

General terms of delivery

of **Bystronic Maschinen AG**, Industriestrasse 21, 4922 Bützberg, Switzerland

1. General

- 1.1 The contract between Bystronic Maschinen AG (hereinafter "Bystronic") and the customer of Bystronic (hereinafter "Customer") shall be concluded upon receipt by the Customer of written confirmation from Bystronic of its acceptance of the order ("Order Confirmation"). Offers from Bystronic that do not contain a due date for acceptance shall be non-binding. If the Order Confirmation differs from the order, the Order Confirmation shall be binding, unless the Customer objects in writing within 5 days.
- 1.2 These Delivery Terms and Conditions shall apply to all agreements between Bystronic and the Customer. Any differing terms and conditions of the Customer shall only be valid if they are expressly approved in writing by Bystronic. In the event of discrepancies between these General Delivery Terms and Conditions and the Order Confirmation, the Order Confirmation shall prevail. In the event of discrepancies between the Order Confirmation and the annexes, the Order Confirmation shall prevail.
- 1.3 All agreements and declarations of the contractual parties shall only be valid if executed in writing. Declarations in text form that are electronically transmitted or recorded are deemed to be executed in writing.
- 1.4 If a provision of these Delivery Terms and Conditions is invalid in whole or in part, it shall be replaced by a new provision which comes as close as possible to the legal and economic purpose of the invalid provision.

2. Content of contract

Bystronic undertakes against compensation to manufacture the systems for the Customer according to the Order Confirmation including annexes and to provide the services according to the Order Confirmation including annexes. The Order Confirmation and the annexes resp. the specifications contained therein are final.

3. Plans, technical information and intellectual property rights

- 3.1 Brochures and catalogues are not binding. Plans and technical information are only binding to the extent that they are expressly specified and warranted in the offer or Order Confirmation including annexes. In the event of discrepancies, the Order Confirmation shall prevail.
- 3.2 Each contracting party shall retain all intellectual property rights to the plans and technical documents that it has provided to the other party. Intellectual property rights developed on behalf of the Customer shall belong to Bystronic. The Customer shall receive an unlimited, cost-free, non-transferable licence to such intellectual property rights developed on its behalf. The receiving contracting party acknowledges these rights and shall not make the documents available in whole or in part to third parties without the prior written authorisation of the other contracting party or use them for a purpose other than the one for which they have been provided to it.

4. Provisions applicable in the country of destination

- 4.1 In the case of deliveries of systems outside Switzerland, the Customer is obligated no later than when placing the order to notify Bystronic of the provisions and standards in the country of destination that relate to Bystronic's systems and services.
- 4.2 If no notification to provisions and standards in the country of destination is made according to Section 4.1, any warranty by Bystronic that the Bystronic systems and services comply with these provisions and standards shall be excluded.

5. Prices

- 5.1 The Customer shall owe Bystronic the compensation specified in the Order Confirmation for the systems and services.
- 5.2 All prices are net, ex works (EXW) manufacturing facility (Incoterms 2010), including packaging, payable in freely available Swiss francs, without any deductions.
- 5.3 All ancillary costs such as, e.g., for freight, insurance, export, transit, import and other permits as well as certifications shall be borne by the Customer. The Customer shall likewise be responsible for paying all types of taxes, levies, fees, customs duties and similar costs along with the related administrative costs that are charged in connection with the contract or its performance. To the extent that such costs, taxes, etc. are levied on Bystronic or its auxiliary agents, they must be reimbursed by the Customer after submission of the corresponding documents. In the event of discrepancies, this provision shall prevail over Incoterms.
- 5.4 Bystronic reserves the right to make a price adjustment if the labour rates or cost of materials change between the time of the offer and the time of performance. In this case the price adjustment shall be made according to the additional costs actually incurred.
- 5.5 A reasonable price adjustment shall also be made if
 - the delivery period is subsequently extended for one of the reasons specified in Section 8.4, or
 - the type or scope of the systems and services is changed by the Customer, or
 - the type or scope of the systems and services must be changed because the documents provided by the Customer did not correspond to the actual circumstances or were incomplete, or
 - the type or scope of the systems and services must be changed because laws, regulations, principles of interpretation or application change after the Order Confirmation, or
 - the type or scope of the systems and services must be changed for other reasons not attributable to Bystronic.

6. Payment terms

6.1 In accordance with the agreed payment terms, the Customer shall make payments at the registered office of Bystronic without any deductions for discounts, expenses, taxes, levies, fees, customs duties and similar costs.

Except as otherwise agreed, the price shall be payable in the following instalments:

- 30% of the price as a net down-payment after the Customer's receipt of the down-payment invoice,
- 70% of the price as an irrevocable letter of credit, which has been confirmed by a leading Swiss bank, divided as follows: (i) 60% of the price before shipment of the systems ex works (EXW) manufacturing facility of Bystronic (Incoterms 2010) against submission of the documents specified in the offer and in the Order Confirmation; (ii) 10% of the price upon signing of the acceptance report or at the latest 3 months after shipment of the systems ex works (EXW) manufacturing facility of Bystronic (Incoterms 2010) against submission of the documents specified in the offer and in the Order Confirmation.

The original letter of credit must have been received by Bystronic no later than 12 weeks prior to shipment of the systems.

The payment obligation shall be met when the agreed amount has been made freely available to Bystronic at Bystronic's registered office. If payment with bills of exchange or through a letter of credit is agreed, the Customer shall bear the bill discount, bill tax and collection costs resp. the costs of opening, notifying and confirming the letter of credit.

6.2 Bystronic shall be entitled in its sole discretion to request appropriate securities in addition to the letter of credit.

6.3 The payment due dates must be met even if transport, delivery, assembly, commissioning or acceptance of the systems or services are delayed or made impossible for reasons not attributable to Bystronic or if minor parts are missing or reworking proves to be necessary, which does not prevent use of the systems.

6.4 If the down-payment or the securities to be provided upon conclusion of the contract are not made in accordance with the terms of the contract, Bystronic shall be entitled to either affirm or rescind the contract and, in either case, to claim damages (at Bystronic's option, the positive or negative contract interest).

If the Customer is in arrears with a further payment or if Bystronic due to a circumstance that occurs after the contract is entered into has good reason to fear that it will not receive the Customer's payments in full or in a timely manner, Bystronic shall be entitled, without any limitation of its statutory rights, to suspend further performance of the contract and to retain systems that are ready for shipment; all of which shall apply until new payment and delivery terms and conditions are agreed and Bystronic in its sole discretion has received sufficient securities. If such an agreement cannot be reached within a reasonable period or if Bystronic does not receive sufficient securities, Bystronic shall be entitled to rescind the contract and to claim damages.

6.5 If the Customer fails to comply with the agreed payment terms, it shall pay default interest of 5% from the agreed due date, without any requirement for a reminder. The foregoing shall be without prejudice to the right to claim further damages.

7. Reservation of title

Bystronic shall remain the owner of all its systems until it has received in full the payments specified in the contract.

The Customer shall be obligated to cooperate in measures that are required to protect Bystronic's title; in particular, it shall authorise Bystronic with the conclusion of the contract, at the Customer's expense, to register or note the reservation of title in public registers, books and the like pursuant to the relevant national laws and to fulfil all formalities relating thereto. Further, the systems must be marked as owned by Bystronic until payment in full has been made.

The Customer shall be obligated to maintain the systems at its own expense for the duration of the reservation of title and to insure them for the benefit of Bystronic against theft, breakage, fire, water and other risks. It shall further take all steps to ensure that the ownership rights of Bystronic are neither impaired nor revoked.

8. Delivery period

8.1 Except as otherwise agreed, delivery shall be made ex works (EXW) manufacturing facility of Bystronic (Incoterms 2010).

8.2 The delivery period shall start as soon as the contract is concluded, all administrative formalities such as import, export, transit and payment authorisations have been obtained, the payments to be made and any securities to be provided upon placement of the order have been made or provided, and the material technical points have been settled. The delivery period shall be met if by the time it expires notification of readiness for shipment has been sent to the Customer.

8.3 Meeting the delivery period is contingent on the Customer's fulfilment of its contractual obligations.

8.4 The delivery period shall be reasonably extended:

- if the information required by Bystronic for the performance of the contract is not received in a timely manner, or if the Customer subsequently changes it, resulting in a delay in the manufacturing of the systems or the provision of the services;
- if obstacles arise that Bystronic cannot prevent despite exercising due care, regardless of whether they occur at Bystronic, the Customer or a third party. Such obstacles include, for example, epidemics, mobilisation, armed conflict, civil war, acts of terrorism, insurrections, political unrest, revolutions, sabotage, significant disruptions to operations, accidents, labour disputes, delayed or defective delivery of the required raw materials, semi-finished or finished products, the need to scrap important work pieces, acts or omissions on the part of the authorities, governmental or supranational bodies, embargos, unforeseeable obstacles to transportation, fire, explosion or natural disasters;
- if the Customer or third parties are in arrears with the work to be executed by them or are in default with performance of their contractual obligations, in particular if the Customer does not comply with the payment terms.

8.5 The Customer shall be entitled to claim compensation for delayed performance in the event of the late delivery of systems, provided that the delay is demonstrably attributable to Bystronic and the Customer can demonstrate a loss resulting from such delay. If the Customer receives a replacement delivery, the entitlement to compensation for delayed performance shall lapse.

The compensation for delayed performance shall amount to 0.5% for each full week of delay, up to a maximum of 5% in the aggregate, calculated on the contractual price of the part of the system that is delayed. No entitlement to compensation for delayed performance shall arise during the first two weeks of the delay.

After the maximum amount of compensation for delayed performance has been reached, the Customer must set a reasonable grace period for Bystronic in writing. If this grace period is not met for reasons attributable to Bystronic, the Customer shall be entitled to refuse acceptance of the delayed part of the system. If a partial acceptance of the system is economically unreasonable for the Customer, it shall be entitled to rescind the contract and claim repayment of the payments already made in exchange for returning the systems already delivered.

8.6 If instead of a delivery period a specific due date is agreed, this due date shall correspond to the last day of a delivery period. Sections 8.2 to 8.5 shall apply *mutatis mutandis*.

8.7 This Section 8 contains the Customer's exclusive rights and claims for the delayed delivery of systems or provision of services. This exclusion of liability shall not apply in the event of unlawful intent or gross negligence of the governing bodies of Bystronic.

9. Changes

9.1 Bystronic shall be authorised to make changes to the systems that result in improvements, provided these changes do not result in a price increase.

9.2 Until the systems are completed, Bystronic shall be entitled to suggest changes to the Customer, along with an indication of any resulting changes to the price and the schedule. Unless the Customer accepts the change on these terms in writing within 5 days, the change shall be deemed to be rejected and shall not be implemented by Bystronic.

9.3 Until the systems are completed, the Customer shall be entitled to request changes to the system. Bystronic may in its own discretion either reject the changes or notify the Customer of the necessary adjustment to the price and delivery terms for such change. Unless the Customer accepts the change on these terms in writing within 5 days, the change shall be deemed to be rejected and shall not be implemented by Bystronic.

10. Packaging

Bystronic does not take back the packaging. If, however, it has been marked as the property of Bystronic, it must be returned by the Customer at its own expense to the point of departure.

11. Transfer of benefit and risk

11.1 Benefit and risk shall pass to the Customer upon departure of the systems from the manufacturing facility.

11.2 If shipment is delayed at the request of the Customer or for other reasons not attributable to Bystronic, risk shall pass to the Customer at the time originally planned for departure from the manufacturing facility. From that point on, the systems shall be stored and insured on the account and at the risk of the Customer.

12. Shipment, transportation and insurance

12.1 Special requests concerning shipment, transportation and insurance must be notified to Bystronic before it sends the Order Confirmation. Transportation shall be on the account and at the risk of the Customer.

12.2 Any complaints in connection with the shipment or transportation shall be made by the Customer to the last freight forwarder immediately upon receipt of the system or the freight documents.

12.3 The Customer shall be responsible for insurance against damage of any type.

13. Inspection and acceptance of the systems

13.1 Bystronic shall be obligated to inspect the systems to the extent customary prior to shipment. If the Customer demands additional inspections, these must be specifically agreed and paid for by the Customer.

13.2 The Customer is obligated to inspect the systems promptly after receipt and immediately to notify Bystronic in writing of any defects. If it fails to do so, the systems shall be deemed to be free of defects.

13.3 Bystronic shall be obligated to remedy within a reasonable period the defects notified to it in accordance with Section 13.2 and the Customer shall be obligated to give Bystronic an opportunity to do so. After the defects have been remedied, acceptance testing in accordance with Section 13.4 shall take place at the request of the Customer or Bystronic.

13.4 The performance of acceptance testing and the stipulation of the conditions applicable thereto must be specifically agreed, subject to Section 13.3. The following shall apply to acceptance testing:

- Bystronic shall be obligated to notify the Customer in a timely manner of the performance of acceptance testing so that it or its representative can attend it.
- An acceptance report shall be prepared, which must be signed by the Customer and Bystronic or by their representatives. The report shall record the Customer's acceptance or the Customer's acceptance subject to reservations or the Customer's refusal of acceptance. In the last two cases the defects asserted must each be specifically included in the report.
- The Customer may not refuse acceptance, and refuse to sign the acceptance report, for minor defects, in particular those that do not significantly impair the functionality of the systems. Such defects must be remedied by Bystronic.
- Where there are significant deviations from the contract or serious defects, the Customer must give Bystronic an opportunity to remedy these within a reasonable grace period. Thereafter, further acceptance testing shall occur.
- If it again shows significant deviations from the contract or serious defects, the Customer may, if the contracting parties have agreed on a price reduction, compensation payment or other performance obligations in this regard, demand these from Bystronic. If, however, the defects or deviations that become apparent during such acceptance testing are so serious that they cannot be remedied within a reasonable period and the system cannot be used for

the intended purpose or can only be used to a much reduced extent, the Customer shall have the right to refuse acceptance of the defective part or, if partial acceptance is economically unreasonable, to rescind the contract. Bystronic can only be obligated to refund the amounts that it has been paid for the parts affected by the rescission.

13.5 Acceptance is also deemed to have occurred:

- if the Customer does not attend the acceptance despite receiving prior notification;
- if acceptance testing cannot be performed on the scheduled date for reasons not attributable to Bystronic;
- if the Customer refuses acceptance without being entitled to do so;
- if the Customer refuses to sign an acceptance report prepared in accordance with Section 13.4; or
- as soon as the Customer uses the systems of Bystronic.

13.6 The Customer shall have no further rights or claims in respect of any defects of any kind to the systems except as expressly specified in Sections 13.4 and 14 (Warranty, Liability for defects).

14. Warranty, Liability for defects

14.1 Warranty period

The limitation period for claims arising from breaches of warranties and representations shall be 12 months. It commences upon signing of the acceptance report (Factory Acceptance Test) and at the latest 3 months after the system has left Bystronic's manufacturing facility. If shipment, acceptance or assembly are delayed for reasons not attributable to Bystronic, the limitation period shall end at the latest 18 months after notification of readiness for shipment.

For parts that are replaced or repaired, the limitation period shall start anew and last for 12 months after replacement, completion of the repair or acceptance.

The warranty shall expire early if the Customer or a third party makes alterations or repairs or if the Customer, in the event a defect becomes apparent, fails to promptly take all appropriate measures to mitigate the damage and to provide Bystronic with the opportunity to remedy the defect.

14.2 Liability for defects in materials, construction and execution

Upon written request of the Customer, Bystronic shall be obligated to repair or replace (at its option) within a reasonable period, subject to timely notification of the defect, all parts of the system of Bystronic that up to the end of the limitation period are shown to have become damaged or unusable as a result of poor materials, defective construction or improper execution. Parts that have been replaced shall become the property of Bystronic, unless it expressly waives its right to them. Bystronic shall bear the costs of remediation within reason, provided they do not exceed the usual transportation, personnel, travel and accommodation costs as well as the usual costs for the installation and disassembly of the defective parts.

14.3 Liability for warranted characteristics

Only those characteristics that are expressly designated as warranted characteristics in the Order Confirmation or in the specifications shall count as such. Defect-related rights arising from breaches of warranties and representations shall expire at the end of the limitation period. If it is shown during acceptance testing that warranted characteristics are met, the corresponding performance obligations shall be deemed to have been provided free of defects.

If the warranted characteristics are not met or only partially met, the Customer's exclusive claim shall be to remediation by Bystronic within a reasonable period.

If the remediation is unsuccessful or only partially successful, however, the Customer shall be entitled to the compensation agreed for this case or, where no such agreement has been made, to a reasonable price reduction. The agreed compensation shall be deemed to be final. Any further claims are excluded.

If after remediation the system does not correspond or hardly corresponds to the agreed characteristics and specifications, the Customer shall be entitled to definitively refuse acceptance of the defective part. In this case Bystronic can only be obligated to refund the amounts that it has been paid for the affected parts.

14.4 Exclusions of liability for defects

Bystronic shall not be liable for damages that cannot be shown to have arisen due to poor materials, defective construction or improper execution, e.g. damages arising due to natural wear and tear, defective maintenance, failure to comply with operating instructions, excessive strain, inappropriate equipment, chemical or electrolytic influences, construction or assembly work performed by parties other than Bystronic, as well as for other reasons that are not attributable to Bystronic.

14.5 Systems and services of subcontractors

For systems and services of subcontractors who are specified by the Customer, Bystronic shall only provide a warranty within the scope of the warranty obligations of the applicable subcontractors.

14.6 Exclusivity of warranty claims

For defects in materials, construction or execution as well as for the absence of warranted characteristics, the Customer's exclusive rights shall be those expressly set forth in Sections 14.1 to 14.5. Any other contractual or non-contractual liability shall be excluded.

If the Customer has provided notice of a defect and no defect for which Bystronic is liable can be determined, the Customer shall owe Bystronic payment for the work performed and compensation for any additional expenses and costs.

14.7 Liability for ancillary obligations

Bystronic shall only be liable for claims of the Customer for defective advice and the like or for breach of any ancillary obligations in the event of unlawful intent or gross negligence.

15. Non-performance, inadequate performance and their consequences

- 15.1 In all cases of inadequate performance or non-performance not expressly regulated by these Terms and Conditions, in particular if Bystronic, without valid reasons, commences the manufacturing of the system and the performance of the services so late that timely completion can no longer be expected or if it is clearly foreseeable, due to Bystronic's fault, that performance will be in breach of the contract or if, due to Bystronic's fault, the systems were manufactured or the services were performed in breach of the contract, the Customer shall be entitled to set a reasonable grace period for Bystronic to manufacture the systems or perform the services in accordance with the contract under threat of rescission in the event of non-compliance. If, due to Bystronic's fault, this grace period elapses unused, the Customer may rescind the contract in respect of the systems or services that were manufactured or performed in breach of the contract or for which it is clearly foreseeable that they will be manufactured or performed in breach of the contract and claim a refund of the payments already made that are attributable thereto.
- 15.2 In such a case the provisions of Section 20 shall apply with regard to any damages claim of the Customer and the exclusion of further liability and the damages claim shall be limited to 10% of the contractual price of the systems and services for which rescission occurs.

16. Termination of contract / Rescission

- 16.1 The contract shall be reasonably adjusted if and insofar as any unforeseen events substantially alter the economic significance or content of the systems or services or have a substantial impact on Bystronic's work as well as if execution subsequently becomes impossible. To the extent that it is economically unreasonable, Bystronic shall be entitled to terminate the contract or the affected parts thereof.
- 16.2 If Bystronic wishes to exercise the option of terminating the contract, it must notify the Customer thereof within a reasonable period after it learns of the extent of the event, even if initially an extension of the delivery period has been agreed. In the event that the contract is terminated, Bystronic shall be entitled to compensation for the systems already delivered and the services already provided. The Customer shall not be entitled to claim damages due to such a termination of the contract.
- 16.3 The Customer's right of withdrawal pursuant to Art. 377 Swiss Code of Obligations shall be excluded.
- 16.4 Each Party is entitled to terminate the contract by written notice to the other party:
- (i) upon bankruptcy, insolvency, suspension of payments, seizure, or similar proceeding or in case of dissolution, of the other party
 - (ii) upon force majeure existing, in the aggregate, for more than six (6) months;
 - (iii) upon failure by the Customer to pay any amount owing to Bystronic or opening the L/C, if applicable, under the contract within thirty (30) days from its due date subject to Bystronic having notified the Customer in writing of the payment default and granting the Customer ten (10) days to rectify such failure; or
 - (iv) upon any other material breach of the contract by the other Party, which failure has not been rectified and cured within reasonable time from the receipt of a written notice thereof from the Party.
- 16.5 If Bystronic terminates the contract for reasons referred to in (i), (iii) or (iv) it shall have the right to keep any and all payments of the price received as penalty payment for the termination. In addition, the Customer shall pay full compensation for Bystronic's additional costs and damages incurred due to the termination.
- 16.6 If the Customer terminates the contract for reasons referred to in (i) or (iv) it shall have the right to either (a) retain the systems (in whole or in portion) already delivered and pay the relevant price for such systems. In addition, the Customer is entitled, if applicable, to a restitution of the price paid in excess of the value of the systems it retains. Alternatively, the Customer is entitled to (b) return the systems (in whole or in portion) to Bystronic against a restitution of the price paid. This is the sole and exclusive remedy for such termination.

17. Export control

The Customer acknowledges that the systems may be subject to Swiss and/or foreign laws and regulations on export control and may not be sold, leased or otherwise transferred or used for a purpose other than the agreed purpose without an export and/or re-export permit of the competent authority. The Customer undertakes to abide by such laws and regulations. It acknowledges that these may change and that they are applicable to the contract in their then-current wording.

18. Data protection

Bystronic is entitled to process personal data of the Customer in the context of performing the contract. The Customer agrees in particular that Bystronic may also disclose such data to third parties in Switzerland and abroad for the purpose of handling and maintaining the business relationships between the parties.

19. Software

If the Bystronic systems also include software, the Customer shall, unless otherwise agreed, be granted a non-exclusive right to use the software together with the deliverable. The Customer shall not have the right to produce copies (except for archiving purposes, for error searching or for the replacement of defective data carriers) or to develop the software. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written approval of Bystronic. Bystronic may revoke the right of use in the event of a breach. For third party software the terms of use of the licensor shall apply and in the event of a breach, such licensor may assert claims in addition to

Bystronic.

20. Exclusion of further liability of Bystronic

All cases of breach of contract and their legal consequences as well as all claims of the Customer, irrespective of their legal basis, including non-contractual claims, for example for material error, are conclusively regulated by these Terms and Conditions. In the event of any claims of the Customer in relation to or in connection with the contract or its improper performance, the total amount of such claims shall be limited to the price paid by the Customer. Conversely, any claims for damages, price reduction, termination or rescission of the contract in particular that are not expressly specified shall be excluded. The Customer shall not under any circumstances be entitled to claim compensation for damages that were not caused to the deliverable itself, such as namely loss of output, loss of usage, loss of orders, recall costs, loss of profits or any other direct or indirect damages. In addition, liability for the compensation of third party claims brought against the Customer in relation to the infringement of intellectual property rights shall also be excluded.

This exclusion of further liability of Bystronic shall not apply to unlawful intent or gross negligence of the governing bodies of Bystronic.

Moreover, this exclusion of liability shall not apply to the extent precluded by mandatory legal provisions.

21. Right of recourse of Bystronic

If personal injury or damage to third-party property occurs through actions or omissions of the Customer or its auxiliary agents and a claim is brought against Bystronic for this reason, then Bystronic shall have a right of recourse against the Customer.

22. Assembly

22.1 If assembly is part of the scope of services, Bystronic shall provide the necessary fitters at the hourly or daily rates applicable at the time the work is performed pursuant to a separate assembly agreement to be concluded in a timely manner.

22.2 Unless otherwise agreed, the Customer shall be charged for the work, travel and waiting time, the expenses of the travel there and back, board and lodging as well as for the transportation costs for the tools.

22.3 The Customer shall provide free of charge the support staff, premises, power, ancillary materials etc. that are required to perform the assembly work.

23. Jurisdiction and applicable law

23.1 The location of the registered office of Bystronic shall be the exclusive place of jurisdiction for the Customer and Bystronic for any disputes arising from or in connection with this Agreement.

However, Bystronic shall be entitled to take action against the Customer at the location of its registered office.

23.2 The legal relationship shall be subject to Swiss substantive law.

Last update: September 2019