

Article 1: Definitions and applicability of these terms and conditions

1. In these terms and conditions 'DYKA' means the private limited liability company Dyka B.V., having its registered office in Steenwijk.
2. In these terms and conditions the 'counterparty' means the party that accepts the applicability of these general terms and conditions by its signing of a document or in any other way.
3. In these terms and conditions 'delivery' means the actual transfer of a good or service, such as, for example, the performance of work, the provision of services, and the making of goods available.
4. These terms and conditions apply to every tender and every agreement between DYKA and a counterparty to which DYKA has stated these terms conditions applicable, excepting if and to the extent that the parties have expressly agreed otherwise in writing.
5. The terms 'delivered duty paid' and 'ex works' have the meaning set out in the at that time applicable Incoterms.

Article 2: Tenders and orders

1. Every tender by DYKA is subject to contract. Tenders are valid for 30 days unless stated otherwise. Agreements pursuant to a tender subject to contract issued by DYKA shall be formed only as of the moment that DYKA has confirmed in writing a counterparty's order for delivery or, failing that, by the act of delivery and/or by issuance of an invoice.
2. All stated prices are exclusive of BTW (Dutch VAT) unless stated otherwise.
3. Any content of DYKA's website, folders, printed matter and the like do not bind DYKA unless explicitly referenced in the agreement. Each new price list renders the previous one inoperative.

Article 3: Delivery

1. If and to the extent the parties do not agree otherwise in writing, delivery shall be made to the counterparty 'ex works'.
2. The counterparty is obliged to take delivery of the goods purchased at the agreed moment of delivery. If the counterparty refuses to take delivery or is negligent in the provision of information or instructions necessary for their delivery, the goods will be stored at the counterparty's risk and expense. In such a case the counterparty shall pay DYKA all additional costs which shall in any case include a storage fee of 8% of the invoiced amount per month or the actual costs (of storage), whichever is greater. The counterparty shall be in default after a term of four weeks following the agreed moment of delivery and DYKA is then entitled to dissolve the agreement and sell the goods under the agreement to third parties. The costs associated with this and any reduced amount of proceeds for the goods shall be at the counterparty's risk and expense.

Article 4: Delivery period

1. An agreed delivery date is not a strict deadline unless expressly agreed otherwise. If delivery is not made on time, the counterparty must serve DYKA with a written notice of default and set DYKA a reasonable term within which it can still meet its obligations.
2. The delivery period shall commence only once the counterparty has furnished DYKA with all details and information it shall require, or which the counterparty should reasonably understand are necessary, for the execution of the agreement.
3. Should any changes to the order to DYKA result in additional time being needed to execute the agreement, the delivery period shall be extended by the amount of that additional time required.

Article 5: Partial deliveries

DYKA is permitted to deliver purchased goods in lots. If such goods are delivered in lots, DYKA is authorised to invoice each such lot separately.

Article 6: Technical requirements and standards

DYKA is responsible that all goods delivered by DYKA meet the technical requirements and standards set for these by laws and regulations governing their use in the Netherlands.

Article 7: Samples, models and examples

If DYKA displays or provides a model, sample or example this shall be presumed to be an indicative representation only: the properties of the goods to be delivered can differ from those of the sample, model or example unless expressly agreed in writing that such goods shall be delivered in conformity with the sample, model or example displayed or provided.

Article 8: Defects; time limit for complaints

1. The counterparty must examine or have the goods purchased examined at delivery. In so doing, the counterparty must in any case determine:
 - whether the correct goods have been delivered;
 - whether the delivered goods match in terms of quantity with what was agreed;
 - whether the delivered goods match the agreed quality requirements or – if these do not exist – the requirements that should apply to their normal use and/or commercial purposes;
 - whether, in case of 'delivered duty paid', any damage has occurred during the transport of the goods;
 - whether, in case of delivery other than 'ex works' any damage has occurred during the transport of the goods.
2. DYKA maintains the tolerances that DYKA deems customary for quantities and such technical details as sizes, weights, colour (accuracy) and the like.
3. Should any visible defects or shortfall be found, the counterparty must report these in writing to DYKA within eight days of delivery. Any right of the counterparty towards DYKA in respect of visible defects or shortfall shall expire if the visible defects or shortfall are not reported in writing to DYKA within eight days of delivery.
4. The counterparty must report in writing to DYKA any hidden defects within eight days of discovery or of when these should reasonably have been discovered, but no later than three months after delivery. Any right of the counterparty towards DYKA in respect of hidden defects shall lapse if these are not reported in writing to DYKA within the stated term of eight days and/or three months.
5. If the defects or shortfall are inadmissible, the counterparty is entitled solely to the remedy of the repair of the goods or the completion of the shortfall. DYKA then can choose to replace the goods, or, as the case may be, to dissolve the agreement in whole or in part so that all or part of the delivered goods can be returned for whole or partial refund of their purchase price. The counterparty is entitled to replacement only if the goods cannot be repaired. All replaced goods become the property of DYKA.

Article 9: Warranty and exoneration

1. DYKA warrants that the goods it delivers are free of design, material, manufacture and other errors for a period of six months after their delivery. DYKA strictly excludes its liability for defects that may occur thereafter.
2. DYKA is not liable for costs, damage, including consequential damage, and interest that are the direct or indirect consequence of design, material, manufacture and other errors in the goods it delivers if the counterparty has not observed the obligations set out in Article 8 paragraph 1 and the counterparty has not notified DYKA of such defects subject to the provisions of Article 8 paragraphs 2 and 3.
3. If goods show design, material, manufacture and other errors or shortfall that fall outside the usual and customary tolerances within the meaning of Article 3 paragraph 4 and DYKA's liability for these errors or shortfall is not excluded, the counterparty's sole right of remedy for the repair of the goods or completion of the shortfall is governed by the terms and conditions set out in Article 8 paragraph 4 of these terms and conditions. If the counterparty desires the repair or replacement of errors or shortfalls, the counterparty must make the property to be repaired or replaced freely available to DYKA, without prejudice to DYKA's right to invoke the provisions set out in this Article 9.
4. Any liability of DYKA is limited to the amount paid out under DYKA's liability insurance in such a case. If DYKA's liability insurance does not give any right to payment, DYKA's liability shall be limited to the invoiced amount agreed for the sale and/or delivery by DYKA of such goods, services and/or consulting.
5. DYKA is not liable for consequential losses, such as losses in the form of lost profits and other indirect damage.
6. Any right of action of the counterparty towards DYKA shall lapse one year after the goods were delivered or made available to the counterparty under the agreement unless the counterparty has commenced legal proceedings against DYKA within this term.
7. Contrary to what has been stated in the provisions in paragraphs 1 and 2 above, DYKA is not liable for any damages consequential to the improper handling by the counterparty or any third party of the goods delivered by DYKA. 'Improper handling' shall be understood to mean also any repairs made by the counterparty and/or third parties without DYKA's advance written permission.
8. The warranty does not apply to any goods delivered by DYKA in conformity with the tender or order confirmation that deviate in any aspect from the technical requirements and standards stated in Article 6 above, unless the design, material, or manufacturing error is not related to this deviation.
9. The limitation of liability under this Article does not apply to any damage consequential to the intentional or wilful recklessness of DYKA's management.

Article 10: Price increases

If and to the extent the parties have not explicitly agreed otherwise in writing, DYKA is entitled to increase the price agreed with the counterparty to the price applicable at delivery pursuant to DYKA's price list applying at that moment. The counterparty is entitled to dissolve the agreement if the agreed price is increased by more than 5%. Such dissolution must occur as soon as the counterparty becomes aware of the price increase.

Article 11: Payment

1. Unless otherwise agreed in writing the counterparty must make payment within thirty days after the date of the invoice in euros by transferring the amount owed to DYKA's bank account.
2. Without prejudice to the provisions of paragraph 1, if it is agreed that payment shall be made by letter of credit (L/C), this shall be an irrevocable confirmed L/C for the full amount of the contract price, opened by the counterparty with a leading bank within the due date of DYKA's tender. The L/C shall be confirmed by a bank accepted by DYKA. The L/C shall be subject to the 'Uniform Customs and Practice for Documentary Credits, 2007 Revision', ICC publication no. 600.
3. If payment has not been made in full after the expiry of the applicable term for payment the counterparty shall be in default without formal notice of default being required. As from the moment it is in default, the counterparty shall owe the statutory rate of interest agreed by the parties on the outstanding amount plus an additional 2%.
4. In case of (a decision for) the counterparty's liquidation, bankruptcy, or moratorium, or when the statutory debt management scheme for natural persons is ordered against the counterparty, all of DYKA's claims against the counterparty shall become immediately due and payable.
5. Payment by the counterparty must be made without the counterparty having any authority to apply any discount to the payment, to suspend payment, or to set off the payment against any claim against DYKA.
6. Payments made by the counterparty shall be applied first against all interest owed, any remaining balance then against costs, and finally any balance against whichever invoice has been open the longest even if the counterparty specifies its application to some later invoice.

Article 12: Collection costs

1. Should the counterparty be in default of fulfilling one or more of its obligations the counterparty shall pay all reasonable out of court expenses for collection. In any case, the counterparty shall owe:

- on the first	€3,000.00	:15%;
- on the balance, up to	€6,000.00	:10%;
- on the balance, up to	€15,000.00	: 8%;
- on the balance, up to	€60,000.00	: 5%;
- on the balance:	3%.	

If DYKA demonstrates that its actual costs were greater, such actual higher costs shall be at the counterparty's expense.
2. The counterparty shall owe DYKA all actual legal costs incurred by DYKA in all instances to the extent that judgment is issued entirely or mainly against the counterparty in legal proceedings between DYKA and the counterparty related to an agreement to which these general terms and conditions apply.

Article 13: Retention of title

1. DYKA retains title to all goods it has or shall deliver to the counterparty under any agreement until such time as DYKA has received full consideration for such goods. If DYKA has or shall perform services under said agreement(s), the goods referenced in the preceding sentence shall remain DYKA's property until the counterparty has also satisfied DYKA's claims in full concerning the consideration for the same. The retention of title shall also apply to any claims that DYKA acquires against the counterparty for non-performance by the counterparty of such agreement(s).

2. If the law prevailing in the goods' country of destination offers rights in respect of retention of title that are more far-reaching than those provided above in paragraph 1, any such more far-reaching provisions shall be deemed to have been stipulated on behalf of DYKA, with the proviso that when it cannot be objectively determined to which more far-reaching rules this provision refers, the provisions as set out in paragraph 1 above shall continue to apply.
3. Goods delivered by DYKA that fall under the retention of title may be resold only within the framework of normal business operations.
4. Any delivered goods that have become the property of the counterparty by reason of its payment and which remain in the hands of the counterparty, remain subject to DYKA's rights of pledge within the meaning of Article 237, Book 3 of the Civil Code of the Netherlands as additional security for any claims which DYKA might have upon the counterparty for any reason whatsoever. The rights within this paragraph apply also to any goods delivered by DYKA and to which DYKA has lost its retention of title by reason of the counterparty's treatment or processing of the goods.
5. If the counterparty does not fulfil its obligations or if there is reasonable fear that it will not do so, DYKA is entitled to remove or cause to be removed the delivered goods subject to retention of title from the counterparty or third parties holding them for the counterparty. The counterparty is obliged to provide all assistance in this on penalty of an immediately payable fine of 10% for each day of the amount it owes.
6. If third parties wish to enforce or have enforced any right under the retention of title on delivered goods, the counterparty is obliged to so notify DYKA immediately.
7. The counterparty undertakes:
 - to insure and maintain insurance on the goods delivered under retention of title against damage and loss and to make the policy available for DYKA's inspection upon request;
 - to pledge to DYKA at DYKA's request any claims on the insurers with respect to goods delivered under retention of title;
 - to pledge to DYKA at DYKA's request any claims that the counterparty obtains upon its customers upon the resale of the goods delivered by DYKA under retention of title;
 - to mark the goods delivered under retention of title as DYKA's property;
 - to otherwise provide its assistance in all reasonable measures that DYKA wishes to take for the protection of its property rights to the goods, which the counterparty will not unreasonably impede in the normal exercise of its business.

Article 14: Intellectual and other property rights

1. Unless otherwise agreed in writing, all drawings, dies, models, templates, moulds, instruments or similar technical examples are and shall remain the property of DYKA even if any costs for these have been charged to the counterparty as DYKA holds the intellectual property rights associated with these. The counterparty may not make any of these available to third parties, disclose these to third parties, copy or use these, or make any announcement about these without DYKA's written permission. These must be returned to DYKA's possession immediately upon request.
2. The drawings, dies, models, templates, moulds, instruments and the like that are the property of the counterparty or which are made available to DYKA through the counterparty shall be returned to the counterparty at its cost after the agreement has been executed. DYKA is entitled to suspend their return until all of DYKA's claims (including any claims from previous and later agreements) upon the counterparty have been satisfied.
3. The counterparty is obliged to take delivery of the goods named in paragraph 2 at the moment these are delivered to it or, as the case may be, at the moment these are made available to it. If the counterparty refuses delivery or is negligent in the provision of information or instructions necessary for their delivery, the aforesaid goods will be stored at the counterparty's expense and risk. In such a case, the counterparty shall owe all additional costs, including, in any case, the costs of storage applying to the goods. DYKA is entitled to destroy or sell the aforesaid goods if the counterparty has not proceeded to remove the goods after DYKA has formally demanded the goods be removed within a certain period of time, or, as the case may be, within three months after DYKA has executed the agreement.
4. DYKA is not liable for wear and tear, loss or damage to the goods named in paragraph 2, barring the intentional or wilful recklessness of DYKA or its supervisory employees.
5. If the goods named in paragraph 2 are not, or not sufficiently, suited for further manufacture, upon the counterparty's written notice DYKA will repair or replace the goods at the counterparty's expense.
6. The counterparty undertakes towards DYKA that there shall be no infringement of third-party industrial or intellectual property rights in the execution of the agreement. The counterparty indemnifies DYKA against any third-party claims for infringement of industrial or intellectual property rights.

Article 15: Execution of the agreement

1. If and to the extent the agreement provides for, or also provides for, the performance of services by DYKA, DYKA shall observe the due care of a good contractor in so doing.
2. If and to the extent in DYKA's opinion the proper execution of the agreement so requires, DYKA is entitled to have certain activities carried out by persons of its designation, including third parties. The applicability of Articles 404 and 407(2) of Book 7 of the Civil Code of the Netherlands is excluded.
3. The counterparty shall see to it, at its own expense and risk, that:
 - a. as soon as DYKA's personnel have entered the building site or the grounds of the counterparty or of any other location where DYKA's personnel must carry out tasks, they can begin their activities and are afforded the opportunity at all times to carry out their activities during normal working hours and in particular outside normal working hours if such is agreed or is necessary at DYKA's sole and exclusive judgment;
 - b. suitable shelter and/or other facilities required by the Working Conditions Act for personnel are available;
 - c. the designated building site or the grounds of the counterparty or of any other location where DYKA's personnel must carry out tasks is suitable for storage and for carrying out the agreed activities and/or services and furthermore offers all arrangements and facilities needed for DYKA's execution of the agreement;
 - d. the required secure storage places are available for materials, tools and other property;
 - e. the necessary and customary labourers, auxiliary plant and equipment and materials are available for DYKA's use at the right time, at the right place, and at no cost to DYKA;
 - f. all necessary safety and other precautionary measures have been taken and are maintained.
4. The counterparty shall assure at its own cost that all goods and data that DYKA indicates that it requires or which the counterparty should reasonably understand are required for it to execute the agreement are provided to DYKA in good time. If the goods and data required for the execution of the agreement are not provided to DYKA in a timely manner, it is entitled to not commence execution of the agreement, or as the case may be to suspend execution of the agreement and/or to invoice the counterparty at the usual rates for the additional costs arising from the delay.
5. DYKA is not liable for damage of whatever sort that arises because it proceeded from inaccurate and/or incomplete information furnished by the counterparty.
6. If it is agreed that the agreement shall be executed in phases, DYKA can suspend execution of those parts of the agreement that are part of a later phase until the counterparty has approved in writing the results of its preceding phase.

7. The costs incurred by DYKA as a result of the conditions set out in this Article not being satisfied at all or in a timely manner shall be at the counterparty's expense.

Article 16: Packaging materials

1. DYKA shall use packaging materials as necessary. These packaging materials are, unless DYKA states otherwise in writing, always returnable packaging materials. The counterparty is obliged to return the packaging materials within fourteen days empty and in an undamaged condition. If the counterparty fails to meet its obligations with respect to the packaging materials all costs arising from this shall be at its expense. Such costs include the costs arising from late return and costs of replacement, repair, and/or cleaning.
2. If the counterparty does not return any returnable packaging materials after a demand to do so within the stated term, DYKA is entitled to replace these and to charge the costs to do so to the counterparty.

Article 17: Termination of the agreement

1. Any claim of DYKA upon the counterparty is immediate due and payable without need of any formal notice of default if:
 - circumstances become known to DYKA after conclusion of the agreement that give reasonable grounds to fear that the counterparty will not meet its obligations;
 - DYKA has asked the counterparty to post security for the fulfilment of its obligations under the agreement and such security is not posted within a reasonable period of time or is insufficient.
 - the counterparty is in default in some other way and fails to meet its obligations under the agreement.
2. In such cases DYKA is entitled to suspend further execution of the agreement and/or move to dissolve the agreement, all without prejudice to DYKA's right to claim compensation. If circumstances arise with respect to persons and/or materials used or that tend to be used by DYKA for the execution of the agreement which are of such a nature as to make execution of the agreement impossible or so inconvenient and/or disproportionate that fulfilment of the agreement can no longer reasonably be expected, DYKA may dissolve the agreement without being bound to make any compensation.

Article 18: Force majeure

1. In these terms and conditions, 'force majeure' means those circumstances that prevent the fulfilment of the obligations under this agreement and which cannot be attributed to DYKA. These shall include (if and to the extent these situations make fulfilment impossible or inconvenient):
 - strikes in DYKA's factory or in factories other than those of DYKA;
 - a general lack of the inputs and other goods or services needed to bring about the agreed performance;
 - interruption of business operations unforeseeable by DYKA of suppliers or other third parties on which DYKA depends and general transport problems;
 - (government) measures such as, but not limited to, import or export restrictions that prevent DYKA from meeting its commitments on time and/or properly.
2. DYKA is also entitled to invoke force majeure if the conditions that impede (further) fulfilment arise after DYKA should have met its commitment.
3. DYKA's delivery and other obligations shall be suspended during a state of force majeure. If the period during which force majeure renders DYKA's fulfilment of its obligations impossible lasts longer than fourteen days, both parties shall be authorised to dissolve the agreement without any obligation to pay compensation in that case.
4. If when force majeure arises DYKA has already fulfilled part of its obligations, or can fulfil only part of its obligations, it is entitled to invoice separately the portion already delivered and/or ready for delivery and the counterparty is bound to pay this invoice as if it referred to a separate contract.

Article 19: Confidentiality

Other than the statutory obligations to which they are subject, both parties are bound to keep confidential all confidential information they have acquired in the course of the agreement from each other or from some other source. Information shall be confidential if the information-provider so deems it or if its confidentiality arises from the nature of the information.

Article 20: Dispute resolutions

Disputes between DYKA and the counterparty will be resolved in first instance exclusively by the competent judge of the Zwolle-Lelystad District Court, except as may arise differently from Article 108 (2) of the Code of Civil Procedure of the Netherlands. DYKA remains authorised, however, to submit a dispute before the competent court under the law or applicable international convention.

Article 21: Applicable law

Each agreement between DYKA and the counterparty is subject solely to the law of the Netherlands. The applicability of the provisions of the Vienna Sales Convention (CISG) is hereby excluded.

Article 22: Amendments to these terms and conditions

DYKA can amend these terms and conditions. The revised terms and conditions shall apply to all tenders and agreements between DYKA and the counterparty that are made or concluded after the day on which DYKA has sent the amended terms and conditions to the counterparty.

Article 23: Translations of these terms and conditions

The original Dutch-language text of these terms and conditions are on file with the Chamber of Commerce in Zwolle. If a translation of these terms and conditions is in any way inconsistent with the original Dutch-language text of these terms and conditions, the Dutch-language text of these terms and conditions shall be exclusively binding.