### 8.2

Kenter may annually (as of 1 January) adjust the agreed fees in accordance with the Service Price Index (SPI) as published annually by Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)).

### 8.3

Any increases in costs resulting from circumstances beyond Kenter's control (including, but not limited to, changes in legislation and regulations, Codes & Conditions, NEN standards, etc.) shall be for the account of the Client. Kenter shall inform the Client in advance of the circumstances and costs referred to above. Any costs related to the necessary involvement of the grid manager in question are not included in the Agreement and are at the expense of the Client.

### 8.4

If and to the extent that, as a result of any special circumstances outside Kenter's sphere of influence which are not included in the price index referred to in Article 8.2, the costs of labour, materials, etc. increase by more than 5%, Kenter will be authorised to increase the rates for the Work and Products by an amount which exceeds that price index.

### 8.5

The rates specified by Kenter in the Agreement are in euros and will be increased by VAT and all other applicable taxes, levies and fees that Kenter is required to charge pursuant to the law and/or pursuant to a government decision. Kenter will specify these amounts on the invoice.

### 8.6

If Kenter has had to perform Work or deliver Products outside Kenter's normal working hours

(from 07.00 to 17.00 on working days), Kenter will charge a surcharge in accordance with the rates.

#### 8.7

Kenter shall always be authorised to require an advance payment or security (such as a bank guarantee or pledge) from the Client in connection with the amounts that the Client owes Kenter under the Agreement. If Kenter requires security in the form of an (undisclosed) pledge, the Client is obliged to sign a deed establishing the pledge.

#### 8.8

Kenter shall send an invoice to the Client for the fees payable under the Agreement, including the amounts by which these fees may be increased on the basis of this article 8.

The invoice must be paid by the Client within the term indicated on the invoice to the account number stated on the invoice. The term stated on the invoice is a fatal term within the meaning of Article 6:83 (a) of the Dutch Civil Code.

#### 8.9

If a payment term stated on the invoice is exceeded, Kenter shall be entitled to charge the Client the statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code without prior notice of default being required. Kenter shall also be entitled to all judicial and extrajudicial costs necessary to collect the invoices, without prejudice to the right to reimbursement of all other costs and damages.

#### 8.10

The Client shall not be entitled to suspend payment of Kenter's invoices or to set off the amount it owes against a claim it believes it has against Kenter.

#### 8.11

Kenter shall announce any adjustments to rates and fees at least one month in advance.

## 9 Warranty and complaints

#### 9.1

With regard to the Products delivered by Kenter, the manufacturer's warranty applies. A warranty period of twelve (12) months applies to Kenter's Products that consist of parts originating from different producers that Kenter has formed into one Product.

#### 9.2

Any complaints relating to observable defects in the Product and the Work must be made as soon as possible, but no later than fourteen (14) days after delivery, by registered letter, stating the reasons.

#### 9.3

The Client will not be entitled to make a warranty claim, as referred to in this article, if a defect in a Product or in the Work has arisen as a result of

incorrect use of the Product or as a result of actions, including any adjustments, modifications, assembly, repair, transport, storage and maintenance work of/on the Product or the Work that was not carried out by Kenter. Nor can Kenter be held liable for any defects resulting from accidents that cannot be attributed to Kenter.

#### 9.4

Provided that according to the provisions of this article and on justified grounds a complaint has been made by the Client, Kenter is free to do one of the following:

- repair the defect in the Product or in the Work free of charge; or
- replace the Product free of charge with an equivalent product; or
- compensate the Client for the defect by means of an amount of money.

#### 9.5

If, at the request of the Client, Kenter carries out any repair or replacement work after the warranty period has expired, the costs thereof (including labour costs, administration, shipping and call-out charges) shall be borne by the Client.

#### 9.6

The parts replaced by Kenter as a result of the warranty become the property of Kenter.

#### 9.7

In the event of an unjustified complaint, the costs involved shall be borne by the Client.

#### 9.8

Legal actions must be brought within twenty-four (24) of the complaint being made in good time, at the risk of such a claim lapsing.

## 10 Liability and damage

#### 10.1

Except in the case of intent or deliberate recklessness on the part of Kenter, Kenter shall at all times only be liable for direct, material damage, which is understood to mean the damage to property arising immediately and directly as a result of an attributable failure on the part of Kenter to fulfil its obligations under the Agreement. This shall include the costs of repairing the defect. Kenter is therefore under no circumstances obliged to compensate any indirect damage (such as consequential loss or loss of profits, loss of production, loss of turnover or profit and missed savings).

#### 10.2

Without prejudice to the provisions of Article 10.1, the liability of Kenter towards the Client shall in all cases be limited to the amount paid out under the liability policies of Kenter. To the extent that

Kenter's insurer does not pay out, for whatever reason, Kenter's liability shall be:

- in the case of a continuing performance agreement (Agreement for Periodic Services), limited to a maximum of twice the annual amount that the Client owes Kenter for the periodical Work;
- in the case of an Agreement for the performance of one-off Work or the delivery of Products on a one-off basis, limited to the price specified in the Agreement for the Work or Products.

### 10.3

During the execution of Work and the delivery of Products, there may be interruptions in the energy supply. To the extent possible, the Client shall be informed in advance of such an interruption and accepts that any liability on the part of Kenter for any damage resulting from such an interruption shall be excluded.

### 10.4

If the progress of Work and/or the delivery of Products is obstructed or delayed due to circumstances for which the Client is responsible, the Client must compensate Kenter for the damage suffered as a result.

### 10.5

If the Activities have to be halted due to unforeseen circumstances - including (non-exhaustive) soil contamination, circumstances as referred to in the Flora and Fauna Act or in other laws or regulations, and failure to obtain a permit (on time) - the consequences thereof are for the account and risk of the Client.

### 10.6

The limitations and exclusions of Kenter's liability contained in this article shall also apply to third parties whose services Kenter uses in the performance of the Agreement.

### 10.7

The Client indemnifies Kenter against any claims from third parties (including parties affiliated with the Client) that are directly or indirectly related to the use of the Products and/or the performance of the Work. The Client shall also compensate Kenter for any damage Kenter may suffer as a result of such claims.

## 11 Force majeure

### 11.1

If Kenter is prevented from performing all or part of the Agreement due to force majeure as referred to in Article 6:75 of the Dutch Civil Code, Kenter shall be authorised to suspend performance of the Agreement for a maximum of six (6) months without the Client being entitled to compensation for any damage or costs. All costs incurred by Kenter up to that point which must be reimbursed on the basis of the Agreement shall be immediately due and payable.

### 11.2

Force majeure within the meaning of Article 11.1 applies in any event in the following situations:

- a. strike and all other circumstances preventing Kenter from deploying all or a significant part of its staff; and
- b. all circumstances including (non-limitative) delays or non-performance by Kenter's suppliers and/or transporters, import or trade restrictions, fire, traffic problems and hacker attacks, as a result of which Kenter is unable to dispose (in a timely manner) of materials or parts required for the performance of the Agreement.

### 11.3

If the period of force majeure lasts longer than six (6) months, the Client and Kenter are authorised to terminate the Agreement. This does not affect the fact that the Client is obliged to pay fees for that part of the Agreement that has already been performed by Kenter.

## 12 Final provisions

### 12.1

The Agreement, these General Terms and Conditions and the Product Terms and Conditions (including this article) are exclusively governed by Dutch law. All disputes relating to the Agreement, these General Terms and Conditions and/or the Product Terms and Conditions shall be submitted exclusively to the competent court of the District Court of Gelderland (Arnhem location).

### 12.2

These General Terms and Conditions enter into force on 1 January 2020 and may be cited as "General Terms and Conditions of Kenter B.V. 2020".

### 12.3

These General Terms and Conditions are published on [www.kenter.nu](http://www.kenter.nu).

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