



kenter

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

2016

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1 Definitions

In the event of any inconsistency or ambiguity in relation to the meaning of any word or phrase in this translation, the Dutch text shall always prevail.

The terms which are written with a capital letter in these General Terms and Conditions have the meaning defined hereafter:

General Terms and Conditions Metering Services

These General Terms and Conditions Metering Services, as these are amended from time to time.

Codes & Conditions

Secondary regulations set by the Consumer & Market Authority for the energy market.

Service

Service provided by or on behalf of Kenter. The Service can be divided into Metering Services and Information Services.

Information Services

Information Services are Services which relate to accessing Metering Data, including but not limited to: Abonnement Meetdata.nl, Meetdataplus and Emailservice.

Kenter

Kenter B.V., having its registered office in Arnhem.

Location

The address specified by the Principal where Metering Equipment has been or will be placed on the Principal's instruction.

Metering Equipment

All equipment, with the exception of metering transformers, with which the exchanged quantity of electricity, gas or another unit is metered and/or read out.

Metering Services

All Service(s) which are not Information Services. Metering Services in any event means the statutory measurements for which Kenter is Meter Operator, but interim measurements are also Metering Services.

Metering Data

All metering data which are generated by means of the Metering Equipment and which are determined by Kenter and/or are procured from third parties for the purpose for which the relevant Service(s) are provided.

Meter Operator

A natural person or legal person who has the responsibility for the presence of the mandatory metering device(s), as well as for the correct and timely determining and passing on of Metering Data, and who is certified in this respect.

Grid Manager

A company which on the basis of the law is designated to control one or more grids.

Principal

The person who procures or wishes to procure Service(s).

Contract

The Contract which is made by acceptance of Kenter's offer, encompasses the conditions on the basis of which the Service(s) is/are provided.

2 General Terms and Conditions Metering Services

2.1

The General Terms and Conditions Metering Services apply to all offers of and Contracts with Kenter regarding Metering Services. The General Terms and Conditions Metering Services also apply to all changes and/or additions to the Contract which are made subsequently.

2.2

Prior to the making of the Contract, or the extension thereof, the Principal will have taken note of the General Terms and Conditions Metering Services and the applicability thereof, with the exclusion of any (purchasing) terms and conditions applied by the Principal, have been accepted by the Principal. The General Terms and Conditions Metering Services can be viewed on the Kenter website (www.kenter.nu) and can be easily downloaded there.

2.3

In the event of conflict between provisions of the Contract and the General Terms and Conditions Metering Services, the relevant provisions of the Contract will have priority.

2.4

The applicability of any general terms and conditions of the Principal and/or third parties is explicitly excluded. Signing or (tacit) acceptance by Kenter of documents of the Principal and/or third parties to which such general terms and conditions have been declared to apply is never deemed acceptance thereof.

3 Confidentiality and Intellectual Property Rights

3.1

The parties are subject to a duty of confidentiality with regard to the contents of the Contract and all information and data which they receive from each other and which have been deemed as confidential or the confidential character of which ensues from the nature of the information and data, unless a statutory obligation mandates disclosure of the said information and/or data.

3.2

All (intellectual) property rights of Kenter with regard to the documents issued in the framework of the Contract, such as drawings, designs, models, advice, reports, as well as with regard to logos and the like, will remain the property of Kenter. The Principal is not permitted to furnish or disclose these documents to third parties without Kenter's explicit consent.

4 Contract

4.1

The contract will be made in one of the following manners:

- a) by going through the steps set out on the Kenter website up to and including the clicking of the button "agree";
- b) by signing the acceptance form / the offer; or
- c) in another manner which evidences the acceptance of the Service by the Principal, inter alia but not limited to the situation whereby the Metering Equipment is installed or placed by Kenter or because the Service is provided by Kenter and is taken by the Principal.

4.2

The conditions of the Contract, including but not limited to the prices and installation costs, are based on the legislation and regulations applicable at the time of the offer and the data furnished by the Principal and/or the data obtained via the Grid Manager. If said legislation and regulations change and/or the furnished or obtained data are not correct or change, the relevant conditions of the Contract will be adjusted to the prevailing legislation and regulations and/or current data. If he has furnished incorrect data, the Principal will have to pay the additional costs over the term which has already passed to Kenter and is in all cases bound by the Contract so amended for the remaining term. Kenter will inform the Principal of such adjustments.

4.3

If as a result of an amendment in the legislation and regulations changes to the Metering Equipment are necessary for the execution of the Metering

Services, the related costs are charged to the Principal, unless other agreements are made in this respect.

4.4

Kenter can make use of services of third parties for the performance of the Contract. The Principal unconditionally agrees to such in advance.

4.5

If the Principal does not give Kenter the opportunity after a notice of termination to carry out the actions necessary for the termination, the Principal will remain bound by the Contract until the Principal has given Kenter the opportunity to carry out the actions necessary for termination.

4.6

Kenter has the right to transfer the rights and obligations ensuing from the Contract to a third party. The Principal unconditionally agrees in advance to this contract takeover and hereby agrees to no longer have any claims on Kenter after the contract takeover.

4.7

The Principal can only transfer the obligations under the heading of the Contract to a third party with Kenter's prior written consent.

5 Term and termination

5.1

The term of the Contract and the starting date of the Service are set out in the Contract. If no term is agreed, there is a term of five (5) years to be counted as of the starting date of the Service(s). If no starting date has been fixed, the starting date will be the date when the Service(s) is (are) taken.

5.2

The Contract will be tacitly extended for an indefinite period of time after the end of the term stated in Article 5.1, unless the Principal or Kenter has given explicit written notice to the other party at latest one month before the expiry of the term that there will be no extension, in which case the Contract will automatically end after the term.

The Contract cannot be terminated, cancelled or dissolved by the parties with regard to the Metering Services during the term, subject to the provisions in Articles 5.6 and 5.7 on immediate, premature termination.

After the extension for an indefinite period of time the Contract can be terminated subject to a notice

period relating to the Metering Services of six (6) months, unless otherwise agreed.

The Contract can always be terminated by written notice subject to a one (1) month notice period during the term as well as thereafter in the event of extension for an indefinite period of time with regard to Information Services.

5.3

If the Contract is terminated with immediate effect pursuant to Article 5.7 before the expiry of the term referred to in Article 5.1, Kenter will charge an immediately payable termination fee which will be immediately paid by the Principal. This termination fee will be the total of the periodic fees over the remaining duration of the term of the Contract, possibly increased by the costs referred to in Article 5.4.

5.4

Upon termination or non-extension of the Contract Kenter will remove the Metering Equipment, if it is the property of Kenter, subject to an agreement to the contrary, and the Principal will compensate Kenter for the costs relating thereto.

If the Principal and Kenter agree that the Metering Equipment will not be removed or will be removed in part, Kenter will transfer the Metering Equipment to the Principal in whole or in part.

5.5

If several Services are provided and a Service is terminated, the Service(s) which is (are) dependent for their functioning on the terminated Service will also be terminated.

5.6

Kenter has the right, without consequently owing compensation to the Principal, to terminate the Contract with immediate effect if Kenter's certification as Meter Operator lapses or is revoked. Kenter is also entitled to terminate the Contract and related provision of Service(s), subject to a notice period of at least three months, if technical or financial reasons necessitate such. In such case Kenter will offer a replacement service if possible. If the Principal does not wish to accept the replacement service, or if no replacement service is available, the Contract will be terminated on the date that Kenter ceases the Service(s) for this reason. The above provisions also apply if Kenter no longer has disposition of specific products

and/or services which are provided by third parties, due to causes beyond Kenter's control.

5.7

Kenter and the Principal have the right, without consequently owing compensation, to terminate the Contract without judicial intervention and without notice of default in whole or in part with immediate effect, if:

- a) the Principal or Kenter has been granted a moratorium on payment;
- b) the Principal or Kenter is declared bankrupt;
- c) the Principal or Kenter does not perform the contract and is in default after notice of default;
- d) the Principal or Kenter, after notice of default, is in default with regard to one or more provisions of these General Terms and Conditions Metering Services;
- e) the Principal or Kenter does not satisfy the Codes and Conditions or another applicable statutory provision.

5.8

Upon termination of the Contract as referred to in Article 5.7 due to a reason on the part of the Principal as referred to in Article 5.7 a through e, the amounts which the Principal owes will be immediately due in full pursuant to Articles 5.4 and 5.5.

6 The Principal's Obligations

6.1

The Principal will provide Kenter with the necessary cooperation in the provision of the Service, in particular by:

- a) informing Kenter as soon as possible of all details, incidents and changes in circumstances which can be important for the provision of the Service, including the loss observed or suspected by him, defects or irregularities in the Metering Equipment or sealing. The Principal guarantees that the information furnished is correct and complete;
- b) at all times granting persons who possess ID or authorisation issued by Kenter access to the Location;
- c) ensuring that all statutory requirements and arrangements relating to safety and working conditions have been satisfied, so that Kenter can execute work in a safe manner;

- d) to notify Kenter at latest 14 days before a de facto address or (trade) name change, of such change;
- e) upon termination of the Service making the Kenter Metering Equipment available to Kenter in good condition;
- f) to cooperate in all relevant activities relating to the Metering Equipment.

6.2

The Principal will take care of the accessibility of the Location.

6.3

The Principal will see to it that the space where the Metering Equipment is or will be placed is easily accessible and free of obstacles. It must be possible to read and/or maintain the Metering Equipment without climbing materials.

6.4

The Principal is obliged to do all that is reasonably possible to protect the Metering Equipment against damage and against breaking the seal.

6.5

The Principal will refrain from any action which can affect the working of the Metering Equipment. The Principal is not entitled to make changes relating to (the placing of) the Metering Equipment or to move or damage the Metering Equipment, or allow such changes to be made or to move the Metering Equipment by persons other than Kenter or persons designated by Kenter, subject to Kenter's consent.

6.6

If the Principal is not the owner of the space where the Metering Equipment is or will be placed, he guarantees that owner agrees to the carrying out of all actions which Kenter deems necessary with regard to the Metering Equipment.

6.7

If the Metering Equipment is Kenter's property, the Principal is obliged to take the necessary measures or to cooperate in order to safeguard Kenter's property rights. The Principal indemnifies Kenter against any claims of third parties on Kenter's Metering Equipment.

6.8

If the Principal acts or has acted contrary to an obligation referred to in this chapter, Kenter can, without further notice of default, impose a penalty in

the amount of €500 maximum per act which is in breach of this provision.

Claiming a penalty is without prejudice to Kenter's right to claim additional compensation.

7 The Service

7.1

Work on Location will be executed on workdays between 08.00 hours and 17.00 hours. If the Principal wishes to have the work executed outside of the specified working hours Kenter can charge the Principal extra costs.

7.2

During the work on Location there can be interruptions in the power supply. The Principal will be informed as much as possible about this interruption and accepts that any liability of Kenter in connection with such an interruption is explicitly excluded.

7.3

Kenter will take over management of the Principal's Metering Equipment if the Metering Equipment satisfies the conditions which Kenter sets therefor and confirms such in writing to the Principal.

7.4

If such is necessary for the provision of the Service, defects in the Metering Equipment will be repaired or replaced by Kenter, without Kenter being obliged to inform the Principal thereof in advance.

7.5

The Principal cannot derive any rights from Metering Data if they are used for other purposes than described in relevant legislation and regulations, including Codes & Conditions.

7.6

Cost-increasing circumstances, including but not limited to limited accessibility of the Location, which are not attributable to, nor are at Kenter's risk, will be charged to the Principal. If possible, the Principal will notify Kenter in advance of these cost-increasing circumstances.

8 Rates, compensation and payments

8.1

The Principal owes compensation for the provision of the Service as laid down in the offer or the Contract.

8.2

The rates will be indexed annually on the basis of the Consumer Price Index (CPI) published by the CBS (Dutch Central Bureau of Statistics) in the month of July of the preceding calendar year.

8.3

The Principal will pay every invoice of Kenter in full within fourteen days after the date of the invoice, unless otherwise agreed. If the Principal has not paid within the specified term, the Principal will be in default without further notice of default. As of the day that the Principal is in default, he will also owe interest for late payment equal to the statutory commercial interest rate (6:119a DCC) as of the first day of the default, without prejudice to Kenter's right to compensation for all other costs and loss.

8.4

The Principal explicitly waives possible rights of suspension and in the event of objections to invoices of Kenter will continue to owe payment.

8.5

The Principal explicitly waives possible rights to set-off in relation to any amount that Kenter owes him.

9 Disruptions, questions, complaints and disputes

9.1

Kenter will make contact details available to the Principal to report disruptions, complaints, questions and disputes.

9.2

The Metering Data are deemed to be correct, unless inspection as referred to in Article 9.3 shows that the provisions laid down in or pursuant to the law have not been satisfied.

9.3

In the event of doubt regarding the accuracy of the Metering Data the Principal can have the Metering Equipment and, if applicable, the metering

transformers inspected. Kenter will determine when such inspection will take place and will notify the Principal, as much as possible in advance, when such inspection takes place and/or when the Metering Equipment is removed for inspection. If Kenter carries out the inspection itself, it will notify the Principal of the inspection options and the costs of the inspection.

9.4

The costs of the inspection are at the Principal's expense if the inspection shows that the doubt as to the accuracy of the Metering Data was unfounded, or in the event that:

- a) the doubt was valid, but the cause lies in the improper functioning of the metering transformers and Kenter can demonstrate it satisfied the inspection obligations, in conformity with the provisions of the Codes & Conditions;
- b) the doubt was valid, but the Principal is the owner of the Metering Equipment and Kenter can demonstrate that the Metering Equipment did function correctly at the start of the relevant Service.

loss and profit or income loss and/or any other loss than the direct tangible loss referred to in Article 10.1 is explicitly excluded.

10 Liability

10.1

Kenter is bound under the Contract, in addition to the provision of any agreed advisory services, to endeavour to generate usable and reliable Metering Data with properly working Metering Equipment. If Kenter defaults with regard to its obligations to the Principal under the heading of the Contract Kenter is only liable for the direct, tangible loss of the Principal which directly ensues from a default in the performance of its obligations attributable to Kenter under the heading of the Contract and then up to a maximum amount equal to the amount invoiced in fees and (installation costs) up to the time of the shortcoming causing the loss or, if such is more, up to a maximum of € 5,000.

10.2

The Principal will not hold Kenter liable for any indirect or consequential loss, such as in any event business loss and profit or income loss, which can be the result of inaccurate Metering Data or a shortcoming attributable to Kenter in the performance of its obligations under the heading of the Contract. Kenter's liability to the Principal for indirect or consequential loss, such as business

11 Force majeure

11.1

None of the parties is bound to perform any obligation if it is prevented from doing so as a result of force majeure.

11.2

Insofar as such is not already included thereunder, force majeure also means: work strike, occupation, blockades, embargo, government measures, war, revolution and/or any equivalent situation, power disruptions, malfunctions in electronic communication lines, cable breakage, fire, explosion, water damage, lightning strike, natural disasters, flood and/or earthquake, lack of and/or illness of personnel as well as a shortcoming with regard to Kenter or Kenter's suppliers or force majeure on the part of Kenter's suppliers.

11.3

If the force majeure lasts longer than ninety (90) days, the parties have the right to terminate the Contract by means of recorded written notice, unless it is foreseeable at that time that the force majeure situation will be resolved within a reasonable term. The performance already effected pursuant to the Contract will in the event of termination due to force majeure be settled proportionately, without the parties owing each other anything.

12 Final provisions

12.1

The contract and these General Terms and Conditions Metering Services are governed by Dutch law. All disputes which are connected with the Contract and these General Terms and Conditions Metering Services will exclusively be presented to the competent court in Arnhem.

12.2

These General Terms and Conditions Metering Services can be amended from time to time.

12.3

If these General Terms and Conditions Metering Services are amended by Kenter, they will enter into effect thirty (30) days after the day on which the Principal was informed thereof and when they were made available to the Principal, unless the Principal has indicated in writing within those thirty days to wish to terminate the Contract for that reason. The Principal will only be able to make use of this termination option if continuation of the Contract in the event of applicability of the amended General Terms and Conditions Metering Services can no longer be reasonably demanded of it.

12.4

If provisions or parts of provisions of the Contract and/or these General Terms and Conditions Metering Services or annexes due to mandatory legal provisions in the Codes & Conditions or in any other respect are unlawful, invalid or unenforceable in any other respect, the other provisions or the valid part of the invalid provision will remain in full effect and enforceable, without any consequence for the other obligations of the parties. Furthermore, the unlawful, invalid or unenforceable provision will be deemed to have been replaced by a provision with the same legal and commercial purport as much as possible.