



**kenter**

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

**2022**

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## 1 Definitions

The terms written with a capital letter in these general terms and conditions Kenter B.V. (**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.

### CC

Civil Code.

### Codes & Terms

Secondary regulations adopted by the Consumer and Market Authority for the energy market, including amendments thereto.

### Rented Property

The Infrastructure that Client rents from Kenter.

### Infrastructure

The infrastructure named in the Agreement, including equipment such as transformers, switchgear(s), etc.

### Kenter

The private company with limited liability Kenter B.V., having its registered office in Arnhem and registered with the Chamber of Commerce under no: 58246312

### Client

The party with whom Kenter enters into an Agreement.

### Agreement

The Agreement between Kenter and one or more Client(s), which is established in accordance with these General Terms and Conditions and the 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 items, services in the broadest sense of the word that Kenter provides or will provide to Client pursuant to the Agreement.

### Product Terms and Conditions

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

### In writing

By letter or digitally (including by e-mail).

### Work

All work and related acts performed or to be performed by Kenter on behalf of the Client pursuant to the Agreement.

Where words in the plural form are assigned a defined meaning above, they shall 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 supplements thereto, apply to, and form an integral part of, all Offers and (negotiations on) Agreements.

### 2.2

The Client has received the General Terms and Conditions and the Product Terms and Conditions (digitally) prior to or at the conclusion of the Agreement, has been able to take note of their contents, and agrees to them. The General Terms and Conditions and the Product Terms and Conditions are also available on the Kenter website ([www.kenter.nu](http://www.kenter.nu)) and can be easily downloaded and saved.

### 2.3

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, and shall otherwise fully uphold these General Terms and Conditions. In case of 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. In case of conflict between the General Terms and Conditions and the Product Terms and Conditions, the provisions of the Product Terms and Conditions shall prevail.

### 2.4

The General Terms and Conditions and the Product Terms and Conditions are subject to change 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 is notified thereof. Only when the change is so substantial that continuation of the Agreement cannot reasonably be required of the Client, the Client is shall be authorized to terminate the Agreement upon a change in the General Terms and Conditions or Product Terms and Conditions.

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 remaining provisions shall remain in full force and effect. The parties shall endeavour to substitute for the invalid, void or voidable provision a provision with as much as possible the same legal and commercial purport as the original provision.

### 3 Offers

#### 3.1

All Offers from Kenter:

- shall be addressed to Client;
- shall not be circulated;
- cannot be partially accepted; and
- are entirely without obligation.

#### 3.2

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

#### 3.3

Kenter may charge a fee for the preparation of an Offer, if the Client has been informed 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 accuracy and completeness of this data and information.

### 4 Performance of the agreement

#### 4.1

The Agreement between the Client and Kenter is concluded at the moment the Client accepts Kenter's Offer, either by signing it or by another method prescribed by Kenter, and after Kenter has received this Offer.

#### 4.2

In the absence of an Offer, the Agreement is established by the Client(s) using Work or Products of Kenter. In the case of the performance of one-time Work or the one-time delivery of Products, Kenter's invoice shall in that case be considered the correct representation of the Agreement between Client and Kenter. In the case of periodic Work, the Client and Kenter will still conclude a Written Agreement in such a case.

#### 4.3

Changes or additions to the Agreement must be agreed upon in Writing.

#### 4.4

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

#### 4.5

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

#### 4.6

The Client may assign its rights and obligations under the Agreement to a third party but only with Kenter's prior Written consent.

#### 4.7

If it appears that the data and information referred to in article 3.4 are/is not correct, Kenter may require a related adjustment to the Agreement. Kenter will inform Client of this as soon as possible.

#### 4.8

Kenter shall perform the Work to the best of its ability in accordance with the Agreement. Kenter shall be entitled at any time to modify the Work or replace certain parts thereof with other parts provided that the essential character of the Work in question, or parts thereof, shall be maintained.

#### 4.9.

Kenter shall make every effort to comply with the delivery periods stated in the Offer or agreed with the Client, but these may never be regarded as deadlines within the meaning of Section 6:83 under a of the Dutch Civil Code. If such a term is exceeded, Kenter shall if possible specify the new delivery or completion date or time of performance of the Agreement to the Client.

#### 4.10

If Kenter requires data and/or information to be provided by the Client for the performance of the Agreement, the delivery or completion period will not commence until the day on which all the required data are in Kenter's possession or the Client has fulfilled the said obligation(s) in respect of Kenter.

#### 4.11

The (delivery) period will be extended by the period equal to the period that the Work must be stopped due to any unforeseen circumstances.

### 5 Duration and termination

#### 5.1

The term and effective date of the Agreement and the Parties' right to terminate the Agreement shall

be set forth in the Agreement. If the term (and the reasons for any of termination) are not specified in the Agreement, the provisions of Article 5.2 shall apply.

## 5.2

Agreements with respect to periodic Work are entered into for a specified term. This specified term for periodic Work is recorded by Kenter in the periodic services specification. Termination of the Agreement for periodic fixed-term Work by a Party is only possible by the end of the term and subject to a notice period of at least 6 (in words: six) months. Termination of Agreements shall be in Writing. If the term of the Agreement has expired and no notice of termination has been given, the Agreement will always be tacitly renewed for one (1) year, in which case the Parties may terminate the Agreement in Writing by the end of the term with due observance of a notice period of at least 6 (in words: six) months. If, contrary to the foregoing, the Agreement expressly provides that the Agreement has been entered into for an indefinite period of time, the Parties may terminate the Agreement in Writing with due observance of a notice period of at least 6 (in words: six) months.

## 5.3

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 and to be provided by the Client.

## 5.4

Without prejudice to its other statutory rights, Kenter shall be entitled, without thereby becoming liable for compensation, without judicial intervention and without notice of default, to terminate 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 goes into administration;
- d. Client is admitted to the Statutory Natural Persons Debt Rescheduling Scheme;
- e. Client applies for or is granted suspension of payment;
- f. attachment of all or part of the Client's property is made and/or when Client is entered into forced administration or otherwise loses the power of disposition of its assets or parts thereof;
- g. Client fails to fulfil any obligation to Kenter under the Agreement, these General Terms and Conditions, the Product Terms and Conditions or statutory regulations (including Codes & Conditions, NEN standards); and/or

- h. Client ceases, terminates or transfers its business and/or proceeds with dissolution or liquidation.

## 5.5

Upon termination of the Agreement as referred to in Article 5.4, the amounts owed by Client to Kenter under the Agreement including compensation for any costs related to the early termination shall be immediately due and payable.

## 5.6

Client shall remain bound by the Agreement until it has fulfilled all of its resulting obligations to Kenter. If upon termination of the Agreement Kenter does not have the opportunity to perform the actions necessary for termination, Client shall remain bound by the Agreement until Kenter has been given the opportunity to perform these actions.

## 5.7

Upon termination of the Agreement, Kenter shall be entitled to take back the Rented Property and other property belonging to Kenter. In such case Client shall grant Kenter unhindered access to the Rented Property and other property owned by it. The Client shall also provide all cooperation to Kenter in order to enable Kenter to exercise its property rights. In this respect Client shall grant Kenter an irrevocable and unconditional power of attorney to perform or cause to be performed all acts necessary to return to Kenter the Rented Property and other items belonging to Kenter.

## 5.8

If the Client fails to cooperate 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 in the amount of the residual value of the Rented Property at the time of termination of the Agreement.

## 6 Confidentiality, intellectual property and privacy

### 6.1

Without prejudice to the provisions of article 6.2, Kenter and the Client shall keep confidential all information and data relating to (the content and performance of the) Agreement. Information and data exchanged between Kenter and the Client that has/have been designated as confidential or that is confidential by its nature will be treated as confidential, unless Kenter and/or the Client is/are required to disclose pursuant to a legal obligation. These obligations shall remain in full force and effect after termination of the Agreement.

### 6.2

If Kenter uses the services of third parties in the performance of the Agreement, Kenter shall be

permitted to share the information and data required for this purpose with such third parties.

### 6.3

All (intellectual) property rights of Kenter shall remain vested in Kenter with respect to the documents issued under the Agreement, such as drawings, designs, models, advice and reports, technical information and logos. The Client shall not be permitted to provide or disclose these documents to third parties without Kenter's prior Written consent.

### 6.4

In the performance of the Agreement, Kenter will process personal data. Kenter will be considered a data controller in this respect and under applicable privacy laws. The processing of personal data is subject to Kenter's privacy statement. The privacy statement provides more information on processing by Kenter. Kenter's privacy statement can be reviewed on Kenter's website at ([www.kenter.nu](http://www.kenter.nu)).

## 7 Obligations of the client

### 7.1

The Client shall provide all necessary cooperation to Kenter in the performance of the Agreement and shall in any case be obliged to:

- a. at Kenter's request, provide all information, data and resources or goods that Kenter requires from Client in order to perform the Agreement. Client warrants that all information, data, documents and/or materials provided are current, complete and accurate;
- b. cooperate free of charge in Kenter's performance of the Agreement;
- c. notify Kenter as soon as possible, but no later than within (14) days after the Client becomes aware of all circumstances that may be relevant to the performance of the Agreement. This includes (suspected) damage, a defect in the performance delivered by Kenter or the failure of the performance to comply with the Agreement, irregularities, as well as a case as referred to in Article 5.4;
- d. notify Kenter of any address and (trade) name changes no later than fourteen (14) days in advance;
- e. notify Kenter no later than fourteen (14) days in advance of any proposed strikes, termination, dissolution, takeover and/or liquidation of (the company of) the Client;
- f. allow employees of Kenter (or third parties designated by Kenter) who can identify themselves as such to have access at first request to the location of the Rented Property or the place where

the Work is performed and the Products are delivered, and to enable them to perform the relevant actions undisturbed. The Client shall guarantee the accessibility and safety of the aforementioned location and the condition and suitability of the access roads. If (employees of) Kenter do not consider the location to be sufficiently safe, Kenter is entitled to suspend its Work until Kenter's safety requirements are met;

- g. to arrange, at its own expense, for all permits, approvals and exemptions required for the Rented Property, the Products and/or the Work or amendments thereto in good time, including the timely and complete supply of the relevant data;
- h. ensure that, for the purposes of the performance of the Agreement, all legal requirements regarding safety, working conditions and other applicable government regulations are met so that work can be performed by Kenter in a safe manner;
- i. if a party other than the Client is the owner of the location referred to in part e of this paragraph, to guarantee that the owner will cooperate free of charge in the performance of the Agreement and agrees to all acts that Kenter or third parties designated by Kenter are required to perform pursuant to the Agreement. If requested, the Client shall submit Written evidence of the aforementioned consent or cooperation;
- j. inform Kenter of situations involving third party interests in (the performance of) the Agreement;
- k. provide an overall safety plan if Kenter is engaged as a subcontractor.

### 7.2

If the permits, approvals and exemptions referred to in Article 7.1(f) or amendments thereto have not been obtained in time, or have not become irrevocable at the time the Rented Property is delivered or the Work is performed, the consequences thereof shall be at the expense and risk of the Client.

## 8 Rates, fees and payment

### 8.1

Client shall owe Kenter the fee set forth in the Agreement.

### 8.2

Annually (as of January 1) Kenter may adjust the agreed fee in accordance with the Service Price Index (DPI) as published annually by Statistics Netherlands (CBS).

**8.3**

Cost increases resulting from circumstances beyond Kenter's control (including, but not limited to, changes in laws and regulations, Codes & Conditions, NEN standards, etc.) shall be borne by the Client. Kenter will inform Client in advance of the circumstances and costs referred to above. Costs associated with the necessary engagement of the relevant network operator are not included in the Agreement and shall be borne by the Client.

**8.4**

If and insofar as, as a result of special circumstances outside Kenter's sphere of influence, not included in the price index figure referred to in Article 8.2, the costs of labour and materials, etc. increase by more than 5%, Kenter shall be entitled to increase the fee for Work and Products by an amount that exceeds that price index figure.

**8.5**

The fees set by Kenter in the Agreement shall be in Euro and shall be increased by VAT and all other applicable taxes, levies and fees that Kenter is required to charge by law and/or pursuant to a governmental 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 7 a.m. to 5 p.m. on working days), Kenter will charge a surcharge in accordance with the fee schedule.

**8.7**

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

**8.8**

Kenter shall invoice the Client for the fees payable under the Agreement including the amounts by which such fees may be increased under this Article 8.

**8.9**

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

**8.10**

If a payment term stated on the invoice is exceeded, any discounts provided to the Client shall lapse and 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. Kenter shall also claim all judicial and extrajudicial (collection) costs

necessary to collect the invoices. The extrajudicial collection costs shall be set at 15% of the outstanding principal amount, including VAT, with a minimum of € 150, without prejudice to Kenter's right to claim compensation of the actual costs if these costs are higher.

**8.11**

Client is not entitled to suspend payment of invoices of Kenter or to set off the amount owed against a claim it believes it may have against Kenter.

**8.12**

Kenter shall announce any changes of rates and fees at least one month in advance.

## 9 Warranty and claims

**9.1**

With respect to the Products supplied by Kenter, the manufacturer's warranty provided by the manufacturer shall apply. A warranty period of twelve (12) months shall apply to Kenter Products that consist of parts originating from different manufacturers that are formed together by Kenter into a Product.

**9.2**

Complaints concerning 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 is not entitled to rely on the guarantee referred to in this article if a defect in a Product or in the Work has arisen as a result of improper use of the Product or as a result of actions, including in any case adjustments, modifications, assembly, repair, transport, storage and maintenance activities to the Product or the Work that were not performed by Kenter. Kenter shall not be held liable for defects resulting from accidents, which cannot be attributed to Kenter.

**9.4**

Provided that Client's complaint was in accordance with the provisions of this article and on justifiable grounds, Kenter shall have the discretion to:

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

**9.5**

If Kenter performs repair or replacement work at the request of the Client after the warranty period has expired, the costs thereof (including labour,

administration, shipping and call-out charges) shall be borne by the Client.

#### 9.6

The parts replaced by Kenter because of the warranty shall become the property of Kenter.

#### 9.7

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

#### 9.8

If legal actions are not instituted within twenty-four (24) months of the timely claim they shall be cancelled.

## 10 Liability, damages and insurance

### 10.1

Except in the event of intent or deliberate recklessness on the part of Kenter, Kenter shall at all times only be liable for direct, material damage, which shall be understood to mean property damage that arises immediately and directly, including the costs of repairing the defect, due to an attributable shortcoming on the part of Kenter to fulfill its obligations under the Agreement. Kenter is therefore in no case obliged to compensate indirect damages (such as consequential or trading losses, loss of production, loss of sales or profits and missed savings).

### 10.2

Without prejudice to the provisions of Article 10.1, Kenter's liability to the Client shall in all cases be limited to the amount paid out under Kenter's liability policies. To the extent that for any reason Kenter's insurer does not pay out, Kenter's liability shall be limited:

- in the case of a continuing performance contract (Agreement for periodic Work) limited to no more than twice the annual sum that the Client owes Kenter for the periodic Work;
- in the case of an Agreement for the performance of one-time Work or the one-time delivery of Products, limited to the price for the Work or Products specified in the Agreement.

### 10.3

During the performance of Work and delivery of Products, there may be interruptions in power supply. Client will be informed in advance of such an interruption to the extent possible and accepts that any liability of Kenter for damage resulting from such an interruption is excluded.

### 10.4

If the progress of Work and/or the delivery of Products is impeded or delayed by circumstances for which the Client is responsible, the Client must compensate Kenter for the incurred damage.

### 10.5

If the Work has to be halted because of unforeseen circumstances, including (non-exhaustively) soil pollution, circumstances as referred to in the Flora and Fauna Act or in other laws or regulations, and the failure to obtain a permit (in a timely manner), any consequences will be at the Client's expense and risk.

### 10.6

The limitations and exclusions of Kenter's liability included in this article also apply on behalf of third parties which Kenter uses in the performance of the Agreement.

### 10.7

The Client shall indemnify Kenter against claims by third parties (including parties affiliated with the Client) which 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 damages suffered by Kenter as a result of such claims.

### 10.8

The Client shall ensure that during the term of the Agreement the Products, the repair costs and the damage referred to in article 10.7 are covered by (an) insurance policy or policies already taken out or to be taken out at its own expense in which Kenter and the auxiliary persons engaged by Kenter are included as co-insured parties. Upon Kenter's request, the Client shall provide Kenter with an insight into the relevant insurance policy or policies and shall warrant that it will continue to meet all of its obligations under the insurance policy or policies. If, in the event of damage, both Kenter's insurance and the Client's insurance provide coverage, the Client shall be required to claim such damage under its own insurance first.

## 11 Force majeure

### 11.1

If Kenter is prevented from performing the Agreement in whole or in part due to force majeure as referred to in article 6:75 of the Dutch Civil Code, Kenter shall be authorized to suspend the performance of the Agreement without the Client being entitled to compensation for any damage or costs. All costs incurred by Kenter up to that point that are to be reimbursed pursuant to the Agreement shall be immediately due and payable.

### 11.2

Force majeure within the meaning of Article 11.1 shall exist in any case in the following situations:

- a. strikes and any other circumstances that prevent Kenter from deploying all or substantially all of its personnel; and
- b. all circumstances including (non-exhaustive) delay or non-performance by Kenter's suppliers and/or carriers, import



or trade restrictions, fire, traffic problems and hacker attacks, as a result of which Kenter cannot (timely) obtain materials or parts required for the performance of the Agreement.

### 11.3

If the period of force majeure lasts longer than six (6) months, Client and Kenter are authorized to terminate the Agreement. This does not affect the obligation of the Client to pay compensation for any part of the Agreement that had already been performed by Kenter.

## 12 Final provisions

### 12.1

The Agreement, these General Terms and Conditions and the Product Terms and Conditions are (including this article) exclusively governed by Dutch law. All disputes related 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 (location Arnhem).

### 12.2

These General Terms and Conditions shall take effect on December 15, 2022 and may be referred to as "Kenter B.V. General Terms and Conditions 2022".

### 12.3

These General Terms and Conditions can be accessed on [www.kenter.nu](http://www.kenter.nu).

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