

# GENERAL DELIVERY CONDITIONS

small consumers < 100 kW Eteck 2019



## 2019

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**General delivery conditions Eteck 2019, Heat, small consumers with a connected capacity of < 100 kW**

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## Article 1 Definitions

These general delivery conditions and/or the Agreement use the following definitions:

- 1.1. **Connection:** an individual or central connection;
- 1.2. **Connection Conditions:** the technical connection conditions of the Supplier;
- 1.3. **Heat Delivery Set:** the installation used for energy transfer for the delivery of heat to a Consumer. A heat pump in a ground-coupled heat exchanger is not a delivery set;
- 1.4. **Indoor Installation:** pipelines, installations, and appliances, not consisting of the Heat Delivery Set or the Meter Unit, located in an immovable property of a Consumer and intended for the delivery and disposal of Heat for the benefit of this immovable property, except for pipelines, installations, and appliances used to deliver Heat to another immovable property, in which respect the Indoor Installation is closed off at the side of the Heat Grid or the Indoor Grid by:
  - a) the main valves used to connect the Individual Delivery Set to the Heat Grid or the Indoor Grid, or
  - b) if no main valves are present, a physical location agreed in the Agreement;
- 1.5. **Central Connection:** pipelines used to transport Heat intended for Consumers connected to the Indoor Grid located between the Heat Grid and the Indoor Grid, in which respect the Central Connection:
  - a) is closed off at the side of the Indoor Grid by:
    - the main valves to which the Collective Heat Delivery Set or the Indoor Grid is/are connected, or
    - if no main valves are present, a physical location agreed in the heat delivery agreement, and which
  - b) is closed off at the side of the Heat Grid by:
    - the branch of the Heat Grid to which the pipelines and associated appliances intended to transport Heat to the Indoor Grid is/are connected, or
    - if no branches are present, a physical location determined in the Agreement;
- 1.6. **Collective Heat Delivery Set:** a Heat Delivery Set used to transfer energy for the benefit of the delivery of Heat to Consumers located between a Heat Grid and an Indoor Grid;
- 1.7. **Contract Party:** a Consumer with a Connection to the Supplier;
- 1.8. **Individual Connection:** one or more pipelines and connected appliances intended to transport Heat between an Indoor Installation of an individual user and a Heat Grid or an Indoor Grid, in which respect the Individual Connection:
  - a) is closed off at the side of the Indoor Installation by:
    - the main valves to which the Individual Heat Delivery Set or the Indoor Installation is connected, or
    - if no main valves are present, one or more physical locations determined in the Agreement, and which
  - b) is closed off at the side of the Heat Grid or Indoor Grid by:
    - the branch of the Heat Grid or the Indoor grid to which the pipelines and associated appliances intended to transport Heat to the Individual Consumer are connected, or
    - if no branches are present, a physical location determined in the Agreement;
- 1.9. **Individual Heat Delivery Set:** Heat Delivery Set used to transfer energy for the delivery of heat to a Consumer between a Heat Grid or production installation (whether or not using an Indoor Grid) on the one hand, and an Indoor Installation on the other hand;
- 1.10. **Indoor Grid:** one or more pipelines and connected appliances that are part of a building used to transport Heat between a Central Connection of a building connected to a Heat Grid or a production installation and the Individual Connection of an immovable property within the meaning of Article 16(c) of the Dutch Act on the Valuation of Immovable Property;
- 1.11. **Supplier:** Eteck Exploitaties B.V., with registered offices in Rotterdam, or an affiliated company, which expressly

declares or has expressly declared these general delivery conditions applicable;

- 1.12. **Delivery:** the delivery of Heat to Consumers by the Supplier as set out in the Agreement;
  - 1.13. **Meter Unit:** the equipment of the Supplier intended to determine the scope of the Delivery and the other details considered necessary for the invoice;
  - 1.14. **Agreement:** the heat delivery agreement between the Supplier and the Contract Party governed by these general delivery conditions;
  - 1.15. **Plot:** any movable or immovable property, or a part or composition thereof, for the benefit of which one or more Connections have been or will be established, or for the benefit of which a Delivery is taking place or will take place, such as at the discretion of the Supplier;
  - 1.16. **Product and Rates Sheet:** the document in which the rates for the Delivery and the other amounts or costs to be invoiced have been set out, as well as the specifications of the goods and services to be delivered, which document is part of the Agreement;
  - 1.17. **Transport:** the Transport of Heat to the Connection;
  - 1.18. **Consumer:** a person purchasing Heat from a Heat Grid or an Indoor Grid, and:
    - a) who has an Individual Connection of no more than 100 kilowatt, or
    - b) who has a Central Connection of more than 100 kilowatt, and delivers Heat to a Consumer as referred to in (a), and who also:
      - acts as a lessor for a Consumer as referred to in (a), or
      - acts as an association of owners or a comparable legal form of which the Consumer as referred to in (a) is a member.
  - 1.19. **Heat:** the thermal energy delivered to Contract Parties by the Supplier by transporting water for the benefit of heating a room or drinking water;
  - 1.20. **Heat Grid:** the entirety of pipelines, associated installations, and other appliances connected to each other and part of the same grid used to transport Heat, except insofar as these pipelines, installations, and appliances are located in an Indoor Grid, an Indoor Installation, or a building or object of a producer, and are used to supply or dispose of Heat for the benefit of this Indoor Grid, this Indoor Installation, or that building or object of a producer;
- ## Article 2 Applicability of and amendments to the general delivery conditions
- 2.1. These general delivery conditions govern all Agreements, applications, and corresponding offers. These general delivery conditions can be found on the website of the Supplier. The Contract Party accepts these general delivery conditions by signing the Agreement.
  - 2.2. These general delivery conditions and the corresponding applicable rules and regulations can be unilaterally amended by the Supplier.
  - 2.3. Amendments to the general delivery conditions will only take effect once thirty days have expired following the day on which they were communicated with the Contract Party in a manner set out in Article 2(5) of these general delivery conditions, unless this notice states another effective date;
  - 2.4. Rate changes based on the annual indexing will take effect on January 1<sup>st</sup> of the year in question and will be published as soon as possible.
  - 2.5. This change will be communicated by means of personal notice by letter, e-mail, or through the personal "MijnEteck" portal on the website of the Supplier, and by means of a general notice on the website of the Supplier (klantzaken.eteck.nl). The notice will state that the conditions, rules and regulations have changed and can be inspected at the Supplier, as well as that they can be requested from the Supplier at no cost.
  - 2.6. If one or more provisions of these general delivery conditions are invalid or non-enforceable in another manner, the validity

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- of the other provisions of these general delivery conditions will not be affected. The parties will in this case strive to reach a solution concerning the invalid or unenforceable provision(s) in mutual consultation with due observance of the purpose and scope of these general delivery conditions.
- 2.7.** The Agreement is also governed by the Connection Conditions which set out the technical connection conditions of the Supplier. These Connection Conditions can be found on the website of the Supplier (through the personal "MijnEteck" portal). The Contract Party accepts the Connection Conditions by signing the Agreement.
- 2.8.** Any deviations from these general delivery conditions are only valid if expressly agreed in writing.
- 2.9.** The Supplier will decide on a reasonable arrangement in all cases not provided for in these general delivery conditions.
- 2.10.** In writing as defined in these general delivery conditions includes by electronic means.
- 2.11.** The Contract Party chooses the way in which communication with the Supplier will take place at the start of the Agreement:
- by e-mail to the e-mail address set out in the Agreement;
  - by physical mail;
  - on the personal "MijnEteck" portal.
- 2.12.** The Supplier will charge the Contract Party an additional fee to cover the additional costs for communication by physical mail in accordance with the Product and Rates Sheet.

### Article 3 Agreement

- 3.1.** The Agreement takes effect on the date on which the Contract Party is first provided with a Connection (effective date of the rental of the Plot or the notarial execution date of the delivery deed for the plot) and/or on which the Delivery takes place for the first time, or on the agreed date set out in the Agreement.
- 3.2.** Without prejudice to the provisions of paragraph 3 of this article, the Supplier reserves the right to check the payment behaviour of the Contract Party and request securities within the meaning of Article 13 before or upon the application of the Contract Party or after the conclusion of the Agreement, but before the Delivery starts.
- 3.3.** Without prejudice to the provisions elsewhere in these general delivery conditions, the Supplier can refuse the conclusion of the Agreement or dissolve the Agreement before the start of the Delivery, if:
- the Contract Party fails to identify himself in a manner indicated by the Supplier and/or fails to provide other details needed by the Supplier to assess the application;
  - the Contract Party is in default with respect to a claim related to the Delivery or another exigible claim of the Supplier, including those related to a Delivery for the benefit of another plot;
  - the Contract Party has not accepted or has not met the requirements imposed by the Supplier, including the requested securities;
  - it is likely that one or more provisions or requirements set out in the Agreement or laws of regulations have not been, or will not be, met, and the Supplier is justified in exercising this power based on these grounds;
  - the capacity available for Transport or Delivery by the Supplier is insufficient at the location.
- 3.4.** The Supplier may demand joint and several liability if the Agreement is concluded with two or more persons.
- 3.5.** The (Delivery obligation pursuant to the) Agreement will end by operation of law if an exploitation right, concession, license, or delivery permit granted to the Supplier ends or is revoked, due to which the Supplier is no longer able to meet its Delivery obligation.
- 3.6.** The Agreement is governed by the laws of the Netherlands.
- 3.7.** The Agreement will be in force for an indefinite period, unless determined otherwise in the Agreement.
- 3.8.** The Contract Party will not be allowed to transfer its rights and obligations arising from the Agreement to a third party without the written permission of the Supplier. This transfer may be granted subject to conditions.

- 3.9.** The Supplier will inform the Contract Party if the Supplier transfers its rights and obligations arising from the Agreement to a third party. The Contract Party hereby in advance grants permission for such transfer. The Contract Party reserves the right to dissolve the Agreement in case of a transfer as set out above.
- 3.10.** If the Contract Party has not given the Supplier the opportunity to carry out the actions necessary to terminate the Agreement within the notice period, the Contract Party will remain bound to what has been determined in or pursuant to these general delivery conditions until it has met all its obligations arising from these conditions.
- 3.11.** The Delivery Agreement will remain in full force and effect in case of restrictions in or interruptions of the Delivery.
- 3.12.** The Agreement can only be terminated insofar as this has been expressly determined in the Agreement.
- 3.13.** Contract Parties purchasing Heat from a Ground-Coupled Heat Exchanger (GCHE) cannot terminate the Agreement and the Connection as a technically sufficient, responsible, and efficient performance of a GCHE for all Contract Parties demands that the number of Connections for which a GCHE was developed, dimensioned, and created in a given project must actually remain connected to this GCHE. Insofar as disconnecting a (limited) share of the number of Connections to a GHCE is technically feasible, no Contract Party connected to the GHCE in question may terminate the Agreement to ensure that the Supplier does not illegitimately discriminate between Contract Parties (Article 2(4) of the Dutch Heat Act) and to avoid any significant permanent disadvantages for the other Contract Parties.
- 3.14.** The Contract Party will during the effective period of the Agreement not purchase heat from other suppliers than the Supplier.

### Article 4 Connection application

- 4.1.** An application to create a Connection or to expand or change an existing Connection will take place in a manner permitted by the Supplier.
- 4.2.** A Connection or an expansion or change to an existing Connection will only be created by or on behalf of the Supplier. The manner in which and the location where the Connection will be created, as well as the number of Connections, will be determined by the Supplier, as much as possible in consultation with the Contract Party. As a rule, only one Connection per Plot will be allowed.
- 4.3.** The Supplier has the right not to create, expand, or change a Connection, or to impose special conditions on this, to ensure that the interests of the Supplier or those of one or more other Contract Parties are not harmed. This situation may exist, inter alia, if:
- the capacity available for Delivery by the Supplier is insufficient at the location;
  - the Supplier determines that the Indoor Installation is too far removed from the nearest production installation;
  - the permits and permissions needed to create, expand, or change the Connection cannot be obtained, or can only be obtained subject to conditions that are onerous for the Supplier;
  - the Connection and/or the Delivery will only be used as a reserve or is temporary;
  - the use of the Connection may cause hindrance to the production installation(s) of the Supplier;
  - the Contract Party defaults on paying a claim related to the Connection or Delivery, or another exigible claim of the Supplier, including those in relation to a Connection or Delivery for the benefit of another Plot, provided there is a sufficient relationship between the claim and the application to justify refusing to create the Connection or to impose special conditions. This also applies in relation to claims of the Supplier in relation to the Connection or Delivery of another product and/or for the exercise of a profession or company;

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- g) the Plot of the Contract Party is located in an area where no Deliveries take place, and where the Supplier does not intend to carry out Deliveries in the immediate future.
- 4.4. The Supplier also has the right not to create, expand, change, or activate a Connection, or to fully or partially remove or deactivate a Connection, if one or more provisions or requirements set out in or arising from these general delivery conditions have not been or are not being met by the Contract Party, and the Supplier can legitimately exercise this power.
- 4.5. The Supplier has the right to only connect an Indoor Installation, and to only continue the Delivery in case of changes to or a renovation of an existing Indoor Installation, if the creation, change, or renovation was carried out by an installer with the required expertise and equipment.

## Article 5 Connection and Heat Delivery Set

- 5.1. A Connection and Heat Delivery Set will only be maintained, inspected, replaced, relocated, expanded, changed, and removed by or on behalf of the Supplier, everything after prior notice to and in consultation with the Contract Party to the greatest extent possible.
- 5.2. The costs of maintenance and inspection of the Connection and Heat Delivery Set will be borne by the Supplier.
- 5.3. Without prejudice to the provisions above, any costs for replacing, relocating, expanding, changing, and removing will be borne by the Contract Party if:
- this takes place at its request;
  - this is the result of its actions and omissions due to circumstances reasonably attributable to it.
- 5.4. The Contract Party will ensure that the Connection and Heat Delivery Set will remain easily accessible. If a Connection or a part thereof have become difficult to access due to acts or omissions of the Contract Party, the Contract Party will restore the accessibility within a reasonable period. If the accessibility is not resolved within a reasonable period, the Supplier has the right to, at the expense of the Contract Party:
- remove the obstructions;
  - make changes to the Connection route;
  - create a completely new Connection.
- 5.5. In urgent circumstances, such as at the discretion of the Supplier, the Supplier will have the right to immediately remove the obstruction at the expense of the Contract Party and without being liable for any damage of any kind. The Contract Party must grant the Supplier access to the Connection and the Heat Delivery Set at its first request.

## Article 6 Rights in relation to the Plot

- 6.1. The Contract Party – both for itself and for the benefit of third parties – will permanently accept any pipelines installed in, at, on, below, or above the Plot, any created Connections, any branches of already existing Connections, and placed Heat Delivery Sets, and Meter Units, with due observance of the provisions of Article 5(1) and Article 19 of these general delivery conditions, and allow the maintenance, expansion, modification, replacement, relocation, or removal of these pipelines, Connections, branches, Heat Delivery Sets, and Meter Units. Any damage to the Plot caused by or on behalf of the Supplier because of this work will be repaired or compensation by or on behalf of the Supplier.

## Article 7 Indoor Installation

- 7.1. The Indoor Installation must meet the provisions of the Agreement and the Connection Conditions. The Supplier has the right to inspect the Indoor Installation (or have it inspected) if there are reasonable grounds for this. If the Supplier determines that an Indoor Installation does not comply/no longer complies with the provisions of the Agreement or the Connection Conditions, the Contract Party is required to have any shortcomings resolved at its expense, immediately if necessary, and observe any instructions given by the Supplier in this respect. However, the Supplier is not

required to verify whether the provisions of the Agreement or the Connection Conditions of the Supplier are being complied with.

- 7.2. Technical work to the Indoor Installation must be carried out by competent persons with the necessary skills and equipment with due observance of the Agreement and the Connection Conditions.
- 7.3. Changes, expansions, and other scheduled or necessary work to the Indoor Installation by or at the request of the Contract Party that may affect the Delivery and/or the agreed scope of the Delivery may only be carried out after written notice to and after written permission of the Supplier.
- 7.4. The Contract Party will ensure that the Indoor Installation is maintained well. The Contract Party is required to provide all requested information about the Indoor Installation to the Supplier in response to a corresponding request.
- 7.5. If the investigation mentioned in the first paragraph leads to the conclusion of the Supplier that the Indoor Installation does not comply, or no longer complies, with the Agreement or the Connection Conditions as a result of acts or omissions of the Contract Party, or acts or omissions carried out on behalf of or with the knowledge of the Contract Party, the investigation costs will be borne by the Contract Party.
- 7.6. The Contract Party will immediately inform the Supplier if it discovers leaks or other shortcomings in the Indoor Installation and will be required to immediately repair these leaks and shortcomings (or have them repaired), with due observance of any instructions of the Supplier in this respect.

## Article 8 Special circumstances and performance of work

- 8.1. The Supplier has the right to restrict or interrupt the Delivery, or to prohibit the use of the Delivery for certain purposes, or to impose special conditions on the Delivery.
- 8.2. If the Supplier considers this necessary or desirable, the Supplier can in relation to the performance of the work and in the interest of safety or in case of reasonably expected risks of damage, restrict or interrupt the Delivery for a period which is as brief as possible. If possible, this will only take place after prior warning.

## Article 9 Obligations of the Contract Party

- 9.1. The Contract Party is required to cooperate with the implementation of the Agreement insofar as this is reasonably necessary. The Contract Party is, inter alia, required to provide the Supplier with all necessary information, and to inform the Supplier as soon as possible of all data, events, and changes to the circumstances relevant to the proper implementation of the Agreement, including:
- the observed or suspected damage, defects, or irregularities to or in the (parts of) the Connection, Heat Delivery Set and/or Meter Unit present on the Plot, including breaking the seal;
  - address and/or name changes, including changes to the e-mail address;
  - changes to the bank account number.
- 9.2. The Contract Party must grant persons present on behalf of the Supplier access to the Plot from 07:00 to 20:00, except on Sundays and holidays. This access must in urgent circumstances also be granted on Sundays and holidays and outside the specified hours.
- 9.3. The Contract Party is required to do all which is reasonably possible to prevent damage to the Connection, Heat Delivery Set and/or Meter Unit present on the plot.
- 9.4. If the Contract Party is not the owner of the Plot, the Contract Party will guarantee that the owner accepts any actions considered necessary by the Supplier for the creation, replacement, relocation, expansion, modification, or removal of a Connection, Heat Delivery Set, Meter Unit, or the Delivery, both for the benefit of the Contract Party and for third parties. The Supplier may require the Contract Party to submit a written statement from the owner.

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- 9.5.** If the Contract Party has attributable acted in violation of an obligation set out in this article, and this (partly) results in a Delivery not registered by the Meter Unit, the Supplier can demand payment of the actual Delivery and/or compensation. The above does not affect the right of the Supplier to (i) fully or partially remove the Connection, Heat Delivery Set and/or Meter Unit and/or to (ii) deactivate the Connection, Heat Delivery Set and/or Meter Unit.
- 9.6.** The Supplier has the right to be represented by third parties in the fulfilment of its obligations and when exercising its rights. The clauses on the rights of the Supplier set out in these general delivery conditions are third-party clauses within the meaning of Article 6:253 DCC and cannot be revoked by the Contract Party.

## Article 10 Consequences of non-compliance by the Contract Party

- 10.1.** The Supplier has the right to interrupt the Delivery and/or suspend the provision of products, service, and maintenance if and as long as the Contract Party fails to comply with one or more articles of these general delivery conditions or the requirements that apply pursuant to these general delivery conditions after prior written notice, unless prior notice cannot be required from the Supplier for safety reasons. This situation may exist, inter alia, if:
- a) the Indoor Installation does not meet the Connection Conditions;
  - b) one or more of the prohibition clauses set out in Article 14 of these general delivery conditions are violated;
  - c) the Contract Party defaults on paying a claim related to the Connection or Delivery in accordance with the provisions of Article 12 of these general delivery conditions, or another exigible claim of the Supplier, including those in relation to a Connection or Delivery for the benefit of another Plot, provided there is a sufficient relationship between the claim and the obligation of the Supplier to justify the interruption. This also applies in relation to claims of the Supplier in relation to another or a previous Connection and/or Delivery of another product and/or for the exercise of a profession or company;
  - d) the Contract Party fails to comply with an applicable payment arrangement.

However, the Supplier will only make use of its right to interrupt the Delivery if and insofar as the failure of the Contract Party to comply with its obligations justifies this.

- 10.2.** The Supplier will not make use of its right to interrupt the Delivery and/or to suspend the provision of products, service, and maintenance pursuant to the provisions of the previous paragraph if the Contract Party has brought the case before the Dispute Committee within the meaning of Article 17 of these general delivery conditions in accordance with the applicable arrangement in the rules of this Dispute Committee within thirty calendar days of the interruption notice.
- 10.3.** The interruption of the Delivery and/or the suspension of the provision of products, service, and maintenance referred to in the first paragraph of this article will only be reversed once the corresponding reason has been resolved, and the cost of the temporary disconnection and resumption of the connection and the Delivery, as well as any damage incurred by the Supplier in this respect, have been paid in full. The Supplier may make the resumption of the connection and the Delivery subject to additional conditions.
- 10.4.** The use of the powers of the Supplier within the meaning of this article and the previous article cannot lead to liability of the Supplier for any corresponding damage.

## Article 11 Rates

- 11.1.** The Contract Party owes the Supplier the rates set out in the most current, applicable version of the Product and Rates Sheet, unless if and insofar as agreed otherwise.

- 11.2.** The amounts referred to in paragraph 1 may be increased by the taxes and charges which the Supplier must or may charge pursuant to a decision of or an agreement with the government.
- 11.3.** Changes to the rates will be charged in accordance with the agreed price structure and will be listed on the next invoice. The Supplier has the right to change the price structure in the interim, for example as a result of laws and regulations.
- 11.4.** Rate changes in accordance with the provisions of the Dutch Heat Act take effect on January 1<sup>st</sup> of the year to which they relate and will be announced as soon as possible. Changes also apply to any already existing agreements.
- 11.5.** If in a given year one or more decisions of the Netherlands Authority for Consumers and Markets (ACM) which also affect the determination of the rates by the Supplier take effect or are announced on such a date that notice by the Supplier cannot take place on or before January 1<sup>st</sup> of the given year, the rate changes of the Supplier will still take effect on January 1<sup>st</sup>, unless the notice by the Supplier states another effective date.
- 11.6.** Rate changes will be communicated by personal notice by letter, by e-mail, or on the personal "MijnEteck" portal on the website of the Supplier, and possibly using a general notice on the website of the Supplier (klantzaken.eteck.nl). The notice will state that the conditions, rules, and regulations, and plans have changed and can be inspected at the Supplier, and that they are available in a digital format at no cost.

## Article 12 Payment

- 12.1.** All amounts owed by the Contract Party pursuant to the Agreement governed by these general delivery conditions will be charged to the Contract Party by the Supplier, or a company designated by the Supplier, using a (digital) invoice sent to the Contract Party by e-mail, unless agreed otherwise.
- 12.2.** When this Agreement is terminated, or otherwise at least once per year, the Supplier will charge the amounts due to the Contract Party by means of a specified invoice.
- 12.3.** Payments by the Contract Party of the amounts due pursuant to the Agreement will take place by means of direct debit for which the Contract Party will authorise the Supplier, or a company designated by the Supplier, using an appropriate mandate which cannot be revoked before the end of the Agreement. The Contract Party will do all which enables the Supplier to make effective use of this mandate, and refrain from doing anything which would prevent or impede the Supplier from making effective use of this mandate.
- 12.4.** If the Contract Party does not authorise the Supplier for direct debit, the Supplier will offer different payment methods. The Supplier will charge the Contract Party an additional fee to cover the additional costs for other payment methods than direct debit in accordance with the Product and Rates Sheet.
- 12.5.** The payment must take place to a bank account number designated by the Supplier within 14 days of the invoice date.
- 12.6.** Unless agreed otherwise, the Contract Party will owe advances on which it will owe for the Delivery during the current payment period. The Supplier will in all reasonableness determine the advance amounts, the period to which they relate, and the times at which they will be charged and must have been paid. The Contract Party can file a substantiated request with the Supplier to change the advance amounts. The Supplier will take a reasonable decision about such request. Any advances already charged and/or paid will be settled in the specified digital invoice which is provided at least once per year. The Supplier has the right to (partially) settle any amounts to be refunded with the next advance invoice.
- 12.7.** The payment obligation will not be waived or suspended by objecting against the invoice.
- 12.8.** If the Contract Party has not paid the invoice within the specified period, the Supplier will inform the Contract Party in writing and determine a new payment period, in which

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respect the Supplier will have the right to first make a second attempt to collect the amount due if the Contract Party has authorised the Supplier for the direct debit.

- 12.9.** The Contract Party will without further notice be in default if no payment has taken place within the new period referred to in the previous paragraph.
- 12.10.** If the Contract Party is in default, it will owe compensation for the reasonable extrajudicial collection costs, as well as the statutory interest for each calendar day on which no payment has taken place, without prejudice to the provisions of Article 11. The compensation for the extrajudicial costs will be determined in accordance with the Dutch Standards Act on Extrajudicial Collection Costs and the Dutch Decree on Compensation for Extrajudicial Collection Costs.
- 12.11.** The Contract Party must pay all amounts due pursuant to the payment plan and all other amounts due to the Supplier during the effective period of a payment plan concluded between the Supplier and the Contract Party. The Supplier will only accept payment plans based on direct debit. No request for a payment plan can be submitted for these other amounts. The Contract Party will be in default without further notice being required if it fails to comply with its obligations arising from the payment plan.

## Article 13 Security

- 13.1.** The Supplier may demand security from the Contract Party in relation to the amounts which the Contract Party owes pursuant to these general delivery conditions, such as a bank guarantee or deposit, unless the Supplier applies the provisions of Article 12.6.
- 13.2.** The security referred to in paragraph 1 will, as a rule, not be higher than the average amount which the Contract Party is expected to pay for the Delivery for a period of six months, such as at the discretion of the Supplier. A deposit will be refunded as soon as possible once the need for a security no longer exists, but never later than within six weeks following the final invoice if the Agreement is terminated, after deduction of any amounts still due.
- 13.3.** The Supplier will pay half of the commercial interest as interest on the deposit from the date of receipt. The interest will be paid simultaneously with the refund of the deposit.

## Article 14 Prohibition clauses

- 14.1.** The Contract Party may not:
- cause nuisance or damage using the Indoor Installation to the Supplier or third parties with whom the Supplier has concluded agreements;
  - break (or have other parties break) the seals placed by or on behalf of the Supplier;
  - carry out (or outsource) actions due to which the scope of the Delivery cannot be determined (correctly), or create a situation in which the normal operation of the Meter Unit(s), the Heat Delivery Set, or (other) equipment of the Supplier is obstructed;
  - use the Connection, the Heat Delivery Set, or the Meter Unit to ground electrical installation, equipment, lightning protection systems, and similar;
  - (directly or indirectly) extract water from (i) a production installation and/or (ii) the Indoor Installation, if the Indoor Installation has an open connection with the production installation, without the prior permission of the Supplier;
  - (directly or indirectly) add liquids to the water of (i) a production installation and/or (ii) the Indoor Installation, if the Indoor Installation has an open connection with the production installation, without the prior permission of the Supplier.
- 14.2.** The Contract Party may exclusively use the Delivery for the benefit of its own Plot, unless it has the written permission of the Supplier to do otherwise. The Supplier may make this permission subject to conditions.
- 14.3.** If it is determined that circulation water in the system has been removed, the lost water, as well as the Heat present therein, will be charged to the Contract Party, except in case

of force majeure. The Contract Party will compensate the Supplier for all other damage.

## Article 15 Force majeure

- 15.1.** The Supplier is not required to fulfil any obligation if it is prevented from doing so due to:
- a defect not located in its Water Grid or the grid of a grid administrator, Indoor Pipelines, a Connection, or a Heat Delivery Set (including an interruption in the delivery of electricity or gas), and/or
  - an extreme situation which cannot be attributed to the Supplier or the grid administrator.
- 15.2.** An extreme situation which cannot be attributed to the Supplier or the grid administrator includes any event or circumstance beyond the control of the Supplier which it in all reasonableness cannot prevent, such as but not limited to natural disasters, mobilisation, war, inundation, acts of war, riots, calamities, government measures, measures taken by energy and grid companies and/or supervisors that lead to disruptions, and a situation in which the Supplier is rejected access to or prevented from accessing the cause of the disruption.

## Article 16 Liability

- 16.1.** With due observance of the other provisions in the other paragraphs of this article, the Supplier is liable vis-à-vis the Contract Party for damage as a result of interruptions in the transport of the delivery of Heat, but only if and insofar as:
- the interruption is the result of a shortcoming attributable to the Supplier, and
  - this concerns personal damage as a result of personal injury or death, and/or
  - this concerns material damage consisting of destruction, damage, or loss of an object, and/or
  - this concerns necessary costs to prevent material damage in case of an interruption of more than 8 hours.
- 16.2.** Damage of the Contract Party up to a threshold amount of EUR 65 (sixty-five euros) is not eligible for compensation. This threshold amount will also be compensated insofar as damage exceeds this threshold amount and is eligible for compensation. No threshold amount applies for personal damage as a result of personal injury or death.
- 16.3.** With due observance of the other provisions in the other paragraphs of this article, the Supplier is also liable for damage to persons or goods as a result of a faulty Connection or Delivery, or of incorrect actions or omissions related to a Connection or Delivery – not including interruptions to the Delivery – but not if the damage is the result of a shortcoming not attributable to the Supplier.
- 16.4.** Except in case of damage caused as a result of intent or gross negligence of the company or its manager, any damage to goods used by the Contract Party to operate a company or exercise a profession will not be eligible for compensation, as well as damage as a result of operational standstill, loss of profits and/or the failure to exercise another profession.
- 16.5.** If and insofar as the company is required to pay compensation to the Contract Party pursuant to these general delivery conditions, damage will only be eligible for compensation up to an amount of no more than: EUR 5,000,000 (five million euros) per event for all Contract Parties jointly insofar as this concerns personal injury, and EUR 2,500,000 (two and a half million euros) per event for all Contract Parties jointly insofar as this concerns material damage and the costs necessary to prevent material damage, provided that, irrespective of the overall scope of the damage, the compensation for the costs necessary to prevent material damage is limited to no more than EUR 75 (seventy-five euros) per Contract Party, and the overall compensation for material damage and costs necessary to prevent material damage is limited to no more than EUR 3,500 (three thousand five hundred euros) per Contract Party. If the overall damage amounts to more than the stated

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EUR 5,000,000 in personal injury and/or EUR 2,500,000 in material damage or costs necessary to prevent material damage, the company is not required to pay a greater compensation than the mentioned amount, in which respect the claims of the Contract Parties will be met pro rata with due observance of the maximum amounts for each Contract Party set out previously in this paragraph.

- 16.6. Damage must be reported to the Supplier as soon as possible, but never later than within four weeks after its occurrence, unless the Contract Party can demonstrate that it was unable to report the damage sooner.
- 16.7. The Supplier does not accept any liability for damage caused as a result of defects in the Indoor Installation of the Contract Party or as a result of any actions of the Contract Party.
- 16.8. The Contract Party is liable for all damage to any facilities installed by the Supplier for the Transport or the Delivery in, to, on, below, or above the Plot, unless the damage is the result of a shortcoming which is not attributable to the Contract Party. If the Contract Party is required to compensate damage, this will be limited to an amount of no more than EUR 3,500 (three thousand five hundred euros) per Contract Party per event.
- 16.9. The liability rule in this article also applies to any other company delivering Heat with which the Supplier collaborates for the delivery of Heat, as well as to any persons for whom the Supplier or this other company delivering Heat is liable.

#### Article 17 Questions, complaints, and disputes

- 17.1. If the Contract Party has a complaint or question about the conclusion or implementation of an Agreement (not including the rejection of a proposed payment plan), the Contract Party must first submit this complaint or question to the Supplier in writing within 8 weeks of the date on which the fact on which the complaint is based was or should reasonably have been discovered.
- 17.2. A dispute exists once the Contract Party has submitted a substantiated complaint to the Supplier in writing and this complaint is not resolved to its satisfaction within 8 weeks.
- 17.3. Disputes between the Contract Party and the Supplier concerning the conclusion or implementation of an Agreement on the Delivery of Heat can be submitted to the Dutch Dispute Committee Energy ([www.geschillencommissie.nl](http://www.geschillencommissie.nl)) or the competent court in the Netherlands by either the Contract Party or the Supplier.
- 17.4. A dispute will only be accepted by the Dutch Dispute Committee Energy if the Contract Party has first submitted its complaint to the Supplier within a reasonable period after which it (could have) discovered the fact on which the complaint is based. The dispute must have been submitted to the Dutch Dispute Committee Energy no later than three months after the complaint was submitted to the Supplier.
- 17.5. If the Contract Party submits a dispute concerning the Delivery of Heat to the Dutch Dispute Committee Energy, the Supplier will be bound to this choice.
- 17.6. If the Supplier wants to have a dispute concerning the Delivery of Heat assessed, it will suggest to the Contract Party to have the dispute handled by the Dutch Dispute Committee Energy. The Supplier will in this context announce that it wishes to submit the dispute to the competent court if the Contract Party does not indicate in writing – within five weeks – whether it accepts the handling of the dispute by the Dutch Dispute Committee Energy. If the Contract Party has rejected the request or has failed to answer within the five-week period, and the Supplier has not submitted the dispute to the competent court within two months, the Contract Party can submit the dispute to the Dutch Dispute Committee Energy.
- 17.7. The Dutch Dispute Committee Energy will render an opinion subject to the conditions adopted by the Dutch Dispute Committee Energy Regulations. The decisions of the Dispute Committee will serve as binding advice. Fees will be charged for the handling of a dispute.

#### Article 18 Determining the scope of the Delivery

- 18.1. The Supplier will decide how the scope of the Delivery will be determined. If this is determined using a Meter Unit, the data obtained through this unit will be binding, without prejudice to the provisions of Article 20 of these general delivery conditions.
- 18.2. The readings of the Meter Unit(s) will be determined by or on behalf of the Supplier at a time to be determined by the Supplier at least once per year. This determination will take place by examining the Meter Unit(s) by or on behalf of the Supplier at least once every three years. The Supplier may require the Contract Party to examine the readings itself during the other years and submit these readings to the Supplier in a manner and within a period determined by the Supplier.
- 18.3. If the Supplier is not reasonably able to examine the Meter Unit reading, or if the Contract Party has not met the request of the Supplier set out in paragraph 2 of this article, the Supplier may determine the scope of the Delivery in accordance with the provisions of Article 20(2) of these general delivery conditions, without prejudice to the right of the Supplier to determine and charge the actual Delivery using the Meter Unit reading.
- 18.4. If the Supplier and/or the Contract Party has/have made a mistake when examining the meter or during the administrative processing of the meter reading, a new reading will be taken if necessary and possible before the provisions of Article 20(2) of these general delivery conditions will apply mutatis mutandis.
- 18.5. Facilities can be implemented by or on behalf of the Supplier to make remote Meter Unit readings possible. If this is the case, the provisions of Article 8(3)(4) of the Dutch Heat Act will apply.
- 18.6. The privacy statement of the Supplier applies when examining and determining meter readings and usage figures. The most current privacy statement will always be published on the website of the Supplier ([klantzaken.eteck.nl](http://klantzaken.eteck.nl)) and be provided upon request at no cost.

#### Article 19 Meter Unit

- 19.1. The Supplier determines the location of the Meter Unit. The Meter Unit will be placed and maintained by or on behalf of the Supplier at its expense. The Meter Unit may only be replaced – whether or not as a result of an expansion or modification to the Indoor Installation –, relocated, or removed by or on behalf of the Supplier. All associated costs will also be borne by the Supplier. However, the replacement or relocation and the associated costs will be for the account of the Contract Party if the replacement or relocation takes place at its request or is the result of its acts or omissions, except if this action or omission is the result of circumstances not reasonably attributable to it. The Supplier will inform the Contract Party when the Meter Unit will be replaced or relocated in advance as much as possible.
- 19.2. The Contract Party will ensure that the Meter Unit remains easily accessible. If the Meter Unit has become difficult to access due to acts or omissions of the Contract Party, the Supplier will summon the Contract Party to resolve the accessibility within a reasonable period. If the accessibility is not resolved within a reasonable period, the Supplier has the right to, at the expense of the Contract Party:
  - a) remove the obstructions;
  - b) make changes to the route of the Meter Unit, pipeline(s), and/or branches;
  - c) create a completely new Connection and/or Meter Unit. In urgent circumstances, such exclusively at the discretion of the Supplier, the Supplier will have the right to immediately remove the obstruction at the expense of the Contract Party without being liable for any damage of any kind. The Contract Party must immediately grant the Supplier access to the Meter Unit at its first request.

# GENERAL DELIVERY CONDITIONS

small consumers < 100 kW Eteck 2019

# 2019

# Eteck

duurzame energie van eigen bodem

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The Contract Party must also protect the Meter Unit against damage, including frost damage.

- 19.3.** The Contract Party must grant the Supplier access to the Meter Unit at its first request to examine, check, maintain, and replace it.
- 19.4.** The electrical energy needed for the Meter Unit will be for the account of the Contract Party.
- 19.5.** If a Meter Unit does not only concern Deliveries for the benefit of the Plot, but also Deliveries to other plots, the usage of the Contract Party will be determined by calculating the measured usage pro rata the floor area of the plots in question, or pro rata the capacities determined by the Supplier.

## Article 20 Missing or incorrect readings

- 20.1.** If an investigation shows that the deviation of the reading is greater than permitted in accordance with the Dutch Metrology Act, the Supplier will determine the scope of the Delivery based on the investigation results. A new calculation will take place for the period during which the Meter Unit did not function properly, but for no more than a period of 24 months if the Supplier has charged too much, and for no more than a period of 18 months if the Supplier has not charged enough, calculated from the moment the Supplier determined that the Meter Unit functioned incorrectly, or, if this is sooner, from the moment the Contract Party informed the Supplier of its suspicion that the Meter Unit does not work properly. However, a new calculation will be made for the entire period if there is a suspicion of fraud by the Contract Party.
- 20.2.** If the investigation does not result in a reasonable approach to determine the scope of the Delivery, the Supplier has the right to estimate the scope of the Delivery during the period in question using the best data available to the Supplier for this purpose, for which the following approach can be used:
- the scope of the Delivery during the corresponding period in the previous year;
  - the average scope of the Delivery in a preceding and following period;
  - the average scope of the Delivery in the same period in comparable plots;
  - another fair approach determined after consulting the Contract Party.
- 20.3.** The costs of investigating the Meter Unit will be borne by the party at which request the investigation takes place. If the inspection determines that the deviation is greater than permitted, the costs will be charged to the Supplier.
- 20.4.** If the Meter Unit is temporarily unavailable, the use during the period for which no readings are available will be estimated by the Supplier after consulting the Contract Party in accordance with the provisions of Article 20(2) of these general delivery conditions.

## Article 21 Disruptions

- 21.1.** Hazardous situations in relation to the Indoor Installation, production installation(s), or resulting from the Delivery will be resolved by the Supplier as soon as possible. The Supplier has the right to take unannounced measures for this purpose which temporarily interrupt the Delivery.
- 21.2.** If the Contract Party reports a disruption to the (maintenance company of the) Supplier, but the (cause of the) disruption is determined to be in the Indoor Installation, (the maintenance company of) the Supplier will inform the Contract Party of this. If this is the case, the Contract Party will repay any incurred (call-out and other) costs to the Supplier.
- 21.3.** The Supplier uses, inter alia, a disruption service which is available 24 hours per day to which technical disruptions can be reported.

## Article 22 Compensation and refund

- 22.1.** In case of a serious disruption in the delivery of Heat within the meaning of Article 3(a) of the Dutch Heat Act, the Contract Party is entitled to compensation in accordance with

the provisions of Article 3(a) of the Dutch Heat Act and Article 4 of the Dutch Heat Decree. A scheduled interruption in the delivery of Heat is not a disruption.

- 22.2.** The 8-hour period takes effect at the time a serious disruption is reported by the Contract Party, with respect to a serious disruption in the delivery of Heat in the Individual Connection and/or Heat Delivery Set, in which respect the Supplier, whether or not after conducting an investigation in the home, actually determines whether the cause of this serious disruption is in the Individual Connection and/or Heat Delivery Set. A condition in this respect is that the Contract Party after its first notice of the serious disruption must provide the Supplier with immediate access to the home at its first request. If the Supplier is not granted immediate access to the home following its first request to this end, either based on a corresponding request of the Contract Party or due to the unavailability of the Contract Party after submitting the disruption notice, the effective start of the period referred to above will be the moment at which the Supplier can actually determine whether the cause of the serious disruption is located in the Individual Connection and/or Heat Delivery Set.
- 22.3.** The Supplier is not required to pay compensation if the serious disruption within the meaning of Article 3(a) of the Dutch Heat Act:
- is the result of causes that cannot be affected or controlled by the Supplier, such as:
    - an interruption in the delivery of electricity or gas (also refer to Article 15(1) of these general delivery conditions), or
    - a disruption in the product installation(s) or generation unit(s) connected to or located in a Heat Grid, Indoor Grid, Connection, or Heat Delivery Set;
    - an extreme situation (including a situation mentioned in Article 15(2) of these general delivery conditions) not attributable to the Supplier or grid administrator; or
    - a violation by the Contract Party of the applicable prohibition clause(s) set out in Article 7(3) or (14) of these general delivery conditions;
  - lasts less than 24 hours and no serious disruptions have occurred in a period of 12 months preceding the serious disruption in:
    - the same Heat Grid;
    - the same Heat Delivery Set if this is the property of the Supplier;
    - the same Connection, or
    - the same Indoor Grid.
- 22.4.** If the Delivery of Heat does not meet the agreed quality level as set out in the Product and Rates Sheet (not including a serious disruption within the meaning of Article 3(a) of the Dutch Heat Act), the provisions of the Agreement and/or the Product and Rates Sheet apply.
- 22.5.** The Contract Party does not have the right to settle any compensation or refund within the meaning of Article 22 of these general delivery conditions with any (advance) instalments due to the Supplier.

## Article 23 Final provisions

- 23.1.** These general delivery conditions take effect on 1 August 2019 and replace all previous versions.
- 23.2.** These general delivery conditions can be cited as: 'General delivery conditions small consumers < 100 kW Eteck 2019'.
- 23.3.** These general delivery conditions have been published on the website of the Supplier ([klantzaken.eteck.nl](http://klantzaken.eteck.nl)) and can be requested from the Supplier at no cost.