

General Terms And Conditions of ista Nederland B.V.-  
General Provisions

Registered with the Chamber of Commerce in Rotterdam  
under number 24210773.

## GENERAL PROVISIONS

### Article 1 - General provision

- 1.1 ista Nederland B.V. is a private limited company, with its registered office and principal place of business in Schiedam (3125 AP) at Nieuwpoortweg 11 (hereinafter referred to as "ista").
- 1.2 "Product" and "Services" are referred to as Products and Services delivered by ista to the customer, in this respect (hereinafter referred to: the "**Customer**").

### Article 2 - Applicability

- 2.1 These general terms and conditions of ista (hereinafter referred to as the "General Terms and Conditions") shall apply to all legal relationships, even pre-contractual and future legal relationships, between ista and its customer (hereinafter referred to as the "Customer"). In addition to these General Conditions, the relevant portions of the Product-Specific Provisions (hereinafter: "Product-Specific Provisions") apply to the agreement with the Customer.
- 2.2 Insofar as this is not explicitly agreed otherwise, these General Terms and Conditions shall apply and not the general terms and conditions of the Customer, not even in addition to the General Terms and Conditions of ista. By signing an offer or agreement (hereinafter referred to as the "Agreement"), the Customer agrees to the application of the General Terms and Conditions.

### Article 3 - Formation of the Agreement

- 3.1 Unless explicitly stated otherwise in the offer, ista's offers are without obligation and revocable. ista's offers are valid until 3 (three) months after the date of the offer.
- 3.2 Agreements will be concluded for the period as agreed between the Parties and will each time, unless otherwise stipulated hereinafter, be tacitly renewed for the same period. Unless otherwise stipulated hereinafter each Party may terminate the Agreement at the end of its term with due observance of a notice period of 6 months. In respect of Customers who are private persons, Agreements (except for Agreements regarding Care Free as specified in the Product-Specific Provisions I.IX, and lease as specified in the Product-Specific Provisions I.X) will be concluded for the period of one year and will each time be tacitly renewed. After the initial period of one year the

Customer may terminate the Agreement at any time with due observance of a notice period of one month.

- 3.3 Amendments and additions to any provision of the Agreement and/or the General Terms and Conditions as well as oral agreements shall only apply when confirmed in writing between the Parties.
- 3.4 The Agreement together with these General Terms and Conditions contains the entire agreement between the Parties in relation to its subject matter and supersedes any prior written or oral agreements or understandings between the parties in relation to such matter.

### Article 4 - Provision of services and transfer of a complex

- 4.1 Unless otherwise agreed, the Parties shall perform their respective obligations under the Agreement the day after the formation of the Agreement. In the event that the Customer for any reason whatsoever does not (in time) take delivery or does not enable ista (in time) to perform the agreed Services respectively, all costs incurred by ista in this respect shall be at the expense of the Customer.
- 4.2 The provision of services relating to the apportionment of costs by ista shall commence after completion of the installation of both the meters and peripheral equipment for the registration and/or reading of the consumption data (the "Consumption Registration System") of users of a part of a complex of buildings, being a natural person or legal entity (hereinafter referred to as the "Participants"). The installation will be carried out in complete accordance with the applicable standards, and is considered to be completed when at least 85% of the meters have been installed. In the event that Participants do not, or do not in time, respond to the options offered by ista for installation, the extra costs incurred as a result thereof will be charged to the Customer. If within the Services to be performed by ista cannot be performed or cannot be performed completely, through no act or fault of ista, the Customer shall pay the total costs of the Services as if the Services in question had indeed been performed completely. ista is authorized to charge the Customer for these costs.
- 4.3 If the Services are terminated for reasons for which ista cannot be held responsible (e.g. the sale of the building), the Customer shall compensate ista for the damage it has suffered (which includes inter alia lost profits).
- 4.4 ista is authorized to execute her contractual relationship by a third party.

## Article 5 - Call-off orders

- 5.1 Unless otherwise agreed, call-off orders shall be called within 6 (six) months of the formation of the Agreement.
- 5.2 If the order is not called-off in time, the Customer shall make the payment as if the Products have been delivered. Upon expiry of the term, the Customer has a purchase obligation. The costs of (further) storage, transport costs made in vain and any other damage incurred by ista will also be charged to the Customer.

## Article 6 - Rates

- 6.1 Unless otherwise agreed, the agreed rates are exclusive of VAT and other government levies.
- 6.2 In case of delivery of radiator meters and peripheral equipment the rates are inclusive of transport costs to the location within the Netherlands where the installation must be carried out and inclusive of installation costs, all unless otherwise agreed.
- 6.3 In case of delivery of flow meters and peripheral equipment, the rates are exclusive of transport and installation, all unless otherwise agreed.
- 6.4 ista is authorized to annually determine the rates for Services provided by ista (as of 1 January).

## Article 7 - Delivery, transfer of title and invoicing

- 7.1 If the Customer has to make an advance payment or shall make information and/or materials available required for the performance of the Agreement, the period for compliance shall only commence after payment in full has been received and/or the information and/or materials have been completely made available respectively. If the performance of the Agreement by ista depends on the cooperation of the Customer or third parties and this cooperation is not provided in time, ista no longer has to perform within the originally agreed period. In this case, ista has the right to suspend the performance of the Agreement.
- 7.2 The title to the Products shall remain with ista until the moment ista has received full payment for the delivery of the Products by the Customer.
- 7.3 ista aims to install 100% of the products in two site visits. For every additional visit a separate order from the customer needs to be received. This visit will be charged based on current ista rates. The provisions of article 4.2. remain applicable.
- 7.4 The total invoice will be generated by ista as soon as 85% of the Consumption Registration System has been installed.

- 7.5 Without prejudice to the provisions of article 7.4, ista reserves the right to charge the Customer for partial deliveries.
- 7.6 Flow meters can only be included in the servicing on the condition that the equipment performs well and has been installed according to the instructions. For this purpose ista will carry out an inspection of the performance and installation of the equipment. ista will charge the Customer for the costs hereof against the standard rates currently in use by ista.
- 7.7 During January each year half (50%) of the amount expected to be payable to ista for the Services relating to the current settlement period will be invoiced to the Customer. The other 50% will be invoiced in December.

## Article 8 - Payment

- 8.1 Unless otherwise agreed, payment of ista's invoices will be made by the Customer within thirty (30) days of the date of the relevant invoice. Payment by the Customer is deemed to settle the oldest outstanding invoice of ista.
- 8.2 ista has the right to take back Products owned by ista in case of late payment. Payments received from the Customer shall first of all serve to settle any outstanding invoices, without prejudice to the obligation of the Customer to pay any other outstanding invoices.
- 8.3 The Customer shall provide security for payment in a form of ista's choice.
- 8.4 The Customer does not have the right to suspend payment, in whole or in part, without written permission from ista.
- 8.5 Setoff by the Customer against a counterclaim is only allowed to the extent that the counterclaim is explicitly acknowledged by ista or has been irrevocably ascertained in law.
- 8.6 In case of late payment the Customer will be in default without further notice of default or demand being required and the Customer shall pay an interest on the amount due, immediately due and payable, equal to the statutory commercial interest, with a minimum of 1% per month. A part of a month will be treated as a full month in this respect.
- 8.7 If the Agreement has not been (fully) executed, ista reserves the right to fully suspend the fulfillment of its obligations arising from the Agreement until payment has been made in full of the amount due. If payment is not made within a further period set after receiving notice, ista is authorized to terminate the Agreement, at the discretion of ista, in whole or in part, by means

of a written statement, without prejudice to its right to damages.

8.8 If the Customer is in default, any costs, both in and out of court (including the costs of legal assistance) for ista connected with the enforcement of its rights against the Customer shall be at the expense of the Customer.

8.9 The Customer may not assign any claims it may have towards ista to third parties without the prior written consent of ista.

#### **Article 9 - Obligations of the Customer with respect to apportionment**

9.1 In order to enable a correct apportionment of costs, the Customer must arrange that all groups and heating bodies connected to the installation can be equipped with meters and can participate in the apportionment. All parts of the Consumption Registration System must be installed in the appropriate location and must be accessible for registration and maintenance purposes.

9.2 The Customer shall immediately report any malfunction or failure of the Consumption Registration System to ista on penalty of forfeiture of any claim of the Customer or the Participants against ista.

#### **Article 10 - Charging on**

10.1 Unless otherwise agreed, in case of radiator measuring systems ista will apply reductions to the making of the cost apportionment. Applying reductions means that for a reasonable charging on of the heating costs to be paid by each of the Participants, when making the cost apportionment, to the extent possible, disproportional heat loss of rooms less conveniently located in terms of energy consumption, is taken into account.

10.2 Unless otherwise agreed, the total amount to be paid for the servicing will be included in the cost apportionment and charged on to the Participants. All invoices from ista will be directed to the Customer. The customer shall be obliged to check the cost apportionment before it is distributed to the Participants.

#### **Article 11 - Guarantees and repairs**

11.1 ista will remedy defects free of charge, to the extent that the defects can be demonstrably attributed to ista as a result of ista's failure to perform and to the extent that the defects were reported in accordance with article 12.6, at the option of ista, by means of repair, replacement or correction of a billing error. ista is not under any obligation to repair or replace nor otherwise liable for any defects that are the result of any government regulation on the nature or the quality of the materials used or Services delivered.

11.2 In the event that ista, to fulfill its guarantee obligation referred to in article 11.1, replaces parts by new parts, these parts will be provided free of charge and under the same conditions as applied to the replaced parts. Any repair or replacement does not include the repair of paintwork on the heating bodies. The applicability of Title 1 of Book 7 of the Dutch Civil Code is hereby explicitly excluded.

11.3 Hardware delivered by ista has a guarantee period of 12 months as of the date of delivery or installation by ista (unless the Parties have agreed on a different period in writing).

11.4 In the event that the Customer is a consumer, ista will acknowledge the rights that such Customer may have under the mandatory provisions of Title 1 of Book 7 of the Dutch Civil Code.

#### **Article 12 - Liability for damage**

12.1 ista is exclusively liable for intent and gross negligence. In all other cases the liability of ista shall be limited to compensation for direct damage, up to the invoice amount pertaining to the part of the complex where the damage occurred and to the part relating to the Services that caused the damage. In case of an invoice error, ista shall be exclusively liable for correcting the error.

12.2 In respect of the installation of heat cost allocators, it is necessary to mount the meter on the radiator using weld studs, so that the heat cost allocator can function properly and is secured against incompetent handling. The Customer agrees that the device is mounted in such a manner and that ista shall not be obliged to remove this mounting, nor to compensate or repair any damage to the paintwork in the event the heat cost allocator needs replacing or the Agreement is dissolved.

12.3 If the measurement data are lost as a result of a shortcoming attributable to ista, ista shall be obliged to prepare an adequate cost allocation to the best of its ability, to the exclusion of any further liability. An error in the measurements or the cost allocation shall, to the exclusion of any further liability, be corrected by ista by providing the Customer with the corrected measurements or cost allocation.

12.4 ista shall not under any circumstances be liable for damage resulting from or relating to Products and Services it has provided in respect of the ista Web Portal and the ista application.

12.5 ista does not accept any liability for advice which ista gives without such being based on an Agreement specifically geared to the giving of advice.

- 12.6 On pain of forfeiture of the right to compensation, damage to Products delivered or Services wrongly provided shall be reported in writing to ista within 14 (fourteen) days after discovery. Any claims and rights to compensation of the Customer against ista, on whatever grounds, relating to the Products and Services shall lapse 12 (twelve) months after the date on which the Customer became aware or should reasonably have become aware of the damage and of the potential liability of ista. In any event, these rights and further authorities will lapse 2 (two) years after the Services have been provided by ista.
- 12.7 The Customer shall indemnify ista against all claims for compensation from third parties relating to Products supplied or Services provided to the Customer by ista.
- 12.8 Under no circumstances is ista liable for (additional) costs and damage as a result of or in connection with the data provided to ista by the Customer. Adjustments by the Customer to this data, which result in the re-supply of Products and Services or in an adjustment thereof, are at the expense and risk of the Customer.

#### **Article 13 - IP rights and Data Protection**

- 13.1 The Customer may not use designs, drawings, descriptions, calculations, etc. provided by ista other than for the provision of services by ista. The documents referred to above may only be provided to third parties with prior written permission from ista.
- 13.2 Any intellectual property rights, including but not limited to: I) database rights and II) copyrights on the designs used by ista and the calculation models and the factors used therein are vested in ista Nederland B.V. even if the Customer has contributed to these rights.
- 13.3 In the context of, among other things, the execution of the agreement or compliance with applicable laws and regulations, ista has to process personal data. ista processes these personal data at all times in accordance with the applicable privacy legislation, including but not limited to the General Data Protection Regulation ("GDPR") and the GDPR Implementation Act ("Implementation Act"). The personal data to be processed by ista is subject to ista's Privacy Statement. The Privacy Statement can be consulted via the ista website: <https://www.ista.com/nl/privacy/>.
- 13.4 If ista will process the personal data by order of the Client and in accordance with the purposes, means, storage periods and instructions determined by the Client, and ista and the Client are therefore to be regarded as respectively a processor and a controller on the basis of the GDPR, ista and the Client will enter into a processor agreement within the framework of

the processing of personal data by ista that regulates the rights and obligations of both parties in accordance with the GDPR/Implementation Act.

#### **Article 14 - Termination**

- 14.1 Without prejudice to the provisions of the General Terms and Conditions, ista has the right to immediately terminate the Agreement if the Customer submits their own petition for bankruptcy or is declared bankrupt, has applied for a (provisional) moratorium, or when an application is granted to the customer by the District Court for the applicability of the debt management scheme or based on attachment, a guardianship order or otherwise when the Customer loses the power of disposal of his estate or parts of his estate, unless the liquidator or the administrator acknowledges the obligations arising from the Agreement as estate debts. The Customer shall be liable for the damage incurred by ista, inter alia, consisting of but not limited to, loss of profits and transport and storage costs.
- 14.2 Defects in the Products delivered or in the result of the Services do not constitute grounds for termination of the Agreement and ista after repeated attempts does not succeed in remedying the defect(s) in an acceptable manner within a period of 120 days. The Customer will then be authorized to terminate the Agreement, if and to the extent that maintaining the Agreement cannot in fairness be demanded from the Customer.

#### **Article 15 - Severability**

In the event that any provision of these General Terms and Conditions appears to be void or otherwise unenforceable, the Parties will continue to be bound by the other provisions of these General Terms and Conditions. The Parties will replace the void or unenforceable provision by another provision that is valid, in such manner that the new provision differs as little as possible from the void or unenforceable provision, taking into account the object and the purpose of the Agreement and these General Terms and Conditions.

#### **Article 16 - Applicable law and competent court**

- 16.1 The Agreement shall be governed by Dutch law.
- 16.2 Unless otherwise provided by law, disputes between ista and the Customer shall in the first instance be submitted to the competent court in Rotterdam without prejudice to ista's right to summon the Customer to appear before another competent Court.

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