

General Terms and Conditions of Sale, Delivery and Payment of KEN group B.V. and their affiliated companies:

KEN engineering B.V.

KEN infra – process – automation – special products are trade names of

KEN engineering B.V.

Registered office address of KEN group B.V.:

Alexander Bellstraat 14
3261 LX Oud Beijerland

Correspondence address of KEN group B.V.:

P.O. Box 1607
3260 BC Oud Beijerland

Article 1 Applicability

1.1 These General Conditions of Sale, Delivery and Payment apply to the legal relationship between the Client and KEN group B.V., as well as the subsidiary companies of KEN group B.V.: KEN engineering B.V., hereinafter named KEN.

1.2 As specified under article 2, these conditions apply to all offers, including all agreements in the negotiating phase, as well as all agreements concluded with the Client to render services or to deliver products, unless expressly stated otherwise in writing by KEN. In the event of a conflict between the text of the offer or the contract and the contents of these provisions, the former will prevail.

1.3 In the event that the Client use their own General Conditions which would be applicable to the agreement to be concluded or the concluded agreement, the General Conditions of KEN prevail. If the Client wishes to deviate from these conditions this must be expressly notified in writing. Deviations from these General Conditions shall be binding only if confirmed by KEN in writing.

1.4 These terms and conditions apply to all subsequent agreements concluded by KEN and the Client. In the event of subsequent orders, these terms and conditions need not be separately declared applicable again or resubmitted to the Client so as to manage the legal relationship between the parties.

Article 2 Quotations and Orders

2.1 All quotations offered by KEN to the Client are, unless expressly stated otherwise, based upon price-fixing factors that are valid at the moment of the quotation, including wage costs, and based upon performance under normal conditions and during regular working hours.

2.2 All quotations by KEN shall be completely free of engagement and must be regarded as indivisible. All quotations shall expire two weeks after issuance unless agreed otherwise in writing.

2.3 Orders are accepted by KEN only if such orders are confirmed by KEN in writing. Before an order is accepted, KEN reserve the right to reassess the order during 14 days, unless KEN start to execute the order within this period.

2.4 Reproductions and descriptions in quotations, prospectuses, catalogues, drawings, designs, models, calculations, price lists, specifications of measurement, weight and colour, as well as other specifications made by KEN shall not be binding upon KEN.

2.5 KEN shall retain all rights in connection with the items as specified under section 2.4, irrespective of whether costs are invoiced to third parties. They may not be copied in whole or in part or submitted to third parties or made available without written permission by KEN and must be returned at first request.

2.6 Information submitted by KEN as specified under section 2.4 is only binding if and as far as it has been incorporated expressly in an order confirmation provided by KEN or in an agreement signed by KEN.

2.7 Any intellectual property rights or claim thereto arising from work performed by KEN are the sole property of KEN. If and so far as is required for the other activities, or required for use of the delivered products or services, a non-exclusive user license will be granted to the Client under conditions to be agreed upon.

Article 3 Agreement

3.1 Oral guarantees by and/or agreements with employees of KEN shall only be binding upon KEN after they have been confirmed by KEN in writing. Only the board of directors of KEN as well as persons authorised by it are competent to conclude agreements in the name of KEN.

3.2 If the written order confirmation by KEN deviates from the initial order given by the Client orally or in writing, it is assumed that the Client agrees with said deviation unless the Client notifies KEN otherwise within 14 days after issuance of the order confirmation by KEN.

Article 4 Prices

4.1 If, after issuance of the quotation or agreement one or more price-fixing factors increase, even if this occurs as a result of foreseeable circumstances, KEN is entitled to increase the agreed price accordingly.

4.2 Quoted prices are exclusive of V.A.T.

4.3 Work done outside regular working hours on request of the Client will be charged according to the current price lists in force at KEN.

Article 5 Delivery time, Delivery and Transfer of Risk

5.1 The delivery time specified in an agreement or order confirmation shall be specified as accurately as possible, but it is approximate. An agreed delivery time can never be a fatal period, unless expressly agreed otherwise. In the event of any delay in delivery, the Client must therefore declare KEN to be in default in writing.

5.2 The delivery time starts after the agreement has taken effect, all information necessary to service an order has been received by KEN and payment or security, if agreed upon, has been made.

5.3 The Client is obliged to use reasonable effort in order to service the order granted to KEN as smoothly as possible. This pertains among others to performing activities by the Client for his own account and risk which are required for the performance of the order, providing of space, performing work necessary to service the order, making available of assistant workers, materials and the like if required and agreed.

5.4 Any and all consequences of non-compliance or overdue compliance with the items mentioned in the previous section by the Client are at the Client's risk and expenses.

5.5 In the event of any delivery delay whatsoever, the Client will renounce his potential right to cancel the agreement without holding KEN in default, which also includes a reasonable period for completion, to postpone his obligations resulting from the agreement, to claim damages or refusal. The Client will not perform any activities or have any activities performed in order to carry out the agreement.

5.6 Delivery of products by KEN means 'delivery ex warehouse', and is exclusive packing and shipment costs. If requested by the Client in writing, KEN may arrange the insurance of the products at the Client's expenses.

5.7 The risk in the products will pass on to the Client at delivery. If the products to be assembled or the products to be delivered are not collected and/or accepted by the Client they will be stored at the Client's expenses and risk at a location to be determined by KEN, after which delivery will be deemed to have taken place.

Article 6 Extra work, less work

6.1 Amendment, additions or correction of the agreed activities and/or deliveries will be recorded in a separate.

6.2 If by circumstances that are at the Client's risk, extra work is required to achieve the guaranteed results, KEN will perform such work without further notification or without any agreement as specified in the previous subsection and at the Client's expenses.

6.3 KEN has the right to invoice the Client all expenses that are incurred by the following causes;

a. In the event that activities are made more difficult or cannot be performed normally and without interjections by causes not attributable to KEN;

b. In the event that government rules or regulations have come into effect, which could not possibly be known to KEN at the time of conclusion of the agreement.

Article 7 Warranty

7.1 Warranty obligations are applicable only as far as they have been agreed expressly, in writing and for a specific duration.

7.2 In the event that any delivered product shows any material or production defect, the Client is entitled to replacement.

7.3 Warranty is not applicable if the defect is the result of improper application respectively improper use of the delivered product.

Article 8 Force Majeure

8.1 Force Majeure means circumstances which prevent the performance of the agreement, or which make such performance unreasonably troublesome and which are not attributable to KEN. This includes (in so far as these circumstances prevent the performance or unreasonably complicate the performance) whether or not foreseeable circumstances which prevent suppliers or other third parties that KEN depend upon, to perform.

8.2 KEN also reserves the right to appeal to Force Majeure if the circumstances, that prevent (further) performance, occur after KEN should have performed the agreement.

8.3 All delivery commitments and other obligations are suspended during Force Majeure. If the period, during which fulfilment of obligations is impossible due to Force Majeure, lasts longer than 3 months, either party is entitled to dissolve the agreement without being liable for damages.

8.4 If, at the beginning of the Force Majeure, KEN have already fulfilled part of their obligations or could only fulfil part of their obligations, KEN is entitled to invoice the delivered part or the deliverable part separately and the other party is obliged to settle the invoice as if it concerned a separate contract.

Article 9 Suspension and Termination

9.1 KEN is entitled to suspend and/or terminate the agreement, or any unfulfilled part of the agreement, without proof of default or judicial intervention, in the event that the Client fails to fulfil or fails to timely fulfil any obligation resulting from the agreement with KEN, and also in the event of suspension of payment, bankruptcy, or immobilisation or liquidation of the Client's company, without KEN being liable for damages or warranty, without prejudice to other claims of KEN.

9.2 In the event that the agreement is terminated, the Client is obliged to compensate the value of the services performed by KEN up until that moment, costs already made, unavoidable costs and the loss of profit of the order.

9.3 The Client is not entitled to claim termination or annulment of the agreement with retroactive effect if the legal provision on which this claim is based only serves to protect his interest.

Article 10 Claims

10.1 Claims are understood to mean all grievances of the Client related to inferiority of services performed by KEN or goods delivered by KEN.

10.2 The Client must check the delivered products for their reliability and completeness within 14 days of receipt. The Client must submit complaints in writing within 48 hours of discovering any faults. When this term is exceeded, every claim against KEN regarding the faults in question will lapse. KEN must at all times be given a reasonable term within which it can remedy the faults. Even if the Client submits complaints in time and in writing, their obligation to pay for and take delivery of the goods ordered and/or orders given remains in full force. The Client is never entitled to suspend their payment obligations. KEN is at all times entitled to suspend execution of their obligation to remedy any faults if the Client fails to fulfil their payment obligations.

Article 11 Liability

11.1 Liability can only pertain to the goods delivered by KEN and furthermore only if and insofar as it pertains to a serious fault caused by KEN; any liability of KEN for claims for compensation, including claims related to loss of profit or other indirect damage, are excluded.

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11.2 KEN will not be liable for costs, damages and interests which are caused, directly or indirectly, by:
a. infringements on patents, industrial designs or other intellectual or industrial exclusive rights of third parties, licenses or other rights of third parties resulting from the use of information made available by or because of the Client.
b. deliveries or performing services to the Client by third parties, even if KEN has recommended to do so;
c. actions or acts of negligence, which cannot be qualified as fault, by subordinates or persons which are employed by or because of KEN.

11.3 The Client will waive all claims for damages, caused to his properties during activities by KEN's employees or KEN's subcontractors, unless the damages are caused on purpose or through gross fault by KEN.

11.4 KEN excludes any liability for faults in their products if they have been manufactured in accordance with government regulations, or if the damage is due to the design of a product of which KEN's goods constitute a component.

11.5 Only insofar as liability for damage is not excluded from that which has been stated earlier in this article, every liability of KEN is limited to the amount covered by their liability insurance in the case in question. Insofar as the insurer provides no cover in such cases, every liability is limited to the invoice value related to the (partial) order in question.

11.6 Any liability of KEN for damage will be reduced if (also) caused by acts or omissions as a result of or due to faults in the products of the Client and/or third parties, this in proportion to the extent of every party's shortcoming.

11.7 In the event of claims as a result from effort obligations, related to services to be performed by KEN, KEN is only obliged to repair the defective goods, such to be assessed by KEN. Every claim for damages, except for damages resulting from liabilities to which KEN is legally bound, among which loss of profit or other indirect damages, are excluded.

11.8 In the event of liability for defective delivery of goods or services by subcontractors and before KEN will have to compensate for these damages, KEN will be given the opportunity to hold the subcontractor liable or to have the subcontractor held liable. In the event of consequent legal procedures, KEN will be regarded to act on behalf of the Client and the Client will agree with the decision in possible final instance.

11.9 If KEN is to put personnel at the Client's disposal, KEN warrants that this personnel has the required professional skills. If the Client demonstrates that particular persons lack the required professional skills, KEN will be only obliged to replace these persons as soon as possible. KEN will not be responsible for the personnel made available in any other way.

Article 12 Indemnification

12.1 The Client is obliged to indemnify KEN for all costs, damages and interests, which are generated on KEN's account as a direct or indirect result of legal claims, which are initiated by third parties against KEN, related to the performance of the agreements. On account of the agreement, the Client is obliged to respond appropriately if requested for indemnification by KEN.

Article 13 Confidentiality

13.1 KEN undertakes to treat all information, related to the Client or related to the order placed by the Client, as confidential, in so far as KEN is aware or should reasonably be aware that this information must be treated as confidential.

Article 14 Takeover of Personnel

14.1 During the performance of an order placed at KEN and for a period of 12 months after its completion, the Client will refrain from having existing employees of KEN and/or persons who were employed by KEN when the order was being performed committed to them or letting them undertake work in whatever way, whether or not as an employee, and/or placing orders or otherwise engaging the services of those employees, other than through KEN. On violation of this provision, the Client forfeits an immediately due and payable penalty, which is not open to mitigation, of € 5,000 per violation and € 500 for each day that the violation continues.

Article 15 Payment

15.1 The Client shall be deemed to have acknowledged the invoices as correct and due for payment, unless the Client has protested the invoices within 14 days after the invoice date in writing.

15.2 All payments must be made within 21 days after the invoice date and without any deduction. Compensation is not allowed. Furthermore, the Client can never suspend the performance of any of their obligations arising from this agreement for whatever reason, or to make an attachment in respect of any claim against KEN against their creditor.

15.3 If payment is past due, or if, before the due date the Client applies for a moratorium or is declared bankrupt, the Client is legally in default and KEN is entitled, without proof of default, to charge interest on the outstanding amount at the rate of 1,25% per calendar month from the due date. A part of a month will be charged as a full month.

15.4 If payment is past due, KEN is entitled to cancel the agreement, insofar as not yet (entirely) performed, without judicial intervention, and to recollect all goods that are still property of KEN, without prejudice to KEN's right to damages.

15.5 The Client shall pay all costs related to payment collection, including the costs of summations, legal and out-of-court collection costs as well as costs for legal assistance. The out-of-court collection costs are 15% excluding V.A.T., with a minimum of EUR 500,- of the outstanding amount, without prejudice to the delay interest mentioned above.

15.6 During as well as after realisation of the agreement, KEN is entitled to demand a security against payment of the contract sum, of which the costs must be paid by the Client. If the Client fails to grant the requested security within 14 days, KEN is entitled to cancel the agreement without proof of default or judicial intervention, or to suspend performance of the agreement, without prejudice to KEN's right to payment of the previously delivered goods c.q. performed services, as well as KEN's right to damages.

15.7 Payments, made by the Client to KEN, will always be used to compensate the longest outstanding invoice amounts on the account of the Client, including related delay interest and costs.

Article 16 Reservation of title

16.1 All delivered and deliverable goods remain the sole property of KEN until all of KEN's current or future claims against the Client, among which in any case the claim cited in BW 3:92 section 2, are paid in full.

16.2 As long as the title to the goods has not passed to the Client, the Client may not pawn these goods or grant any rights to third parties, with the exception of their normal business practise. The Client undertakes to co-operate at first request by KEN to establishing a lien to the claims that the Client obtains or will obtain on the account of delivery to their clients.

16.3 The Client is obliged to treat all goods that are delivered under reservation of title with necessary carefulness and to maintain such goods as recognisable property of KEN.

16.4 In the event that the Client fails to fulfil his payment obligations or has or will have difficulty to settle the payment, KEN is entitled to repossess goods that are delivered to the Client under reservation of title and that are still in the possession of the Client.

The Client will grant to KEN free access to their terrains and/or buildings at all times for inspection of the goods and/or for exercising KEN's rights.

16.5 All provisions specified in sections 16.1 through 16.4 are without prejudice to the other rights of KEN.

Article 17 Intellectual/ Industrial property

17.1 The Client is not allowed to remove, change or hide any designations relating to brands, trade names or other intellectual and/ or industrial property rights in connection with goods delivered by KEN.

17.2 Unless otherwise agreed in writing, KEN is and remains at all times the owner of all intellectual and/ or industrial property rights to all goods it has designed and/or manufactured, including yet not limited to drawings, descriptions, advertising material, etc. Without the explicit approval from KEN, these goods cannot be reproduced, published or exempted.

Article 18 Disputes

18.1 Any dispute between the Client and KEN will be submitted in the first instance to the competent court in Rotterdam. KEN is nevertheless entitled to summon the Client to appear before another court, which is competent by law or by applicable international treaty. All agreements concluded with KEN are subject to Dutch law.

Article 19 Taxes

19.1 All charges and taxes imposed by other governments than the Dutch government, as well as the Dutch V.A.T., are not included in the agreed price and/or tariffs and will be paid by the Client. If KEN is required to pay such charges and taxes, the Client will reimburse KEN for this amount.

Article 20 Validity Terms and Conditions of Sale, Delivery and Payment

20.1 Invalidity of one or more provisions of these Terms and Conditions of Sale, Delivery and Payment will not affect the remaining provisions.

Article 21 Changes in Terms and Conditions

21.1 KEN is at all times entitled to change the general terms and conditions they apply; these changes will also govern the legal relationship with the Client for all future agreements between the parties; KEN will publish the (changed) terms and conditions on its Internet site www.ken.nl.

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