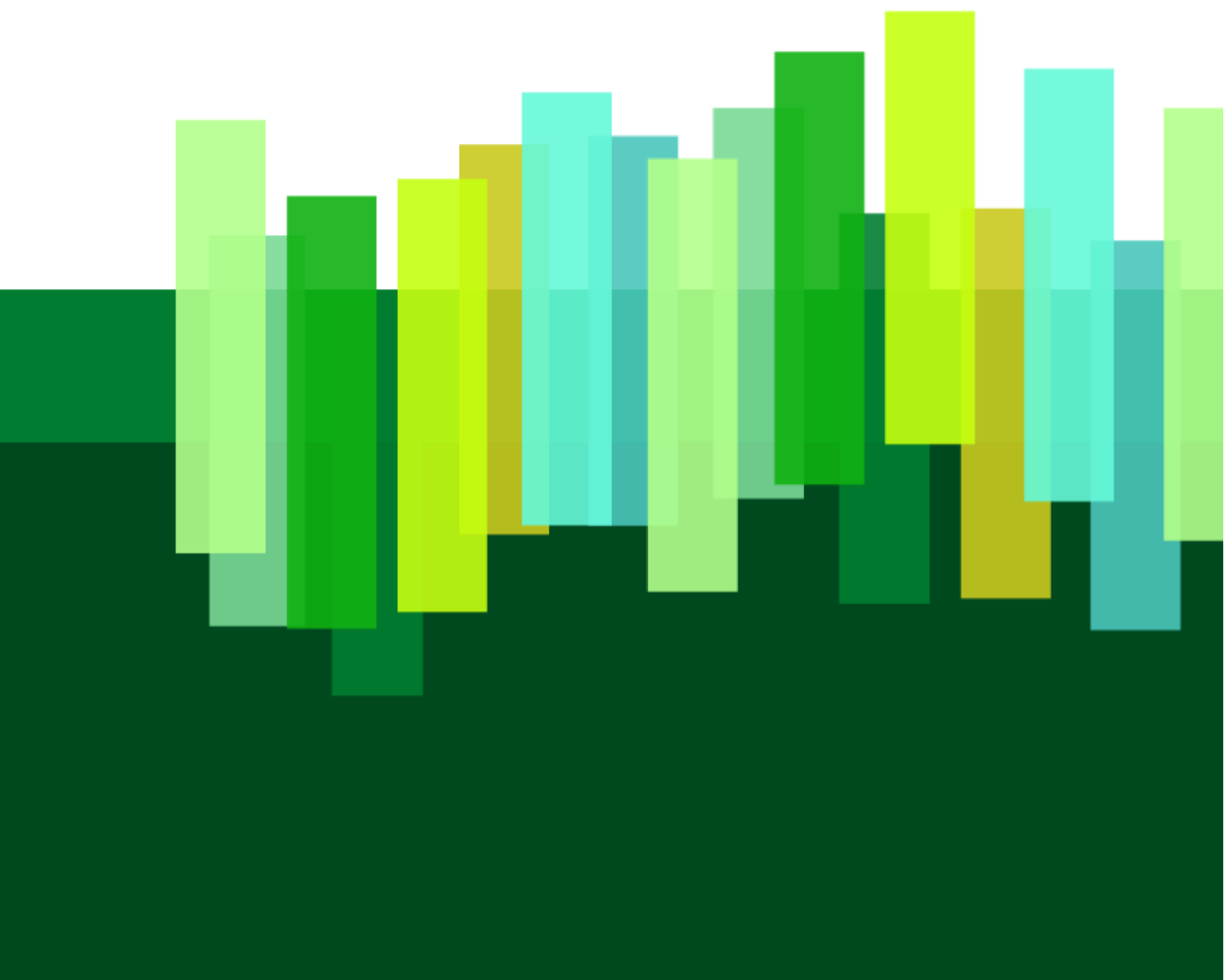




# GENERAL TERMS AND CONDITIONS

2024

Kenter B.V.



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## 1. Definitions and interpretation

### 1.1.

In these General Terms and Conditions, the definitions below starting with a capital will have the following meaning:

#### **Offer**

Every Written offer from Kenter, which may include a draft agreement.

#### **General Terms and Conditions**

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

#### **CC**

The Civil Code

#### **Consumer**

Any natural person who acts for purposes that fall outside his trade, business, craft or profession, within the meaning of Article I.1.2° of the CEL.

#### **Codes & Conditions**

Norms and standards that are mandatory or generally applicable in the territory of Belgium or any subdivision thereof, as well as all applicable statutory and regulatory requirements, including, but not limited to, the General Regulations on electrical systems.

#### **Leased Property**

The Infrastructure rented by the Client from Kenter.

#### **Infrastructure**

The infrastructure specified in the Agreement, including systems such as transformers, switching systems, etc.

#### **Kenter**

Kenter B.V., a company under Belgian law, listed in the Belgian trade register under number 0756.751.438 and with its registered office at Da Vincilaan 1, 1930 Zaventem.

#### **Business**

Any organisation that falls within the scope of Article I.1, 1° of the CEL and, in general, any natural person or legal entity who is not a Consumer.

#### **Client**

The party with whom Kenter concludes an Agreement, on the understanding that this party is a Business.

#### **Agreement**

The Agreement between Kenter and one or more Clients, which is concluded 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 integrated part of the Agreement.

#### **Product**

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

#### **Product Terms and Conditions**

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

#### **In Writing/Written**

By letter or digitally (including by email).

#### **CEL**

The Belgian Code of Economic Law.

#### **Work**

All activities and related actions that Kenter performs or will perform for the Client under the Agreement.

### 1.2.

If a defined meaning is attributed above to words in the plural form, this also includes the singular form and vice versa.

### 1.3.

The headings of the articles of the Agreement, the General Terms and Conditions and the Product Terms and Conditions have no legal value and may not be used to interpret them.

### 1.4.

All terms stated in the Agreement, the General Terms and Conditions and the Product Terms and Conditions are calculated from midnight to midnight. They begin on the day following the day on which the event giving rise to the period occurred. The expiry date is included in the term.

### 1.5.

All terms stated in the Agreement, the General Terms and Conditions and the Product Terms and Conditions consisting of a number of months (or years) are calculated from day x to the day before day y, on the understanding that the terms are calculated from the day following the day of the act or event that gives rise to the term.

## 2. General Terms and Conditions

### 2.1.

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

### 2.2.

The General Terms and Conditions apply to all commercial relationships between Kenter and the Client. Only these General Terms and Conditions apply, to the exclusion of all general or special terms and conditions of the Client that Kenter would not have expressly accepted In Writing, as any tacit acceptance of the Client's general or special terms and conditions by Kenter is excluded.

### 2.3.

Before or at the conclusion of the Agreement, the Client has received the General Terms and Conditions and the Product Terms and Conditions (digitally), has been able to read their contents and has agreed to them. The General Terms and Conditions and the Product Terms and Conditions can also be consulted at <https://www.kenter.be/algemene-voorwaarden/> and can be downloaded and saved.

### 2.4.

Agreements or arrangements that deviate from these General Terms and Conditions and the Product Terms and Conditions only apply if they have been agreed on In Writing with Kenter or confirmed In Writing by Kenter, since any tacit deviation from these General Terms and Conditions and the Product Terms and Conditions is excluded by Kenter, and otherwise do not affect these General Terms and Conditions. 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 will prevail over those of the General Terms and Conditions or the Product Terms and Conditions.

### 2.5.

Kenter is entitled to change the General Terms and Conditions and the Product Terms and Conditions. Changes to the General Terms and Conditions and/or the Product Terms and Conditions come into effect thirty days after the day on which the Client is notified thereof. Unless there is such a substantial change that continuation of the Agreement cannot reasonably be expected of the Client, the Client is not entitled to terminate the Agreement in the event of a change to the General Terms and Conditions or Product Terms and Conditions.

### 2.6.

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 will remain in full force. The parties will make every effort to replace the invalid, void or voided provision with a provision whose legal and commercial scope reflects the original provision to the greatest possible extent. 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 will prevail.

## 3. The offer

### 3.1.

All Offers from Kenter:

- are addressed to the Client;
- may not be distributed;
- cannot be accepted in part; and
- are purely indicative and do not imply a formal offer or a commitment.

### 3.2.

Kenter has the option to charge costs for drawing up an Offer, if the Client has been informed of this in advance and has agreed to this.

### 3.3.

Kenter's Offer is based on the data and information provided by, on behalf 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 is concluded at the time that the Client accepts Kenter's Offer, either by signing or in another manner prescribed by Kenter, and after Kenter confirms In Writing that it will perform the Work indicated in this Offer or begins to perform the Work indicated in this Offer. In the absence of confirmation or performance by Kenter within a period of eight (8) working days, the Offer signed by the Client will be deemed to have been rejected by Kenter. In that case, no compensation is owed to the Client.

### 4.2.

In the absence of an Offer, the Agreement is concluded because the Client(s) make(s) use of Kenter's Work or Products. When performing non-

recurring Work or delivering Products once only, Kenter's invoice will be considered to be the correct representation of the Agreement between the Client and Kenter. In the case of periodic Work, the Client and Kenter will still conclude a Written Agreement.

**4.3.**

Changes or additions to the Agreement must be agreed on In Writing.

**4.4.**

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

**4.5.**

Kenter may use the services of third parties for the performance of the Agreement. The Client agrees in advance and unconditionally to such a transfer, and in that case acknowledges that it no longer has anything to claim from Kenter.

**4.6.**

The Client may transfer its rights and obligations under the Agreement to a third party, but only with prior Written permission from Kenter.

**4.7.**

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

**4.8.**

If it appears that the data and information referred to in Article 0 are incorrect, Kenter may require a related adjustment to the Agreement. Kenter will inform the Client of this as soon as possible.

**4.9.**

Kenter will perform the Work to the best of its ability, in accordance with the Agreement. Kenter is at all times entitled to change the Work or replace certain parts thereof with other parts, provided that the essential character of the relevant Work, or parts thereof, will be maintained.

**4.10.**

Kenter makes every effort to observe the delivery terms stated in the Offer or agreed on with the Client, but these are only given as an indication, without liability for Kenter nor any obligation to compensate the Client on account of any delay. This does not constitute a reason for the customer dissolve the agreement. If such a term is exceeded, Kenter will, if possible, notify the Client of the new delivery term or time of the performance of the Agreement.

**4.11.**

If Kenter requires data and/or information for the performance of the Agreement that must be provided by the Client, the delivery term will not commence earlier than on the day that all required data is in the possession of Kenter or that the Client has fulfilled the aforementioned obligation(s) towards Kenter.

**4.12.**

The delivery term will be extended by the period equal to the period in which the Work must be halted due to force majeure.

## 5. Term and termination

**5.1.**

The term and commencement date of the Agreement and the Client's right to terminate the Agreement are regulated in the Agreement and the Product Terms and Conditions.

**5.2.**

Kenter has the right 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 has the right, without becoming liable to pay compensation, without judicial intervention and without notice of default, to dissolve the Agreement in whole or in part with immediate effect or to suspend or discontinue its obligations under the Agreement, in the event of a serious shortcoming by the Client. In particular, but without limitation, the following are considered serious shortcomings:

- a. in general, an error the severity of which is such that any trust between Kenter and the Client is definitively broken;
- b. bankruptcy, judicial reorganisation, collective debt settlement, judicial or voluntary dissolution of the Client;
- c. the Client proceeding to transfer its assets;
- d. when (some of) the Client's goods are seized and/or when a provisional administrator is appointed for the Client or when the Client otherwise loses the authority to dispose of its assets or parts thereof;
- e. the Client fails to fulfil an obligation towards Kenter under the Agreement, these General Terms and Conditions, Product Terms and Conditions or statutory regulations (including Codes & Conditions, NBN standards); and/or
- f. the Client ceases, terminates or transfers (part of) its business or proceeds to dissolution or liquidation.

**5.4.**

Upon termination of the Agreement as referred to in Article 0, the amounts owed by the Client to Kenter

under the Agreement, including compensation for any costs associated with early termination, become immediately due and payable.

#### **5.5.**

The Client remains bound by the Agreement until it has fulfilled all its obligations arising from it. If, upon termination of the Agreement, Kenter does not have the opportunity to perform the actions necessary for termination, the Client will remain bound to the Agreement until Kenter has had the opportunity to perform these actions.

#### **5.6.**

In the event of termination of the Agreement, Kenter is entitled to take back the Leased Property and other items belonging to it. In that case, the Contractor will grant Kenter unhindered access to the Leased Property and other items belonging to it. The Client will also fully cooperate with Kenter to give Kenter the opportunity to exercise its ownership rights. In that context, the Contractor irrevocably and unconditionally authorises Kenter to perform all actions necessary to return the Leased Property and other items of Kenter to Kenter.

#### **5.7.**

If the Client fails to cooperate with the provisions of Article 0, Kenter (without prejudice to its other (statutory) rights) is entitled to charge the Client a termination fee equal to the residual value of the Leased Property at the time of termination of the Agreement.

## **6. Confidentiality and intellectual property**

#### **6.1.**

Without prejudice to the provisions of Article 0, Kenter and the Client will keep all information and data regarding (the content and performance of the) Agreement confidential. Information and data exchanged between Kenter and the Client that is designated as confidential or that is confidential by its nature will be treated confidentially, unless Kenter and/or the Client are obliged to disclose due to a statutory obligation. These obligations remain in full force for a period of 5 years after termination of the Agreement.

#### **6.2.**

If Kenter uses third-party services for the performance of the Agreement, Kenter is permitted to share the information and data required for this purpose with those third parties.

#### **6.3.**

All (intellectual) property rights of Kenter with regard to the documents issued in the context of the Agreement, such as drawings, designs, models, advice and reports, technical information and logos, remain the property of Kenter. The Client is not permitted to provide these documents to third parties or make them public without the prior Written permission of Kenter.

## **7. Obligations of the client**

#### **7.1.**

The Client will fully cooperate with Kenter in the performance of the Agreement and is in any case obliged:

- a. at Kenter's request, to provide all information, data and resources or goods Kenter needs from the Client to perform the Agreement. The Client guarantees that all information, data, documents and/or materials provided by it are current, complete and correct;
- b. to cooperate free of charge in the performance of the Agreement by Kenter;
- c. to notify Kenter as soon as possible, but no later than within (14) days of the Client becoming aware of it, of all circumstances that may be important for the performance of the Agreement. This includes (suspected) damage, a shortcoming in the performance delivered by Kenter or the performance failing to comply with the Agreement, irregularities, as well as a case as referred to in Article 0;
- d. to notify Kenter no later than fourteen (14) days in advance of address and (trade) name changes;
- e. to grant employees of Kenter (or third parties designated by Kenter) who can identify themselves as such, upon first request, access to the location of the Leased Property or the place where the Work is being performed and the Products are delivered and to enable them to perform the relevant actions undisturbed. The Client guarantees the accessibility of the aforementioned location and the condition and suitability of the access roads;
- f. to arrange, at its expense, all permits, approvals and exemptions or changes thereof required for the Leased Property, the Products and/or the Work, including the timely and complete delivery of the relevant data in a timely manner;
- g. to ensure that, for the performance of the Agreement, all statutory requirements regarding safety, working conditions and other applicable government regulations are met, so Kenter can perform the work safely;
- h. if someone other than the Client owns the location referred to in section e of this paragraph, to ensure that the owner cooperates free of charge in the performance of the Agreement and agrees to all actions that Kenter or third parties designated by Kenter must perform under the Agreement. If requested, the



Client will provide Written proof of the aforementioned permission or cooperation;

- i. To notify Kenter of situations in which third-party interests are involved in (the performance of) the Agreement.

## **7.2.**

If the permits, approvals and exemptions or changes thereto referred to in Article 0, under f, have not been obtained in a timely manner, or have not become irrevocable at the time when the Leased Property is delivered or the Work is performed, the consequences thereof are at the expense and risk of the Client.

## **8. Rates, fees and payment**

### **8.1.**

The Client owes Kenter the fee set out in the Agreement.

### **8.2.**

Kenter may adjust the agreed fee annually (with effect from 1 January) in accordance with the Price Indexes for services as published by the Belgian statistical agency STATBEL.

### **8.3.**

Cost increases as a result of circumstances beyond Kenter's control (including, but not limited to, changes in laws and regulations, Codes & Conditions, NBN standards, etc.) will be borne by the Client. Kenter notifies the Client in advance about the aforementioned circumstances and costs. Costs associated with the necessary involvement of the relevant network operator are not included in the Agreement and will be borne by the Client.

### **8.4.**

If and insofar as the costs of labour and materials, etc. increase by more than 5% as a result of special circumstances outside Kenter's control not taken into account in the price index figure referred to in Article 0, Kenter is 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 are denominated in Euro and are increased by VAT and all other applicable taxes, levies and fees that Kenter must charge by law and/or by virtue of a government decision. Kenter will specify these amounts on the invoice.

### **8.6.**

If Kenter had to perform Work or deliver Products outside Kenter's normal working hours (from 07:00 to 17:00 on working days), Kenter charges a surcharge in accordance with the rate scheme.

### **8.7.**

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

### **8.8.**

Kenter will send the Client an invoice for the fees due under the Agreement, including the amounts with which those fees can be increased under this Article 8. The invoice must be paid by the Client within the period stated on the invoice to the account number stated in the invoice.

### **8.9.**

Any failure to pay within the period indicated on the invoice constitutes, by operation of law and without notice of default, the liability to pay default interest at a rate of 10% per year, calculated from day to day on the total amount of the invoice and on the basis of a year of 365 days. In addition, any invoice not paid on the due date will be increased, automatically and without prior notice, by an amount equal to 10% of the amounts due, with a minimum of EUR 250. In the event of late payment or payment failure on the part of the Client, Kenter reserves the right to stop the performance of the Agreement without prior notice of default, subject to all other rights. Non-payment on the due date of a single invoice immediately and by operation of law makes the balance of all other invoices, overdue or not, due and payable.

### **8.10.**

The Client acknowledges Kenter's right to (i) offset any sum owed to it by the Client, including the sums owed under the General Terms and Conditions, with any sums owed to the Client and (ii) to allocate any payment from the Client to the Client's oldest debt towards Kenter (with priority on the interest and subsequently on the principal amount), regardless of the notification provided by the Client at the time of payment.

### **8.11.**

Any dispute regarding an invoice must be made within 8 days of its receipt and will under no circumstances allow the suspension of payment of other invoices or the undisputed items of the invoice in question. The Client is not entitled to offset the amount owed by it against a claim he believes it has against Kenter.

**8.12.**

Kenter announces adjustments to rates and fees at least one month in advance.

**9. Liability and damage****9.1.**

Except in the case of intent or wilful recklessness on the part of Kenter, Kenter is at all times exclusively liable for direct, material damage, which is understood to mean property damage that arises immediately and directly, including the costs of repairing the defect, due to an attributable shortcoming of Kenter in the fulfilment of its obligations under the Agreement. Kenter is therefore under no circumstances obliged to compensate indirect damage (such as consequential damage or trading loss, loss of production, loss of turnover or profit and missed savings).

**9.2.**

Without prejudice to the provisions of Article 0, Kenter's liability towards the Client is limited in all cases to the amount that is paid out pursuant to Kenter's liability insurance policies. To the extent that Kenter's insurer does not pay out for whatever reason, Kenter's liability is:

- in the case of a continuing performance agreement (Agreement for periodic services) limited to a maximum of twice the annual sum owed by the Client to Kenter for the periodic Work;
- in the case of an Agreement for the performance of non-recurring Work or the one-off delivery of Products, limited to the price for the Work or Products set out in the Agreement.

**9.3.**

During the performance of Work and the delivery of Products, there may be interruptions in the energy supply. The Client will be informed as much in advance as possible about such interruptions and accepts that any liability on the part of Kenter for damage resulting from such interruptions is excluded.

**9.4.**

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

**9.5.**

If the Work has to be stopped due to unforeseen circumstances - including (but not limited to) soil contamination, circumstances within the meaning of the Flora and Fauna Act or other laws and

regulations, and failure to obtain a permit (in a timely manner) - the consequences will be at the expense and risk of the Client.

**9.6.**

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

**9.7.**

The Client indemnifies Kenter against claims from 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 will also compensate Kenter for all damage suffered by Kenter as a result of such claims.

**10. Force majeure****10.1.**

If Kenter is prevented from performing the Agreement in whole or in part due to force majeure, Kenter may choose to temporarily suspend the performance of the Agreement or to terminate the Agreement. In that case, no compensation is owed to the Client. All costs incurred by Kenter up to that point that must be reimbursed under the Agreement will be immediately due and payable.

**10.2.**

All situations beyond the will and control of Kenter, which prevent the normal performance of the agreement are considered cases of force majeure. The following events in particular constitute cases of force majeure, regardless of whether they occur at Kenter, its personnel, one or more third parties engaged by it, the personnel of the aforementioned third parties, even if they are only be partial and regardless of the cause thereof: strikes, transport shortages, fires, floods, damage to equipment, riots, war, epidemics, accidents, breakdowns, power interruptions, disruptions of a (telecommunications) network or a communications connection or system used or the website. The above list is not exhaustive.

**10.3.**

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



## **11. Final provisions**

### **11.1.**

If a provision of the Agreement is declared null and void or unenforceable in whole or in part on the basis of a provision of applicable law, that part will be deemed unwritten and such nullity or unenforceability will not affect the validity of the other parts of the Agreement, the General Terms and Conditions and/or the Products Terms and Conditions, or the Agreement, the General Terms and Conditions and/or the Products Terms and Conditions in their entirety. Each party undertakes to immediately and in good faith negotiate a valid provision to replace the provision that has been declared void or unenforceable in whole or in part.

### **11.2.**

The Agreement, these General Terms and Conditions and the Product Terms and Conditions (including this article) are exclusively governed by Belgian law. All disputes relating to the Agreement, these General Terms and Conditions and/or the Product Terms and Conditions will be submitted exclusively to the courts of Antwerp.

### **11.3.**

These General Terms and Conditions come into effect on 1 November 2020 and can be referred to as "General Terms and Conditions Kenter B.V. 2020".

### **11.4.**

These General Terms and Conditions are published on <https://www.kenter.be/algemene-voorwaarden/>

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