

## **GENERAL SALES AND DELIVERY TERMS AND CONDITIONS**

of

**Tyker Construction**

**B.V.**

### **Article 1 – Definitions**

The following definitions apply to these General Terms and Conditions:

Tyker, registered under the legal name Tyker Construction B.V., registered at the Chamber of Commerce under number 55427839, which company is engaged in the production of and trade in systems with specialized technology to improve and automate road construction;

- Agreement: the agreement entered into by the Customer and Tyker.
- Customer: a legal entity who, in the practice of its profession or conduct of business, enters into an agreement with Tyker Construction B.V. (hereinafter: Tyker) for the purchase and delivery of systems and services for road construction (hereinafter: the Products)

### **Article 2 – Applicability**

2.1 These General Terms

and Conditions apply to every offer, quotation and Agreement between Tyker and the Customer, unless otherwise agreed in writing.

2.3 The applicability of other general conditions including the conditions of the Customer is expressly rejected.

2.4 Additions to and/or deviations from these Terms and Conditions are only binding if and to the extent that Tyker has expressly accepted them in writing. Any additions and/or deviations agreed upon will only apply to the Agreement concerned.

2.5 For the purpose of these Terms and Conditions, 'in writing' is also defined as: by written message, e-mail, the Internet, or other electronic media.

2.6 Any specific stipulation included in the quotation and/or the Agreement formed between Tyker and the Customer will supersede the stipulations of these General Terms and Conditions.

2.7 Insofar as these General Terms and Conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

### **Article 3 – Offer**

3.1 Unless expressly stated otherwise, all quotations issued by Tyker shall be valid as an offer without any obligation, which may be revoked by Tyker in writing within 7 days from having received a confirmation of acceptance from the Customer.

3.2 The Customer guarantees the accuracy, completeness and reliability of details and documents which are made available to Tyker within the scope of an order, even if these details come from third parties.

3.3 Any models, designs, samples or examples supplied and/or shown with the offer are considered to be indicative only unless otherwise agreed in writing.

3.4 Tyker retains the right to refuse orders without giving any reason.

3.5 Tyker is not obliged to keep to an offer and/or an Agreement for a specified price if this price is based on a misprint and/or a writing error.

### **Article 4 – Agreement**

4.1 An Agreement shall come into effect once Tyker has confirmed the order in writing.

4.2 Any offer made or undertaking given by a

representative of Tyker shall only be binding insofar as the latter confirms this in writing.

## **Article 5 – Delivery**

5.1 The delivery time agreed upon is an indication of the estimated delivery time. In no case shall the delivery time be considered as a strict deadline, unless the parties have explicitly agreed otherwise.

5.2 A delivery delay will not give the Customer the right to terminate the Agreement or give the Customer any rights to any compensation.

5.3 Deliveries will be delivered EXW (Incoterms 2020) unless the parties have agreed otherwise in writing hereto.

5.4 Tyker reserves the right to effect a delivery in parts. Each partial delivery shall be deemed to represent a separate agreement. Tyker shall be entitled to demand (pre)payment for each partial delivery before proceeding with any other.

5.5 All terms and conditions of delivery shall apply in accordance with the 2020 Incoterms® in force at the moment of conclusion of the Agreement and will be defined in writing per offer and Agreement.

5.6 The Customer shall be obliged to accept delivery of the Products at the moment at which they are presented for delivery by or on behalf of Tyker. In case of refusal of the delivery, the Customer shall be obliged to pay Tyker for any costs arising therefrom, including storage costs in any case, if applicable.

## **Article 6 – Price**

6.1 The Products will be supplied at the prices mentioned in the quotation or the Agreement.

6.2 All prices mentioned by Tyker in its quotation or the Agreement shall be exclusive of VAT, exclusive of any other charges imposed by government and exclusive of accounting, installation, assembly and are based on the EXW 2020 Incoterms® version in force at the moment of conclusion of the Agreement unless otherwise agreed in writing.

6.3 After commencement of the Agreement but before delivery of the agreed Products, Tyker will be entitled to increase the agreed prices in the following circumstances:

(a) the price increase is caused by changes in one or more of cost price

components, e.g. VAT rates, labour costs, procurement prices or legal regulations or environmental contributions. This includes increasing cost prices because of governmental measures.

## **Article 7 – Payment**

7.1 Full payment shall be made in advance by the Customer, unless agreed otherwise in writing. The agreed price must be paid within 30 days from the date on which the relevant Agreement is concluded unless agreed otherwise

7.2 Payment must be made by the Customer in EURO, unless Tyker agrees otherwise.

7.3 In the event that the Customer does not fulfill his obligation to pay in 30 days, the Customer will owe default interest of 1% per month without the need for any notice of default or judicial intervention, without prejudicing the other rights of Tyker such as the right to compensation for extrajudicial costs and statutory interest.

7.4 The Customer will in no case be entitled to set off the sums invoiced by Tyker against a counterclaim put forward by the Customer or postpone payment in case of

a counterclaim invoked by the Customer.

7.5 In the event the Customer has any outstanding invoice that is past due, Tyker has the right to stop shipments of Products to the Customer until the Customer makes the payment.

7.6 The date on which the amount payable is deposited into Tykers' account shall be valid as the date of payment.

7.7 Upon or after entering into the Agreement and before its implementation, Tyker will be entitled to demand a guarantee from the Customer that both the payment obligations and any other obligations arising from this Agreement will be fulfilled.

#### **Article 8 – Retention of title**

8.1 All Products delivered to the Customer will remain property of Tyker / Tyker will retain title to the Products, until the Customer has fulfilled his obligations to pay according to the Agreement.

8.2 Tyker is entitled to take back the Products that are subject to retention of title in the following cases:

(a) In the event that the other party fails to fulfill its obligations according to the Agreement;

(b) or in case of a well substantiated suspicion that the other party is not capable of fulfilling its obligations flowing from the Agreement;

The other party will be obliged to cooperate with bringing back the Products.

8.3 In the event that third parties wish to establish or assert a right on the Products under retention of title, the Customer must notify Tyker hereof. The Customer must notify the third party that the Products in question were delivered under retention of title.

#### **Article 9 – Liability and risk**

9.1 In the event that the Customer has Products in its possession delivered by Tyker subject to retention of title as referred to in Article 8 of these General Terms and Conditions, the Customer will be liable for any loss suffered by Tyker as a result of the damage, the loss or the destruction of these Products in the period between delivery of the Products and the time at which the Products were returned.

9.2 Tyker will only to be held liable in case of a product recall if;

(a) it is established that Tyker is liable for the circumstances that have led to the recall and;

(b) it has been

established that the other party acted as a reasonable and reasonably competent professional and attempted to limit the costs incurred in connection with the recall as far as possible.

9.3 All liability of Tyker will be limited to the sum paid out under the public liability insurance of Tyker including the own risk under this insurance policy. If for any reason whatsoever no sum is paid out pursuant to this insurance, all liability will be limited to the sum of the invoice corresponding to the Agreement on which the other party's claim is based, on the understanding that all liability will be limited to a sum of EUR 10,000.

9.4 Tyker shall not be liable for damage of any nature whatsoever, which is caused because Tyker has used incorrect and/or incomplete information supplied by or on behalf of the Customer when the order was placed or at a later stage.

9.5 Tyker shall under no circumstances be liable for damage of any nature whatsoever, which is caused by the negligent or injudicious use of the Products by the Customer or a third party. Injudicious or negligent use shall be understood to mean in any event: the use of the Products supplied in a manner other than that

prescribed in the manufacturer's instructions.

### **Article 10 – Force majeure**

10.1 In case of force majeure Tyker will be entitled to suspend or to partly terminate the Agreement without the obligation to pay compensation to the Customer or other parties.

10.2 Any failure in the performance of the Agreement for which Tyker cannot be held accountable because it is beyond its control will be considered as a situation of Force Majeure.

10.3 The following situations should be considered as Force Majeure;

- (a) strikes held by the employees of Tyker or third parties.
- (b) Illness of employees of Tyker or third parties in connection with the performance of the Agreement.
- (c) war and threat of war;
- (d) terrorist attacks;
- (e) riot, revolution;
- (d) natural disasters, including, without limitation, floods;
- (f) non- or late delivery of Products by (part) suppliers or other third parties engaged by Tyker;

(g) statutory regulations and measures issued by the Dutch government, which interfere with the fulfilment (within the time-limit) of the Agreement on Tykers' part, including bans on imports and exports;

(h) statutory regulations and government measures issued by foreign governments or by organs of the European Union, which interfere with the fulfilment (within the time-limit) of the Agreement on Tykers' part, including import and export bans;

### **Article 11 – Intellectual property rights and confidential information**

11.1 All rights of intellectual property on all Products supplied or made available pursuant to the Agreement, including, without limitation, software, designs, working methods, advice, (sample) contracts, materials such as (database) details, analyses, drafts, documentation, reports, quotations, pamphlets and any related preparatory material, all in the broadest sense of the word, shall rest and continue to rest exclusively with Tyker.

11.2 The Customer is expressly not permitted to

duplicate, disclose or utilise any of the Products supplied or made available pursuant to the Agreement, whether or not through the engagement of third parties.

11.3 The Customer is not permitted to modify all or part of any Products supplied, their packaging or labelling without the prior written consent of Tyker.

11.4 The Customer is aware that the Products supplied under the Agreement (may) contain confidential information and trade secrets of Tyker or its part suppliers. The Customer undertakes to keep this information confidential, to not disclose or give the use of it to third parties other than for the purpose for which it was made available.

### **Article 12 – Acceptance and complaints**

12.1 Immediately following the delivery of the Products, they must be inspected and verified by the Customer. The inspection and verification must be carried out in the presence of the driver. The other party must verify whether the Products delivered comply with that stipulated in the Agreement, namely:

- a. whether the correct Products have been delivered;

b. whether the Products delivered comply with the quality requirements made;  
c. whether the Products delivered comply with that agreed on by the parties in terms of quantity (number, amount, weight). If a difference is established by the other party that is less than 10%, the other party will be obliged to fully accept the Products delivered, such for a pro rata reduction of the price agreed.

12.2 Any visible defects and visible (transport) damage in the Products must be noted by the Customer, immediately on delivery, on the delivery note and reported to Tyker within 24 hours from delivery, in writing, with a clear and detailed description of the complaint(s) and stating the order number, in the absence whereof the Customer will be considered to have received the agreed quantity of Products without any visible defects or visible (transport) damage.

### **Article 13 – Suspension and termination**

13.1 Tyker will be entitled to suspend or terminate the Agreement with immediate effect without any notice of action or default being required and without being obliged to pay damages or compensation, if:

(a) the Customer has applied for or has been

granted (temporary)

suspension of payment;

(b) the Customer has instituted bankruptcy proceedings or a Court has declared that the Customer is bankrupt;

(c) the Customer dies or is placed under legal control;

(e) the Customer's business is liquidated;

(h) the Customer fails to comply with his obligations pursuant to an Agreement into which he has entered, or fails to do so properly or on time or if there are grounds to fear that this will occur.

### **Article 14 – Warranty**

14.1 Tyker guarantees soundness of the used materials and promised quality and the herewith related proper functioning of the delivered Products. This warranty only applies to new Products for a period of 12 months starting from the moment of delivery unless agreed otherwise.

14.2 Any defects in the delivered Products which are covered by the warranty, exclusively to be judged by Tyker, will either be repaired or replaced by a new delivery if the defects in the opinion of Tyker are due to a defect of construction or defects in or deficiency of the used

materials so that the Products are not usable for the customer for the purpose which it was reasonably intended for.

14.3 In principle warranty services will be carried out at Tyker.

14.4 Tyker is entitled to perform warranty services at a different location (or have the warranty services carried out by a third party) if Tyker thinks it is important for the execution of the warranty services or if the execution of the warranty services at Tyker is reasonably not possible or undesirable.

14.5 If the warranty service is applicable to the Products the products must be shipped freight paid to Tyker. If the warranty services need to take place at a different location or will be carried out by a third party on a different location, Tyker is entitled to charge travel and subsistence expenses. Also special costs that are related to the transport of the materials, tools and equipment will be charged.

14.6 If it turns out that the Products that have been sent to Tyker for repair or restoration has no defects all costs that have been made will be charged to the customer. This is also

applicable during the warranty period.

14.7 Tyker offers warranty only to the Customer.

14.8 No warranty applies if:

- the damage was caused by improper use or improper installation;
- the Products are not used in accordance with its instructions for use;
- the alleged defect is caused by a circumstance primarily located or originating outside the Products;
- the Customer has continued to use the Products after the discovery of the defect;
- the alleged defect is the result of lack of proper maintenance;
- the Products have been opened, repaired or modified by the Customer or third parties without Tyker's authorization;

14.9 In case of a claim, Customer should first allow Tyker to investigate the problem remotely/on distance, for example by remote desktop or video calling, before sending the Products back to Tyker.

14.10 If Tyker has met the obligations of the warranty services this is to be considered as a full and only defect compensation.

#### **Article 15 – Applicable law**

15.1 These General Terms and Conditions and all agreements formed between the Customer and Tyker shall be exclusively subject to Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG].

#### **Article 16 – Jurisdiction**

16.1 All disputes arising from an Agreement between the Customer and Tyker shall be submitted exclusively to the competent Court in Arnhem, the Netherlands

unless Tyker would elect to submit the dispute to the competent court in the place where the Customer has its registered offices.

16.2 Disputes between Tyker and customers who are established outside the European Union will be settled by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator. The arbitral procedure shall be conducted in the English language.

#### **Article 17 – Amendment of General Terms and Conditions**

17.1 Tyker is entitled to amend and/or supplement these General Terms and Conditions. The most up-to-date version of these General Terms and Conditions can be consulted on the website.