GENERAL TERMS AND CONDITIONS

of Bystronic Lenhardt GmbH, Karl-Lenhardt-Str. 1 -9,
D-75242 Neuhausen-Hamberg, Germany

1. Scope of validity

These General Terms and Conditions (GTC) apply to all contracts, supplies and services, including consultancy services, provision of information and similar, unless modified or excluded with our express approval. They also apply when not explicitly mentioned in subsequent contracts. In cases where contractual partners apply GTC of their own, the contract is validated without express agreement about the inclusion of the partner's GTC. As far as the different terms and conditions concur substantively, they are considered as agreed. If our GTC contain stipulations which are not included in those of the contractual partner, the present GTC shall apply. Our terms and conditions also apply when we provide supplies and services unreservedly in awareness of terms and conditions that conflict with, or deviate from, our conditions. We only recognize terms and conditions that conflict with or deviate from our conditions, in cases where we have explicitly agreed in writing to comply with them.

2. Offers and conclusion of contract

2.1. All offers are without obligation. Contracts and other agreements become binding on written confirmation.

2.2. If the order is deemed an offer based on Art. 145 of the German Civil Code (BGB), we have three weeks from receipt in which to accept it.

2.3. Initial offers are usually provided at no cost. Further offers and design work will only be performed free of charge when the supply contract is validated and becomes and remains legally effective. We reserve property rights and copyrights in pictures, drawings, cost estimates and other documents; such documents must not be made available to third parties. Documents provided by us must be returned without delay on first demand if the order is not placed.

2.4. The documents on which our offers are based such as pictures and drawings, as well as information about weights and dimensions, are only approximate unless otherwise stated in writing. They are subject to slight variations and/or changes compared with catalogue entries, drawings, samples, weights and dimensions, or with goods previously supplied.

2.5. Subsidiary agreements concluded with our employees or assurances given by them which exceed the terms of the written contract are valid only when confirmed by us in writing.

2.6. If software is included in the scope of services, the contractual partner has the non-exclusive right of usage with the agreed performance characteristics in unchanged form; transfer to a third party is not permitted.

3. Prices and terms of payment

3.1. Unless otherwise agreed in the order confirmation, all prices shall be deemed to be “net ex works” (in the case of export contracts: Incoterms 2000 EXW D-75242 Neuhausen-Hamberg), excluding packaging, which will be invoiced separately. Our prices are generally quoted exclusive of the legal rate of value added tax. In the case of transactions liable to VAT, the legally stipulated rate of VAT will be shown separately on the invoice issued on the invoicing date.

3.2. Our prices are always stated without discounts or other deductions. Discounts or other deductions require special written agreement. In the absence of such agreement, payment shall be to us without any deductions.

3.3. Unless otherwise agreed in writing, the price shall be paid in the following instalments:

- one-third with the order confirmation,
- two-thirds before delivery, on receipt of advice that the goods are ready for dispatch.

In the case of bilateral trading operations, we reserve the right to demand the level of interest stipulated in law (Art. 353 of the German Commercial Code, or HGB).

3.4. Payments discharging the obligation can only be made directly to us or to a bank account designated by us. We are entitled to determine payment terms on the invoices. The payment must be made within the date stated on the invoice: the operative date being the one on which we receive the remittance or it is credited to our bank account.

3.5. The seller will only take payment by negotiable and duly taxed bill of exchange if expressly agreed with the customer. Credits for bills of exchange and cheques are subject to receipt of payment, with value date on the day the countervalue is at our disposal.

3.6. If the terms of payment are not observed or the seller subsequently becomes aware of circumstances which may diminish the creditworthiness of the customer, all amounts owing to the seller shall become immediately due and payable, irrespective of the maturity date of any bill of exchange which may have been accepted and credited.

3.7. In the event of overdue payments, default interest will be charged, without excluding any rights and further remedies of the seller. In such cases, we are entitled to charge default interest at the level stipulated in law (Art. 247, 288 BGB). We are entitled to prove greater damage resulting from delayed payment and to raise a claim in this respect.

3.8. The contractual partner is not entitled to offset payments against counterclaims unless they are uncontested or confirmed as being legally valid. The assertion of a right of retention for claims that are contested or not confirmed as being legally valid is excluded, inasmuch as such claims are not based on the same contractual relationship.

4. Delivery time

4.1. The delivery time shall start as soon as the order confirmation is received by the contractual partner, but not before submission of the documentation, authorizations, approvals and clarification of all the technical questions to be provided by the contractual partner, nor before receipt of the agreed advance payment.

4.2. The delivery time shall be deemed to have been observed if by that time the supplier has sent notice to the customer advising that the delivery item is ready for dispatch or has left the factory.

4.3. The delivery time is reasonably extended – also if subject to delay – in the event of *force majeure* and any unforeseen hindrance, for which we are not responsible, occurring after the date of the contract, where such hindrance is likely to affect adversely or delay fulfilment of the contract. *Force majeure* includes all unforeseen events or events – even if foreseeable – beyond our influence, whose effects on fulfilment of the contract could not be prevented by reasonable action on our part. Such hindrances include, but shall not be limited to, war, warlike events, terrorism, insurgency, revolution, military or civilian *coup d'état*, uprising, tumult, riot, blockade, embargo, government decree, sabotage, strike, go-slow, lockout, epidemics, fire, flood, storm tide, typhoon, hurricane or other catastrophic weather conditions, earthquake, landslide, lightning strike, general shortage of process materials, shipwreck, lack of docking or unloading facilities, serious transport accident, the need to scrap and remanufacture important work pieces for reasons we have no control over, as far as these lead to a delay in fulfilment of the contract. This also applies if such events affect our suppliers and/or their subcontractors. We will inform those concerned with a minimum of delay about the beginning and end of such hindrances. In such a case, the contractual partner can request from us a declaration as to whether we intend to withdraw or deliver within a reasonable period. Delivery times are prolonged by the period that the contractual partner is behind in fulfilling its contractual obligations, within a current business relationship also in relation to other contracts.

4.4. In case of non-fulfilment of delivery obligations by Bystronic Glass, the contractual partner cannot withdraw this Agreement or force us to pay compensation without having accepted an adequate number of days of grace. This does not apply if we have agreed, explicitly and in writing, to a fixed delivery period or deadline as binding.

4.5. Should the processing of orders – at whatever stage they may be – be delayed on the request of the contractual partner, then the latter will be charged the costs incurred for storage in our factory, which shall be at least 0.5 percent of the amount invoiced, for every month or part thereof, beginning one month after notice of the delay. In such a case we also reserve the right, after a reasonable notice period has been set out and expired without result, to have the delivery item at our disposal elsewhere and to deliver to the contractual partner at the end of a reasonably extended period.

4.6. Adhering to our delivery commitment implies timely fulfilling of duties according to the rules on the part of the contractual partner.

4.7. Should the contractual partner fall into arrears or should it breach any other obligations to cooperate, we have the right to demand any damages incurred, including any additional expenditure. In this case, the risk of accidental

deterioration of the delivery item is devolved to the contractual partner at the point in time where default of acceptance arises.

5. Transfer of risk and shipment

5.1. Unless otherwise agreed, we deliver "net ex works" (for international contracts: Incoterms 2000 EXW D-75242 Neuhausen-Hamberg).

5.2. Insofar as we undertake delivery as requested by the contractual partner, the shipping route and type, unless otherwise agreed, are left to our discretion. The goods are sent to the contractual partner at its risk and expense, even in the case of a return consignment for whatever reason. In the event of a return consignment, the contractual partner has to choose the same type of shipment that we used for delivery. Furthermore, the contractual partner has to provide sufficient insurance. The same also applies in the case of shipment to another recipient that has been determined by the contractual partner.

5.3. If shipment is delayed either at the request of or at the fault of the contractual partner, the goods are then stored at the contractual partner's risk and expense. In this case, notice of storage or notice of readiness for dispatch are considered as the same as delivery to the transporters.

5.4. The risk devolves to the contractual partner at the latest upon sending (dispatch to the transporters, even if they are assigned by ourselves), even in the case of partial delivery or if we are undertaking other services, for example the shipment costs or delivery and installation.

5.5. At the request of the contractual partner, insurance for the shipment will be taken out, at its own expense, covering breakage, transport, fire and water damage.

5.6. Delivered goods, even if they present obvious defects, are to be accepted by the contractual partner without prejudice to any rights as set out in Article 7.

5.7. Partial delivery and partial services are admissible insofar as they are acceptable to the contractual partner.

6. Retention of title

6.1. We reserve the right of ownership over the delivery items until complete payment of the purchase price and receipt of all payments stipulated in the contract, or until clearance of any cheques or bills of exchange if payment is being made thus. In the case of delivery items which the contractual partner is ordering from us for commercial purposes, we reserve the right of ownership until all outstanding payments by the contractual partner arising from the business relation are made, including any payments arising in the future from contracts concluded at the same time or at a later date. This also applies in the event that we have collated payments either individually or in their totality in an open account and both accepted and taken the balance.

6.2. Should important requirements of the contract not be fulfilled, in particular with regard to default of payment, we reserve the right to take back the delivery item. Should the contract be acknowledged by both sides to be a commercial transaction, our taking back of the delivery item in no way constitutes withdrawal from the contract, unless we had previously agreed this explicitly in writing. After taking back the delivery item, we are authorized to utilize it. The proceeds of sale

are to be deducted from the liabilities of the contractual partner, minus reasonable utilization costs.

6.3. The contractual partner undertakes to handle the delivery item with care. The contractual partner must carry any maintenance and inspection work that is necessary in good time and at its own expense. The contractual partner is in particular required to sufficiently insure the delivery item at its own expense against theft and fire, water and other damages at replacement value. The contractual partner hereby assigns to us, as of now, all insurance claims arising from such contracts with regard to the delivery item; we accept this assignment.

6.4. We reserve the right to insure the delivery item, at the expense of the contractual partner, against fire, water and other damages, insofar as the contractual partner has not verifiably taken out this insurance to an equivalent amount and informed us of same.

6.5. In the event of attachment of property or other interventions by third parties, the contractual partner must inform us in writing in order to enable us to take action according to Art. 771 of the Code of Civil Procedure (ZPO). Should the third party not be in a position to cover legal and extrajudicial costs as set out in Art. 771 of the ZPO, the contractual partner is liable to us to cover the shortfall. In the event of attachment of property or other representations by third parties, the contractual partner must send us without delay the order of attachment as well as an affidavit concerning the identity of the property in attachment. Otherwise the contractual partner is obliged immediately to contradict the bond or the seizure in respect of our rights. Failure to do so will make the contractual partner liable to pay damages to us.

6.6. The contractual partner may neither give the delivery item in pledge nor assign it as collateral. It does however have the right to divest itself of the delivery item in the ordinary course of business, provided that the conditions of the resale ensure our demands as follows: The contractual partner assigns to us, as of now, all receivables with all ancillary rights which accrue to it from the resale to the purchaser or a third party, independently of whether the delivery item is to be sold on, without or after processing. The contractual partner retains the right to recover these receivables, even after assignment. Albeit, our authority to collect the receivables ourselves is unaffected. We do however undertake not to collect the receivables as long as the contractual partner does not breach its contractual obligations, is not in default of payment and also, in particular, is not subject to insolvency proceedings, suspension of payments or other circumstances which would give rise to legitimate doubt regarding the willingness or ability of the contractual partner to pay. Should this be the case, however, we have the right to demand that the contractual partner make known to us the receivables assigned to us and the debtors, provide all the data necessary for collection, hand over all the related documents and inform the debtors (third parties) of the transfer.

6.7. The processing or modification of the delivery item by the contractual partner will always be undertaken on our behalf, though without obligation on our part. Should the delivery item be processed using other parts, which do not belong to us, we thereby acquire co-ownership of the new objects commensurate with the ratio of the value of the delivery item to the value of the other processed objects at the time of processing. The same applies to the object produced through processing as to the item delivered under retention of title.

6.8. Should the delivery item be inextricably combined with other objects which do not belong to us, we thereby acquire co-ownership of the new objects commensurate

with the ratio of the value of the delivery item to the other combined objects at the time of the combination. Should the combination take place in such a way that the contractual partner's object is deemed the main object, it is deemed as agreed that the contractual partner assigns us pro-rata co-ownership. The contractual partner holds the ownership or co-ownership arising in this way in safekeeping on our behalf.

6.9. The co-ownership rights arising in our favour are classed as goods under reserved ownership as far as these conditions are concerned.

6.10. The contractual partner also assigns to us the claims for hedging our claims against itself which are accrued against a third party through the connection of the delivery item with a real estate property.

6.11. Should the contractual partner so require, we undertake to release collateral to which we are entitled insofar, as soon and as long as its value exceeds by more than 25 percent the total value of the claims to be hedged in conjunction with the business relationship.

7. Warranty claims

7.1. The object of the contract is exclusively the product with the properties as agreed between the contractual partner and ourselves on the basis of the product specification supplied by us at the conclusion of the contract. Other or further specifications and features or an additional intended use are only accepted as agreed product specifications if they have been explicitly confirmed by us in writing.

7.2. Insofar as the contractual partner is aware of public statements as set out in Art. 434 para. 1, section 3 of the BGB (regarding advertising and identification via certain characteristics of the object), the specifications regarding the data which are affected by the statements will be rectified in the event of any abnormality using the current description of the product at the time of the passing of risk.

7.3. The object is free of material defects provided it has the agreed properties at the time of transfer of risk. Claims for defects shall not arise from merely insignificant deviation from the agreed specification, from merely insignificant impairment of the serviceability or from natural wear and tear. Claims for defects shall also not arise for damages which arise after the transfer of risk. This particularly applies in case of incorrect or negligent handling, overuse, unsuitable equipment, failure to adhere to the necessary operating requirements for the delivery item, in particular faulty construction work, unsuitable foundations, inadequate power inputs and supply, and errors which occur due to external influences and which are not provided for according to the contract. Should modifications or repair work be undertaken by the contractual partner or by third parties, no claims for defects may arise from these and from the consequences thereof, unless they were brought about by appropriately carried out modifications or repair work.

7.4. It is incumbent on the contractual partner to inspect the product immediately on delivery from us to ascertain the properties and completeness, and also any defects. Obvious defects are to be reported within eight calendar days in writing to the vendor. Should the contractual partner fail to provide notice, the goods are then considered to have been approved. This does not apply in the case of defects which were not identifiable during the inspection.

7.5. Should such a defect occur at a later stage, we must be informed of it within eight calendar days. Should we not be informed then the goods will be considered as approved, even in consideration of the defect.

7.6. Insofar as a defect which is our responsibility is present at the time of the transfer of risk, those items or services which are defective are to be improved free of charge and in a way which we see fit, or to be delivered or produced again. The contractual partner must allow us a fair estimate of the necessary time and opportunity for the rectification of defects, and in particular must make available to us the faulty object or a sample of it. Replaced parts shall become our property.

7.7. Should the subsequent performance fail or only be possible with disproportionate costs, the contractual partner may withdraw from the contract as set out in Art. 437, 440, 323, 326 para. 5 of the BGB or reduce the purchase price as set out in Art. 437 and 441 of the BGB. This does not affect any claims for damages.

7.8. Any right of recourse against us by the contractual partner as set out in Art 478 para. 2 of the BGB is only admissible insofar as the contractual partner and its purchaser have not come to any agreements which go above and beyond the legal warranty claims.

7.9. The statute of limitation for warranty claims is twelve months. This does not apply insofar as the law, as set out in Art. 438 para 1, no. 2, 479 para 1 and 634 para 1, no. 2, specifies longer timescales.

7.10. Art. 10 applies to claims for damages. Further or other claims against us and our auxiliary persons made by the contractual partner and due to material defects are excluded.

8. Intellectual property and copy rights; defects of title

8.1. Unless otherwise expressly agreed, we are obliged to provide delivery solely in the German Federal Republic free of intellectual property and copy rights (hereafter: IP rights) of third parties. Insofar as a third party makes demands against the contractual partner due to an infringement of IP rights caused by our deliveries as set out in the contract, we accept liability towards the contractual partner within the period set out in Art. 7.9 as follows: We will either obtain a right of use for the affected deliveries, modify them so that the IP rights are not infringed or exchange the product, at our choosing and at our expense. If this is not possible under reasonable conditions, the contractual partner is entitled to his legal right to a reduction or withdrawal. Our duty regarding the provision of compensation for damages is in pursuance of Art. 10.

8.2. The previously mentioned obligations only exist insofar as the contractual partner informs us without delay and in writing on the claims asserted by third parties, does not recognize a breach of duty and insofar as we reserve all rights to defensive measures and settlement negotiations. Should the contractual partner, for reasons of damage reduction or other serious reasons, cease the use of the delivery items, he is required to inform the third party that the cessation of use does not imply an acknowledgement of an IP right infringement.

8.3. The demands of the contractual partner are excluded, insofar as he has to account for the infringement of an IP right.

8.4. The demands of the contractual partner are furthermore excluded, insofar as the infringement of an IP right is caused by special guidelines of the contractual

partner, by usage which was not foreseeable by ourselves or which was caused by such, meaning that delivery is changed by the contractual partner or implemented with products which we ourselves did not deliver.

8.5. In the case of infringements of an IP right, as far as the demands of the contractual partner as set out in Art. 8.1 are concerned, it should be noted that the provisions as set out under Art. 7 apply accordingly.

8.6. In the event of other defects of title being existent, the provisions of Art. 7 apply accordingly.

8.7. Any further or other demands on ourselves and our auxiliary persons by the contractual partner based on a defect of title are excluded.

9. Impossibility; modification of the contract

9.1. Insofar as delivery is not possible, the contractual partner has the right to issue a claim for damages, unless we are not responsible for the impossibility. However, the claim for damages by the contractual partner is limited to 10 percent of the value of the part of delivery that cannot be carried out in an appropriate way. This limitation is not applicable insofar as strict liability applies due to intent, gross negligence or injury to life, body or health. A change in the burden of proof to the detriment of the contractual partner is not associated with this by the terms of the preceding rules. The right of the contractual partner to withdraw from the contract is not affected.

9.2. Insofar as unforeseeable events as set out in Art. 4.3 significantly affect the economic significance or the content of the delivery or have a significant affect on our business, the contract will be adapted based on the principle of utmost good faith. Insofar as this is not economically justifiable, we have the right to withdraw from the contract. Art. 313 of the BGB is not affected.

10. Claims for damages

10.1. Claims for damages and for reimbursement of expenses by the contractual partner, whatever the legal grounds, in particular due to breach of duties of obligation and liability in tort, are excluded. This is not applicable insofar as strict liability applies, for example as set out in the Product Liability Act (ProdHaftG) or in the event of liability for intent, for gross negligence or due to injury to life, body or health or due to the negligence of basic contractual duties. Claims for damages due to breach of basic contractual duties are however limited to the typical damages that can be foreseen within the context of the contract. For each complete week of default of payment, this amounts to 0.5 per cent overall and a maximum of 5 percent of the value of the part of the overall delivery which due to the delay cannot be used on time or as set out in the contract. The limitation of liability does not apply insofar as deliberate intent or gross negligence exists or there is liability due to injury to life, person or health. A change in the burden of proof to the detriment of the contractual partner is not linked to the preceding settlements.

10.2. Insofar as the contractual partner is hereafter entitled to claims for damages, these are subject to the statute of limitations upon the expiration of the validity of claims according to Art. 7.9. For claims for damages based on the Product Liability Act, the legal statute of limitations applies.

11. Withdrawal from the contract

If, after concluding a contract, we become aware of circumstances which cast doubt on the creditworthiness of the contractual partner or should a reduction in the creditworthiness of the purchaser occur during the period of validity of the business relationship, in particular if an application to institute bankruptcy or insolvency proceedings is filed or one of those proceedings is opened, we are entitled to withdraw from the contract or, insofar as it is legally possible, to demand immediate payment of any delivered goods and immediate advance payment of any goods to be delivered exclusively in cash or a possible banker's draft with immediate settlement date.

12. Jurisdiction and applicable law, severability clause

12.1. The **exclusive forum** and place of fulfilment of duties for any disputes arising directly and indirectly from the contractual relationship is **our legal domicile**, insofar as the contractual partner is a dealer. However we also reserve the right to take action at the registered office of the contractual partner.

12.2. We nevertheless reserve the right to appeal for arbitration as set out in the arbitration code of 1 July 1998 of the German Institution for Arbitration. We can demand within two weeks of producing a complaint with written explanations that the affair be heard by an arbitration court as set out in the arbitration code of the German Institution for Arbitration.

12.3. Any legal relations between ourselves and the contractual partner are **governed by German federal law**. Uniform Law on the International Sale of Goods (CISG) is excluded. English has been agreed as the language to be used for the contract.

12.4. The invalidity of any individual provisions within these GTC does not affect the legal validity of the other provisions. Both parties commit to establishing in place of the invalid provisions another adequate settlement which is as economically close as possible to what the parties wished for or would have wished for if they had taken the invalidity of the provisions into consideration. The same applies to any omissions in the contract.

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