



**kenter**

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

2017

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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 written with a capital in these General Terms and Conditions have the meaning defined hereafter:

### **Offer**

Every written offer of Kenter, including offers sent by e-mail or in digital form.

### **General Terms and Conditions**

These General Terms and Conditions, as these are altered from time to time.

### **Services**

All services which Kenter provides and will provide on behalf of the Principal on the basis of the Contract.

### **Leased Property**

The objects described in the Contract which are leased by the Principal on the basis of the Contract.

### **Kenter**

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

### **Principal**

The party with whom Kenter makes a Contract.

### **Contract**

The Contract between Kenter and one or more Principal(s), which is made after acceptance by the Principal(s) of an Offer of Kenter in accordance with Article 3.1 of these General Terms and Conditions or because the Principal(s) makes (or make) use of Work or Services of Kenter, including these General Terms and Conditions and the applicable Product Terms and Conditions, which both form an integral part of the Contract.

### **Product Terms and Conditions**

The applicable specific set(s) of Product Terms and Conditions, as these are altered from time to time.

### **Work**

All work and related services which Kenter carries out or will carry out on behalf of the Principal on the basis of the Contract.

## 2 General Terms and Conditions

### 2.1

The General Terms and Conditions and the Product Terms and Conditions apply to, and form an integral part of, all Offers and Contracts, including alterations or additions thereto.

### 2.2

Prior to or when making the Contract the Principal will have received the General Terms and Conditions and the Product Terms and Conditions (digitally), will have been able to take note of the contents thereof and has agreed therewith.

### 2.3

Deviations from the General Terms and Conditions and the Product Terms and Conditions must be agreed in writing. In the event of a conflict between provisions of the Contract and the General Terms and Conditions and/or the Product Terms and Conditions, the provisions of the Contract prevail over the provisions 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 can be altered by Kenter. Alterations also apply with regard to existing Contracts. Alterations in the General Terms and Conditions and/or the Product Terms and Conditions will become effective four weeks after the announcement or at a later date as stated in the announcement. In the event of such an alteration the Principal is not permitted to terminate the Contract, unless the continuation of the Contract, in view of the substantial nature of the alteration, cannot reasonably be demanded of the Principal.

### 2.5

If any part of the Contract, the General Terms and Conditions and/or the Product Terms and Conditions is in any respect invalid, void or voidable, the other parts will remain in full effect. The invalid, void or voided provision will then be replaced by a provision which as much as possible has the same legal and commercial purport.

### 2.6

The applicability of general terms and conditions of the Principal and/or third parties is explicitly excluded.

## 3 Contract

### 3.1

The Contract will be established after the Principal has accepted the Offer by signing, Kenter has received the signed returned Offer and Kenter has confirmed the making of the Contract to the Principal within a reasonable term in writing (including by e-mail or in digital form) or the Principal makes use of Work or Services of Kenter. The acceptance of the Offer can also take place in a digital manner. Alterations or additions to the Offer and/or the Contract must be agreed in writing.

### 3.2

An Offer is valid during a period of one month.

### 3.3

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

### 3.4

Kenter has the right to transfer its rights and obligations which ensue from the Contract to a third party or a legal successor. The Principal unconditionally agrees to such transfer in advance and acknowledges that in such case he will have no further claims on Kenter.

### 3.5

The Principal can transfer his rights and obligations under the Contract to a third party but only with Kenter's prior written consent. Kenter will only refuse its consent or attach conditions thereto in the case of substantial interests.

### 3.6

If the Contract is made with two or more Principals, Kenter can demand several liability with regard to performance of the Contract.

**3.7**

Kenter has the right, without such entailing an obligation to pay compensation, to alter the Contract if legislation and regulations (including the applicable NEN standards) oblige Kenter to do so. If an alteration in the legislation and regulations (including the applicable NEN standards) entails cost-increasing circumstances for Kenter or has as a result that additional investments are necessary to carry out the Work and Services on behalf of the Principal, these cost-increasing circumstances and investments are at the Principal's expense and risk.

## 4 Term and termination

**4.1**

The term and starting date of the Contract and the Principal's right to terminate the Contract will be arranged in the Contract and the Product Terms and Conditions. In addition, the provisions of this Article 4 of the General Terms and Conditions apply.

**4.2**

Kenter has the right to suspend the (start of the) performance of the Contract until it, on its request, has received all information, details and resources or goods from the Principal which it needs to perform the Contract.

**4.3**

Kenter has the right, without such entailing an obligation to pay compensation, without judicial intervention and without notice of default, to terminate the Contract in whole or in part with immediate effect or to suspend or cease the performance thereof, if:

- a. the Principal petitions for bankruptcy, is declared bankrupt, relinquishes his assets, submits an application for a moratorium or is granted a moratorium,, goods of the Principal are attached and/or if the Principal is otherwise not able to perform his payment obligations;
- b. the Principal fails to perform his payment obligations under the Contract;
- c. the Principal fails to perform any other obligation he is subject to with regard to Kenter on the basis of the Contract or on the basis of the law; and/or
- d. the Principal ceases, terminates or transfers his business or dissolves or liquidates his business.

**4.4**

Upon termination of the Contract as referred to in Article 4.3 the amounts which the Principal owes Kenter on the basis of the Contract, including compensation for any costs incurred as a result of the early termination, are immediately due. Amounts which Kenter had already invoiced before the termination in connection with the performance

will remain owed in full and are also immediately due.

**4.5**

The Principal will remain bound by the Contract until he has performed all of his obligations ensuing therefrom. If upon the termination of the Contract Kenter does not have the opportunity to carry out the necessary actions for termination, the Principal will remain bound by the Contract until Kenter has had the opportunity to carry out these actions.

## 5 Confidentiality and intellectual property

**5.1**

The parties are subject to a duty of confidentiality in respect of all information and details about the Contract. Information and details exchanged between the parties, which are deemed confidential or which by their nature are confidential will be treated confidentially. These obligations will continue to apply in full after termination of the Contract.

**5.2**

If in the performance of the Contract Kenter makes use of the services of third parties, Kenter is permitted to share the necessary information and details with these third parties.

**5.3**

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

## 6 The Principal's obligations

**6.1**

The Principal will provide Kenter with all necessary cooperation for the execution of the Contract and in that framework is in any event obliged to:

- a. on Kenter's request furnish all information, details and resources or goods which Kenter needs to perform the Contract. The Principal guarantees that all information, details, documents and/or materials provided are up to date, complete and correct;
- b. cooperate in the performance of the Contract free of charge;
- c. notify Kenter as soon as possible of all circumstances which can be relevant for

- the performance of the Contract, including (presumed) loss, defects and irregularities and circumstances as stated in Article 4.3;
- d. notify Kenter at latest fourteen (14) days in advance of address and (trade) name alterations;
  - e. at all times grant employees of Kenter (or third parties designated by Kenter) who can identify themselves as such access to the location of the Leased Property or the place where the Services and/or Work will be provided and to enable them to carry out the relevant actions uninterrupted. The Principal guarantees the accessibility of the aforementioned location and the condition and suitability of the access roads;
  - f. at his expense ensure the timely availability of all permits, approvals and dispensations or alterations thereto on behalf of the Leased Property, the Services and/or the Work, including the timely and full delivery of the relevant details;
  - g. enable the provision of the Services and Work and the delivery of the goods necessary therefore within Kenter's normal working hours (from 07.00-17.00 hours on working days) and under normal working conditions; and to
  - h. ensure that on behalf of the performance of the Contract all statutory requirements relating to safety, applicable government regulations and working conditions are satisfied.

#### 6.2

If the permits, approvals and dispensations or alterations thereto referred to in Article 6.1, under f, have not been obtained in time or have not become irrevocable at the time when the Leased Property is completed or the Work is executed, the consequences thereof are at the Principal's expense and risk.

#### 6.3

If the Principal acts in contravention of the obligations in Article 6.1 and the relevant obligations in the Product Terms and Conditions if applicable Kenter can, without prior notice of default or judicial intervention, impose a penalty of EUR 1,000.00 per contravening act. This is without prejudice to Kenter's right to demand additional compensation.

## 7 Rates, fees and payment

### 7.1

The Principal owes compensation as laid down in the Contract. Kenter has the right to annually adjust the fee in accordance with the CBS price index figure for commercial services (Services Price Index, DPI).

### 7.2

The fees recorded by Kenter in the Contract will be increased by VAT and all other applicable taxes, charges and fees which Kenter charges on the basis of the law and/or pursuant to a government decision. Kenter will specify these amounts on the invoice.

### 7.3

If the Principal has furnished inaccurate information to determine the amount of the fee (including information as referred to in Article 6.1, under a), Kenter has the right to adjust the fees to the right situation and to charge the adjusted fees.

### 7.4

If Kenter has had to provide Services and/or carry out Work outside of Kenter's normal working hours (from 07.00-17.00 hours on working days), Kenter has the right to charge an additional fee (including a supplement for overtime, public holidays and weekends).

### 7.5

Kenter can demand security (such as a bank guarantee or deposit) from the Principal in connection with the amounts which the Principal owes on the basis of the Contract. Kenter does not owe the Principal any interest or other costs over the amount of the security.

### 7.6

Kenter will charge the fees and amounts owed on the basis of the Contract by which these fees are increased on the basis of this Article 7 by means of an invoice.

### 7.7

The Principal must pay the invoice on the account number specified on the invoice within the term indicated on the invoice. If the Principal does not pay within this term, he will automatically be in default without notice of default and as of the time of default until the day of payment owes statutory commercial interest in accordance with Article 6:119a DCC over the sum owed. This is without prejudice to Kenter's right to compensation of any additional costs and loss as a result of non-payment (including collection costs) by the Principal.

### 7.8

The Principal is not entitled to suspend payment of invoices or to set off the amount owed by him against a claim which he believes he has on Kenter.

## 8 Liability and loss

### 8.1

Kenter is only liable to the Principal with regard to the performance of the Contract or in connection with the Contract for the cases described in the Product Terms and Conditions. Any other liability is explicitly excluded.

### 8.2

In no single case is Kenter bound to compensate indirect loss (also including consequential or business loss, production loss, loss of revenue or profit and a decrease in the value of products) and loss which is not covered by Kenter's insurance. This restriction also applies on behalf of Kenter employees and on behalf of third parties who Kenter engages in the performance of the Contract.

### 8.3

If the Principal is bound on the basis of the Contract to insure himself against certain risks, he is bound to claim any loss under that insurance and to indemnify Kenter against recovery claims of the insurer.

### 8.4

The legal claim for compensation or for rectification of the Principal with regard to Kenter is time-barred by the passing of six (6) months after the Principal has protested in this respect or by the passing of six (6) months as of the time when the Contract has ended by completion, dissolution or termination by notice.

### 8.5

During the execution of Work and Services there can be disruptions in the energy supply. The Principal will be informed as much as possible in advance about this disruption and accepts that any liability of Kenter in connection with such disruption is explicitly excluded.

### 8.6

If in the execution of Work and Services the progress is impeded or delayed by circumstances for which the Principal is responsible, he must compensate the loss suffered by Kenter in consequence thereof.

### 8.7

If the Work or Services must be ceased due to unforeseen circumstances – including (but not exhaustively) soil contamination, circumstances as referred to in the Flora and Fauna Act or other legislation and the non-(timely) obtaining of a permit – the consequences thereof are at the Principal's expense and risk. If the Work or

Services is/are ceased as a result of the above-mentioned unforeseen circumstances, the term agreed in the Contract will be suspended and Kenter will not have exceeded the time-limit.

### 8.8

The Principal indemnifies Kenter against all loss which Kenter suffers as a result of claims of third parties, which are connected with or ensue from the Contract.

## 9 Force majeure

### 9.1

In a case of force majeure as referred to in Article 6:75 DCC Kenter is entitled to suspend the performance of the Contract during a maximum of six (6) months without the Principal having the right to compensation of any loss or costs. All costs incurred by Kenter up to that time which must be compensated on the basis of the Contract will be immediately due.

### 9.2

There will in any event be force majeure within the meaning of Article 9.1 in the following situations:

- a. work strike and all other circumstances as a result of which Kenter cannot deploy its personnel in whole or for a significant part; and
- b. all circumstances including (this is a non-exhaustive list) delay or non-performance by suppliers and/or transporters of Kenter, import or trade restrictions, fire, traffic problems and hacker attacks) so that Kenter cannot dispose (in time) of the materials or parts necessary for the performance of the Contract.

### 9.3

If the period of force majeure lasts longer than six (6) months the parties are authorised to terminate the Contract. This is without prejudice to the obligation of the Principal to pay a fee for the part of the Contract which has already been performed by Kenter.

## 10 Final provisions

### 10.1

The Contract, the General Terms and Conditions and the Product Terms and Conditions are subject to Dutch law. All disputes connected with the Contract, the General Terms and Conditions and/or the Product Terms and Conditions will exclusively be presented to the competent judge of the Gelderland District Court.

**10.2**

These General Terms and Conditions became effective on 7 August 2017 and can be cited as "General Terms and Conditions of Kenter B.V."

**10.3**

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

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