



kenter

PRODUCT TERMS
AND CONDITIONS
OF PURCHASE AND
ONE-OFF (PROJECT) WORK
KENTER B.V.

2017

Table of Contents

1	Definitions	3
2	Applicability	4
3	Termination	4
4	Work	4
5	Purchase	6
6	Retention of title	7
7	The Principal's Obligations	7
8	Rates, fees and payment	7
9	Liability and loss	8
10	Final provisions	8

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 described in these Product Terms and Conditions which are written with a capital have the meaning as defined in the General Terms and Conditions, or, insofar as they are not defined therein, the meaning stated hereafter:

General Terms and Conditions

Kenter's General Terms and Conditions, as these are altered from time to time.

Product Terms and Conditions

These Kenter Product Terms and Conditions of Purchase and One-off (Project) Works, as these are altered from time to time.

Purchase

A Contract on the basis of which Kenter (also) undertakes to deliver goods to the Principal at a price to be determined by the Principal within the meaning of Section 7:1 Dutch Civil Code.

Work

The product of the realisation of the Work laid down in the Contract.

2 Applicability

These Product Terms and Conditions, together with the General Terms and Conditions, apply to and form an integral part of all Offers and Contracts, including alterations and additions thereto, relating to the execution by Kenter of one-off Work, including Work in the framework of projects, and/or which relate to Purchases.

3 Termination

3.1

The Principal is not permitted to terminate the Contract prior to the execution of the Work or during the execution of the Work.

3.2

Kenter can terminate the Contract in the cases laid down in Article 4 of the General Terms and Conditions.

4 Work

4.1 Start and execution

4.1.1

The Principal will ensure that Kenter will have timely disposition of all information, details, documents, materials and goods as referred to in Article 6.1, under a, of the General Terms and Conditions and of all permits, dispensations and approvals, including alterations as referred to in Article 6.1, under f, of the General Terms and Conditions which are necessary to perform the Contract. Kenter will only start the execution of the Work after the Principal has performed these obligations.

4.1.2

If Kenter is to carry out Work, preparatory, related or necessary digging, foundation, drilling or channelling work, masonry, plastering, concrete, carpentry, painting and plumbing work, soil clean-up, removal of asbestos and removal of contaminated soil and street work relating to this Work will not form part thereof. The Principal guarantees at his own expense and risk that this

work will be executed by third parties in a proper and timely manner, and that Kenter will not suffer any hinder in relation thereto in the execution of the Work.

4.1.3

The Principal bears the risk of damage to and loss of materials, components, goods or equipment which Kenter has brought with it on behalf of the Work if the Principal is responsible for the security thereof.

4.1.4

Unless agreements to the contrary have been made in the Contract, the Principal will, at his expense, see to the power supply for the Work, including the timely application for the correct connection to the public grid of a grid manager or to a closed distribution system. Both the costs of the necessary power and the connection costs are at the Principal's expense. The same applies with regard to the other main services necessary for the Work.

4.2 Location

4.2.1

The Principal is responsible for the condition of the location and the buildings and works present thereon where the Work will be executed. The Principal is responsible for the rectification of all circumstances and situations which impede the execution of the Work on the location. The Principal is obliged to notify Kenter as soon as possible of these kinds of circumstances and situations and to warn Kenter of danger in due time.

4.2.2

On behalf of the Work the Principal will make a location available free of charge which satisfies the requirements set therefore by Kenter. All costs connected with the set-up and adjustment of this location, as well as the placing and construction of the Work on the location, are at the Principal's expense.

4.2.3

If the Principal does not own the location as referred to in the preceding paragraphs of this article, he guarantees that the owner agrees to all actions which Kenter or third parties designated by Kenter must execute on the basis of this Contract. If so requested the Principal will present written evidence of the consent referred to above.

4.2.4

The Principal will ensure that the location can be easily reached to a degree which is approved by Kenter. Upon request the Principal will cooperate at his own expense in removing obstacles and impediments identified by Kenter.

4.3 Additional and less work and unforeseen circumstances**4.3.1**

Kenter reserves the right to increase the agreed price for the Work in the event of additional work, if the Principal has approved such additional work. In the event a reduction in work is determined, the scope thereof will be determined between the parties in consultation.

4.3.2

If during the execution of the Work it turns out that (the technical realisation of) the Work must be altered as a result of unforeseen circumstances, Kenter has the right to charge the Principal for the costs thereof. If there is a considerable alteration and cost increase, Kenter will notify the Principal thereof prior to the alteration. In such case the Principal has the right to reject the proposed alteration. The Parties will in such case endeavour to reach agreement on the way in which the unforeseen circumstances which necessitate an alteration in the Work will be dealt with.

4.4 Insurance

The Principal is obliged on behalf of the Work by Kenter to take out and maintain CAR insurance or one or more equivalent insurance policies in which Kenter and the agents engaged by Kenter are included as co-insured. The Principal will send Kenter written proof of the insurance(s) which has (have) been taken out. If in the event of loss both the insurance of Kenter and the insurance of the Principal offers cover, the Principal is bound to first claim this loss under his own insurance.

4.5 Completion**4.5.1**

The agreed term for the Work will be extended by the time that the execution thereof is delayed due to circumstances which are attributable to the Principal and in the event of circumstances as referred to in Article 9.2 of the General Terms and Conditions.

4.5.2

If the Contract includes a term for completion of the Work, this cannot be deemed a firm date. In the event this term is exceeded, the Principal must give Kenter written notice of default and offer a reasonable term to perform the Contract.

4.5.3

The Work will be deemed completed if one of the following circumstances arises:

- a. the Principal has approved the Work in whole or in part;
- b. the Principal has taken the Work into use in whole or in part; and/or
- c. Kenter has informed the Principal in writing that the Work has been completed and the Principal does not state within twenty-one (21) days that the Work was not approved.

4.5.4

Completion releases Kenter from all liability for defects which the Principal should reasonably have discovered at that time.

4.5.5

The Principal will not withhold his approval of the Work on the basis of minor defects which can be rectified by Kenter within one month and which do not stand in the way of the commissioning of the Work by the Principal.

4.5.6

The Principal has the right to carry out inspections to check whether the Work satisfies the requirements laid down in the Contract. The costs of such inspections are at the Principal's expense.

4.5.7

If the Principal does not approve the Work, he is obliged to inform Kenter thereof in writing, stating the reasons for the rejection. The Principal will give Kenter the opportunity to deliver the rejected parts of the Work again.

4.6 Guarantee**4.6.1**

Kenter undertakes to rectify defects in the Work free of charge, including, for the application of this guarantee, the way in which goods delivered by Kenter are installed or compiled, which defects were already present at the time of completion but were only detected within six (6) months after completion.

4.6.2

The guarantee referred to in the preceding paragraph of this article only extends to defects which are not reasonably observable at the time of completion and which become manifest under normal business circumstances and in a correct manner of use of the Work. The guarantee does not extend to defects which are the result of inappropriate use (including negligent or incorrect maintenance and incorrect storage), changes which have been made without Kenter's written consent, normal wear and tear or repairs which have been executed by the Principal. Nor is the Principal entitled to make a claim under the guarantee if the defect has arisen due to circumstances which cannot be attributed to Kenter within the meaning of Section 6:75 DCC.

4.6.3

The Principal will notify Kenter as soon as possible of a defect and will make a plausible case that the matter concerns a defect that falls under the guarantee as referred to in the preceding paragraphs of this article. If Kenter holds that there is indeed a defect that falls under this guarantee, the defect will be rectified by Kenter free of charge on the Principal's written request. The Principal is obliged to fully cooperate with the repair work.

4.6.4

If on the Principal's request Kenter executes repair or replacement work after the expiry of the guarantee term, the costs thereof (including wages, administration, dispatch and call-out costs) are at the Principal's expense.

4.6.5

Any faulty parts replaced by Kenter under the guarantee will become Kenter's property.

5 Purchase

5.1 Delivery**5.1.1**

The place of delivery of the goods is the address specified by the Principal. If no address has been specified, the goods will be delivered at the official address(es) of the Principal(s). Exceeding the delivery term by Kenter cannot lead to liability on the part of Kenter.

5.1.2

The risk of loss, damage or value reduction passes to the Principal at the time when the Principal gains possession of the delivered goods.

5.1.3

The Principal will inspect the delivered goods upon delivery. The Principal must notify Kenter of visible defects within five (5) working days. Non-visible defects must be reported to Kenter at latest within ten (10) working days after the detection of the defect.

5.2 Guarantee**5.2.1**

The goods delivered by Kenter are covered by the factory guarantee which is given by the producer.

5.2.2

The Principal will notify Kenter as quickly as possible of a defect. If Kenter holds that there is a defect which arose following careful and skilled use in accordance with the nature and designated use of the goods and that the defect falls under the factory guarantee, on the Principal's written request Kenter will rectify the defect – at Kenter's election – free of charge by repair, replacement by an equivalent product, or by compensation by Kenter by means of a monetary sum paid to the Principal.

5.2.3

The Principal is not entitled to make a claim on the guarantee referred to in the preceding paragraphs of this article if a defect has arisen as a result of inappropriate use (including negligent or incorrect maintenance and incorrect storage), alterations which have been made without Kenter's written consent, normal wear and tear or repairs which have been executed by the Principal. Nor is the Principal entitled to make a claim under the guarantee if the defect arose due to circumstances which cannot be attributed to Kenter within the meaning of Section 6:75 DCC.

5.2.4

If Kenter executes repair or replacement work on the Principal's request after the expiry of the guarantee term, the costs thereof (including wages, administration, shipment and call-out costs) are at the Principal's expense. If a component must be replaced because of a defect that falls under the factory guarantee, the costs of the replacement are at the Principal's expense.

5.2.5

Any defective parts which are replaced by Kenter under the guarantee will become Kenter's property.

6 Retention of title

6.1

All goods which Kenter delivers to the Principal will remain Kenter's property until the Principal has performed all obligations under the Contract.

6.2

As long as the retention of title as referred to in the preceding paragraph is effective, the Principal is not permitted to encumber the goods with a real right or to encumber it in any other way.

6.3

The Principal undertakes to insure the goods delivered subject to retention of title and to keep them insured against damage/loss (as a result of, inter alia, fire, explosion and water) and theft. As long as the retention of title applies Kenter is entitled to the insurance payout when the insurer makes a payment.

6.4

If Kenter wishes to exercise its retention of title, the Principal will allow access to his site and the goods and the Principal will fully cooperate.

7 The Principal's obligations

The Principal must perform the obligations in Article 6 of the General Terms and Conditions and the obligations formulated in these Product Terms and Conditions. If the Principal acts in contravention of the obligations in these Product Terms and Conditions, Kenter can impose a penalty of EUR 1,000.00 per contravening act without prior notice of default or judicial intervention,. This is without prejudice to Kenter's right to demand additional compensation.

8 Rates, fees and payment

8.1

Unless the contrary is stipulated in the Contract, the payment of the agreed total sum for the Work will be effected as follows:

- a. 20% of the total sum must be paid immediately after the Contract is made;

- b. 70% of the total sum must be paid upon the start of the Work; and
- c. the remaining 10% of the total sum must be paid immediately after the completion of the Work.

8.2

Unless otherwise is stipulated in the Contract, the payment of the agreed purchase price for the delivered goods will be made in conformity with the payment instructions stated on the invoice.

9 Liability and loss

9.1

Notwithstanding the guarantees laid down in Article 4.6 and Article 5.2 of these Product Terms and Conditions, Kenter will at its own expense repair damage to the Work if such damage arose before the Work is completed, unless this damage was not caused by Kenter or cannot reasonably be attributed to Kenter.

9.2

In addition to the provisions of Article 8 of the General Terms and Conditions Kenter is only liable for direct loss relating to persons and goods suffered by the Principal (not being the Work), insofar as this loss was caused by Kenter in the performance of the Contract and this loss can be attributed to Kenter. The foregoing only applies insofar as the liability is covered by Kenter's insurance.

9.3

In all cases the liability is limited to the amount of the price laid down in the Contract for the Work, or – if no price is laid down in the Contract – the amount of the reasonably suspected price. With Contracts with a term of more than one year the liability is limited to one times the annual sum owed of the fees owed by the Principal on the basis of the Contract.

10 Final provisions

10.1

The applicability of the Vienna Sales Convention is excluded.

10.2

These Product Terms and Conditions became effective on 7 August 2017 and can be cited as

“Product Terms and Conditions of Purchase and One-off (Project) Work of Kenter B.V.”.

10.3

These Product Terms and Conditions are published on www.kenter.nu.
