



## **Bystronic Sales AG General Terms and Conditions of Delivery**

### **1. General Provisions**

- 1.1 The contract between Bystronic Sales AG ("Bystronic") and Bystronic's client ("customer") shall be concluded upon receipt of the written confirmation by Bystronic, stating that it accepts the order (order confirmation).
- 1.2 These General Terms and Conditions of Delivery shall be binding if they are declared applicable in the offer or in the order confirmation.
- 1.3 Contrary terms and conditions of the customer shall only be valid insofar as they have been accepted expressly and in writing by Bystronic.

### **2. Scope of Supply and Services**

Bystronic supply of goods and services shall be exhaustively listed in the order confirmation, including any appendices.

### **3. Plans and Technical Documentation**

- 3.1 Brochures and catalogues shall not be binding without an agreement to the contrary. Statements in technical documentation shall only be binding insofar as they are expressly guaranteed.
- 3.2 Bystronic shall retain all rights in the issued plans and technical documentation. The customer shall acknowledge these rights and shall not make the documentation available to third parties in whole or in part or use it outside of the purpose for which it was issued, without prior written authorisation by Bystronic.

### **4. Instructions and Safety Measures**

- 4.1 The customer shall advise Bystronic, no later than at the time of the order, of regulations and standards that apply to the performance of the delivery of goods and services, to the operation, and to the prevention of illnesses and injuries.
- 4.2 In the absence of alternative agreements, the goods and services shall correspond to the regulations and standards at the registered office of the customer, of which it has advised Bystronic in accordance with paragraph 4.1. Additional or other safety equipment shall be included to the extent that they are expressly agreed upon.
- 4.3 The customer is expressly advised that, for reasons of safety and quality assurance, any modification and installation and removal of components, as well as any repair and maintenance work on machines and systems delivered by Bystronic, must be conducted

either by Bystronic personnel (including personnel of affiliated companies) or by third parties expressly authorised by Bystronic.

### **5. Prices**

- 5.1 All prices are calculated net ex Bystronic manufacturing works, without packaging, in EURO, plus value added tax to be calculated, if applicable. All ancillary costs (e.g. for freight; insurance; export, transit, import, and other authorisations; as well as certifications) shall be borne by the customer unless otherwise stated in the order confirmation.
- 5.2 The customer shall bear all types of taxes, tolls, duties, tariffs, and the like, which are levied in connection with the contract, or shall reimburse Bystronic upon receipt of corresponding proof, in the event Bystronic were to have become liable for their payment.

### **6. Payment Terms and Conditions**

Upon conclusion of the contract, Bystronic shall issue a pro forma invoice to the customer for the entire purchase price of the goods and services which, barring other payment terms that have been stated and agreed upon in the order confirmation;

- 6.1 Shall be paid at the following ratios and within the following deadlines:
  - 30% advance payment within five business days after receipt of the pro-forma invoice;
  - 60% upon notice of readiness for dispatch
  - 10% within five business days following conclusion of the installation or of acceptance, as long as an acceptance inspection was agreed upon.
- 6.2 For replacement parts, service calls, as well as remaining services that are not carried out in connection with the delivery of a machine, the payment deadline shall be 30 days from the date of the statement.
- 6.3 Payments shall be made by the customer in accordance with the agreed-upon payment terms at Bystronic's domicile, without deducting discounts, expenses, taxes, tolls, duties, tariffs, and the like.
- 6.4 If the advance payment is not made in accordance with the contract or if the customer does not comply with the payment conditions cited in paragraph 6.1, Bystronic shall have the right to adhere to the contract or to withdraw

from the contract, and to demand compensation for damages in both cases.

- 6.5 If the customer does not comply with the payment deadlines, it shall as of the due date, without reminder, pay interest that conforms to the prevailing interest rates at Bystronic's domicile, though at least 4% above the respective 3-month CHF-LIBOR. The right to compensation for further damages remains reserved.

## **7. Retention of Ownership**

- 7.1 Bystronic shall remain the owner of all its delivered goods until it has fully received payment in accordance with the contract.
- 7.2 The customer shall be obligated to co-operate in taking necessary measures to protect Bystronic's ownership; in particular, upon entering into the contract and at the customer's expense, it shall authorise Bystronic to undertake the recording or registration of priority notices with respect to ownership retention in public registers, ledgers, or the like in accordance with applicable national law and to satisfy the corresponding formalities.
- 7.3 The customer shall, during the retention of ownership and at its own expense, maintain the delivered goods in good condition, and shall insure them against theft, breakage, fire, water and similar risks. It shall additionally take all measures so that Bystronic's ownership rights are neither impaired nor abrogated.

## **8. Delivery and Delivery Period**

- 8.1 Absent agreement to the contrary, delivery shall be FCA Bystronic manufacturing works Incoterms® 2010.
- 8.2 The delivery period shall begin as soon as the contract is concluded, the customer has satisfied all governmental formalities (such as import, export, transit, and payment authorisations), has made the advance payment of 30% in accordance with paragraph 6.1, and the relevant technical points have been cleared.
- 8.3 Compliance with the delivery period presupposes the fulfilment of the customer's contractual duties.
- 8.4 The delivery period shall be extended commensurably,
- if Bystronic does not receive the information needed for the fulfilment of the contract in a timely matter, or if the customer subsequently amends it and thereby causes a delay in the delivery of goods or services;
  - if obstacles arise that Bystronic cannot avert in spite of application of due care, regardless of whether they arise on its end, the customer's, or that of third parties, such as e.g. epidemics; mobilisation; war; insurgency; serious disruption of operations; accidents; labour strife; delayed or defective supply of necessary raw materials, intermediate, or finished products; rejection of essential components; official action or forbearance; natural events; or
  - if the customer or third parties fall behind in the tasks they were to have accomplished or

default in the accomplishment of their contractual duties, especially if the customer does not comply with the payment terms and conditions.

- 8.5 In case of late delivery, the customer shall be obligated to provide a suitable grace period to Bystronic. If this grace period is not adhered to for reasons attributable to Bystronic, the customer shall have the right to reject the delayed portion of the delivery. Should a partial acceptance be economically unacceptable, it shall have the right to withdraw from the contract and, upon the return of already-delivered goods, to demand the refund of payments made. If a specified due date is agreed to instead of a delivery period, this date shall correspond to the last day of a delivery period and the above terms and conditions shall be applicable analogously.
- 8.6 The customer shall have no rights and claims due to delay in delivery of goods and services, other than those expressly listed in this section. This restriction shall not apply to unlawful intent or gross negligence by Bystronic, but shall apply, however, to unlawful intent or gross negligence by auxiliary persons.

## **9. Transfer of Benefit and Risk**

- 9.1 Benefit and risk shall be transferred to the customer no later than at the handover of the goods to the carrier or another person designated by the customer.
- 9.2 If the dispatch is delayed on request of the customer or for other reasons not attributable to Bystronic, the risk shall transfer to the customer at the original stipulated point in time for the delivery of goods in accordance with paragraph 9.1. From this point in time, the delivered goods shall be warehoused and insured at the expense and risk of the customer.

## **10. Dispatch, Transport and Insurance**

Transport shall take place at the expense and risk of the customer. Complaints in connection with the dispatch or transport shall be immediately lodged by the customer with the last carrier upon the receipt of the delivered goods or of the freight documents. Insuring against damage of any kind shall be incumbent on the customer.

## **11. Installation**

- 11.1 If installation is part of the scope of supply, but not included in the cost, Bystronic shall make available the necessary installers at the tariffs valid at the time of the performance of the work, based on a separate timely agreement regarding installation.
- 11.2 Work, travel, and waiting time, expenditures for travel to and from the site, boarding and lodging, as well as shipping expenses for tools, will be invoiced, if not included in the order confirmation's scope of supply or not included in the cost.

11.3 The customer shall, at no cost, make available assistants necessary for conducting the installation work.

## **12. Testing and Acceptance of the Goods and Services**

12.1 The customer shall test the goods and services within a reasonable time period and shall notify Bystronic immediately and in writing of any possible defects. If it fails to do so, the goods and services shall be deemed approved.

12.2 Bystronic shall rectify the defects communicated to it in accordance with paragraph 12.1 as soon as possible, and the customer shall afford it the opportunity to do so. Upon rectifying the defect, an acceptance test in accordance with paragraph 12.3 shall be conducted at the customer's or at Bystronic's request.

12.3 The performance of an acceptance test, as well as the establishment of the applicable conditions therefor, requires (subject to paragraph 12.2) a special agreement. Subject to a further understanding to the contrary, the following shall apply:

- Bystronic shall notify the customer of the performance of the acceptance test early enough, so that it or its representative can participate therein.
- with respect to the acceptance, a protocol shall be signed by the customer and Bystronic, or by their representatives. The fact that the acceptance took place, that it took place with reservations, or that the customer refused acceptance, shall be recorded therein. In the latter two cases, the asserted defects shall be recorded individually in the protocol
- The customer shall not be entitled to refuse the acceptance and the signing of the acceptance log because of insignificant defects that do not considerably compromise the proper operation of the goods and services. Such defects shall be immediately rectified by Bystronic.
- In case of considerable deviation from the contract or severe defects, the customer shall give Bystronic the opportunity to rectify them within a reasonable grace period. Thereupon, a further acceptance test shall take place.
- If during this test significant deviations from the contract or severe defects become evident, the customer can request a corresponding decrease in price. If, however, the defects or deviations that surface during this test are so severe that they cannot be rectified within a reasonable time period, and the goods and services are not fit or only fit to a severely reduced degree for their declared purpose, the customer shall have the right to refuse acceptance of the defective portion or, if a partial acceptance is economically unacceptable, to withdraw from the contract. Bystronic shall only be obligated to refund the amounts that were paid to it for the applicable portions before the withdrawal.

12.4 The acceptance shall be deemed accomplished,

- if the acceptance test, for reasons not attributable to Bystronic, cannot be conducted by the stipulated deadline,
- if the customer refuses acceptance without having the right to do so,
- if the customer refuses to sign an acceptance protocol created in accordance with paragraph 12.3, or
- as soon as the customer utilises Bystronic's goods or services

12.5 The customer shall have no rights or claims for reason of defects of any kind in the goods or services, other than those expressly listed in paragraph 12.3 as well as in section 13 (Warranty, Liability for Defects).

## **13. Warranty, Liability for Defects**

13.1 The warranty period shall be 12 months or a maximum of 2000 hours of operation, whereby the first limit reached shall be decisive.

13.2 The warranty period shall begin with the delivery in accordance with paragraph 8.1 or with any agreed acceptance of the goods and services or, insofar as Bystronic has also undertaken the installation, with its conclusion. Should dispatch, acceptance, or installation be delayed for reasons not attributable to Bystronic, the warranty period shall end no later than 15 months following the notification of readiness for dispatch.

13.3 For repaired or replaced parts (excluding wear parts and consumables), the warranty period shall begin to run anew and shall last for 6 months following the replacement and/or conclusion of the repair, but no longer than after the expiry of a time period amounting to double the warranty period in accordance with paragraph 13.1.

13.4 The warranty shall expire early if the customer or a third party undertake improper modifications, installation or removal or repairs or if, in case a defect surfaces, the customer does not comprehensively take all appropriate measures to mitigate its damages and give Bystronic the opportunity to rectify the defect. The warranty shall also expire early if the customer uses replacement parts or consumables that do not correspond to Bystronic specifications.

13.5 Bystronic undertakes, upon written request of the customer, to either, at Bystronic's choice, repair or replace as soon as possible all parts of Bystronic delivered goods proven defective or unusable because of poor materials, faulty construction, or defective implementation, until expiry of the warranty period. Replaced parts shall become property of Bystronic. Bystronic shall bear the accrued costs of the defect remediation at its works.

13.6 Guaranteed features are only those that are expressly designated as such in the order confirmation or in the specifications. The guarantee shall be in force no longer than up to the expiry of the warranty period. Should an acceptance test be agreed to, the guarantee shall be deemed satisfied if confirmation of the applicable features is produced during this test.

Should the guaranteed features not be or be only partially complied with, the customer shall initially have an entitlement to defect remediation by Bystronic. For this purpose, the customer shall afford Bystronic reasonable time and opportunity. If the defect remediation is not or only partially successful, the customer shall be entitled to a commensurate reduction in price. If the defect is so severe that it cannot be remedied within a suitable time period, and if the delivered goods are not fit or only fit to a severely reduced degree for their declared purpose, the customer shall have the right to refuse acceptance of the defective portion or, if partial acceptance is economically unacceptable, to withdraw from the contract. Bystronic shall only be obligated to refund amounts that were paid to it for the applicable portions before the withdrawal.

13.7 Damage which has not been proven to have arisen due to poor materials, faulty construction, or defective implementation, e.g. as a result of normal wear and tear, improper handling or upkeep, disregard of operating instructions, excessive operational demands, unsuitable operating resources, chemical or electrolytic influences, as well as other reasons not attributable to Bystronic, shall be excluded from the warranty and from liability by Bystronic. The exclusion from the warranty and liability shall also apply in particular, if modifications and installation and removal of components, as well as any repair or maintenance work on machines and systems, were not performed by Bystronic personnel (including personnel of associated companies) or third parties expressly authorised by Bystronic.

13.8 The customer shall have no rights or claims due to defects in material, construction, or implementation, or for the absence of guaranteed features, other than those expressly specified in paragraphs 13.1 through 13.7.

13.9 For claims by the customer for deficient advice and the like or due to a breach of any kind of secondary obligation, Bystronic shall be liable only in case of unlawful intent or gross negligence.

#### **14. Non-performance, Inadequate Performance**

14.1 In all cases of non- or inadequate performance not expressly governed by these Terms and Conditions, especially if Bystronic without reason begins the performance of the delivery of goods and services so late that the timely conclusion can no longer be foreseen, performance in breach of contract attributable to fault by Bystronic can be clearly foreseen, or the deliveries of goods and services were performed in breach of the contract by Bystronic due to its fault, the customer shall be authorised to set a reasonable grace period, under threat of withdrawal in case of default, for the delivery of the goods and services concerned. Should the grace period lapse as a result of Bystronic's fault, the customer – with

regard to deliveries of goods and services performed in breach of contract or if it is clearly foreseen that their performance will be in breach of contract – shall be able to withdraw from the contract and to demand the refund of the payments corresponding to it that have already been made.

14.2 In such a case, in view of a possible damage-compensation claim by the customer and the exclusion of further liability, the terms and conditions specified in section 16 shall apply (Exclusion of further liability by Bystronic), and the damage-compensation claim shall be limited to 10% of the contract price of the goods and services for which the withdrawal took place.

#### **15. Dissolution of the Contract by Bystronic**

15.1 If unforeseen events substantially alter the economic importance or the content of the goods and services or have a substantial effect on Bystronic's work, as well as in the case of subsequent impossibility of performance, the contract shall be adapted accordingly.

15.2 Insofar as this is not economically acceptable to Bystronic, Bystronic shall have the right to dissolve the contract or the applicable parts.

15.3 If Bystronic wishes to avail itself of the dissolution of the contract, following recognition of the consequences of the event it shall immediately notify the customer, even if an extension to the delivery period was agreed upon initially.

15.4 In case of dissolution of the contract, Bystronic shall have a claim for compensation for the already carried out deliveries of goods and services. Damage-compensation claims by the customer due to such a contract dissolution shall be barred.

#### **16. Exclusion of Further Liability by Bystronic**

16.1 All breach of contract cases and their legal consequences, as well as all claims of the customer, regardless of the legal basis under which they are made, are governed exclusively by these Terms and Conditions. In particular, all non-express claims for compensation for damages, abatement, cancellation of the contract, or withdrawal from the contract shall be barred.

16.2 In no case shall there be claims by the customer for compensation for damages which did not originate at the object of the delivery, such as, specifically, production outages, loss of use, loss of orders, lost profits, or other indirect or direct damages. This exclusion of liability shall not apply in case of unlawful intent or gross negligence by Bystronic, but shall apply, however, to unlawful intent or gross negligence by auxiliary persons.

16.3 Additionally, this exclusion of liability shall not apply, insofar as it conflicts with mandatory law.

#### **17. Right of Recourse by Bystronic**

If acts or forbearance by the customer or its auxiliary persons cause injury to persons or damage to property of third persons, and for

this reason a claim is lodged against Bystronic, it shall be entitled to a right of recourse against the customer.

**18. Jurisdiction, Applicable Law**

18.1 Exclusive jurisdiction for the customer and Bystronic shall be at the place of the registered office of Bystronic, i.e. in **Niederönz, Switzerland or Spartan, South Africa,**

**19. Amendments and Severability Clause**

19.1 Amendments to these General Terms and Conditions of Delivery as well as of the contract entered into between the parties must be carried out in writing.

19.2 Should one or more provisions of these Terms and Conditions for Delivery or of the contract entered into between the parties be, in part or in whole, invalid, void, or unenforceable in

Bystronic shall have the right, however, to pursue its claims against the customer at the place of the customer's registered office.

18.2 The legal relationship is subject to substantive Swiss law and South African law, excluding any conflict-of-law provisions as well as the United Nations Convention on Contracts for the International Sale of Goods.

other ways, the validity of the remaining provisions shall not be affected. In such a case, the parties shall replace this provision with a provision as close as possible to one that will ensure its legal and economic success.

Bystronic Sales AG

Issue: 27 January 2021

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

(in print)