

1. Scope and applicability

1.1 The contract between Bystronic Maschinen AG ("Bystronic") and the customer of Bystronic ("Customer") shall be concluded upon receipt of written confirmation from Bystronic of its acceptance of the order ("Order Confirmation").

1.2 These General Terms and Conditions of Service shall be binding if declared to be applicable in the offer or in the Order Confirmation. Any terms and conditions of the Customer that are in contradiction to these Terms and Conditions shall only be valid if expressly accepted in writing by Bystronic.

1.3 The scope of the services shall be indicated in the Order Confirmation provided by Bystronic or in the contract relating to the services (both referred to hereafter as the "Contract").

2. Rights and obligations of the Customer

2.1 The Customer shall inform Bystronic of any irregularities, damage or defects affecting the object to which the services relate.

2.2 The Customer shall provide Bystronic with the technical documentation that is necessary for or conducive to the provision of the services. If Bystronic requests additional technical documentation, the Customer undertakes to procure it.

2.3 If the services are performed on the premises of the Customer, the Customer shall provide the personnel of Bystronic with safe and suitable workshops and, if necessary, ensure the availability of a specialist free of charge and guarantee safe access to the object to which the services relate (including the necessary vehicular and pedestrian rights of way).

2.4 If the services are performed on the premises of Bystronic, the Customer shall arrange disassembly and assembly in addition to transportation in accordance with the instructions of Bystronic.

2.5 The Customer shall procure spare parts in a timely manner.

2.6 The Customer shall inform Bystronic in writing of any provisions or standards that must be complied with regarding the object to which the services relate as well as any circumstances that require special consideration to be given to it or to third parties. Unless otherwise agreed, the services shall be compliant with the provisions and standards applicable at the registered office of Bystronic.

2.7 The Customer shall, at the latest when placing the order, inform Bystronic in writing of any applicable provisions or standards relating to illness or accident prevention. The Customer shall take suitable measures to ensure occupational health and safety, shall provide reasonable support in the event of accident or illness affecting personnel and shall document any safety instructions issued.

3. Rights and obligations of Bystronic

3.1 Bystronic shall provide the services in a professional manner by qualified personnel or by third party subcontractors.

3.2 At the Customer's request, Bystronic shall, before commencing the services, inspect the object to which the services relate (inspection) in order to determine the cost in terms of time and materials. Any services ascertained that extend beyond the agreed services shall be performed by Bystronic subject to agreement with the Customer.

3.3 Bystronic shall be entitled to carry out a risk assessment and a safety check prior to the commencement of the services and to refuse or suspend the services at any time in the event that the safety of personnel is not guaranteed or the Customer does not comply with its obligations.

3.4 Bystronic shall present a service report to the Customer concerning the services performed.

3.5 Inspections and communications by Bystronic to the Customer or its representative concerning the condition, operational readiness, safety, serviceability etc. of the object to which the services relate and differing opinions to the instructions, measures etc. of the Customer shall constitute notices of reservation and shall release Bystronic from its liability.

4. Completion period

4.1 Unless otherwise agreed, all statements relating to completion periods are based on estimates and shall be non-binding.

4.2 Any agreement to a binding completion period is conditional upon full information concerning the scope of the services.

4.3 Any binding completion period shall be reasonably extended:

- a) if the information required by Bystronic for the performance of the services is not received in a timely manner, or if the Customer subsequently changes it; or
- b) if the Customer fails to comply with its obligations under the Contract, including in particular late fulfilment or non-fulfilment of the obligations set forth in Article 2 or the payment obligations set forth in Article 5; or
- c) 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, by way of example, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, significant disruptions to operations, accidents, labour conflicts, late or deficient delivery of required materials, acts or omissions by any authorities, governmental or supranational bodies, official travel advisories, embargos, unforeseeable transport problems, fire, explosion or natural catastrophes.

4.4 In the event that Bystronic fails to comply with a binding completion period due to reasons for which it is at fault, the Customer may, to the extent it has suffered a loss, claim liquidated damages for the delay in the amount of 0.5% for each full week of delay, up to a maximum of 5%. Liquidated damages for delayed performance shall be calculated on the basis of the price of the services pertaining to the part of the system that cannot be placed into service on time as a result of the delay. Further claims or rights on account of the delay, including in particular the right to claim compensation for damages, shall be excluded.

After the maximum amount of liquidated damages for delayed performance has been reached, the Customer shall set a reasonable grace period for Bystronic in writing. If Bystronic fails to comply with this grace period due to reasons for which it is at fault, the Customer may refuse to accept the delayed portion of the services, withdraw from the Contract in respect thereof and claim a refund of any payments already made in respect thereof.

4.5 A binding completion period shall be deemed to have been met in the event that, notwithstanding the absence of certain portions or the need for additional work, proper operation is possible or is not impaired.

4.6 If a specific completion date is agreed instead of a completion period, this date shall correspond to the last day of a completion period. Sections 4.1 to 4.5 shall apply by analogy.

4.7 The Customer shall have no further rights or claims in respect of any delay in the performance of the services other than those expressly specified in this Article. This limitation shall not apply to unlawful intent or gross negligence on the part of Bystronic.

5. Remuneration and payment terms

5.1 Unless otherwise agreed, the services shall be invoiced on a time and materials basis according to the rates charged by Bystronic. This shall, in particular, also apply to technical documentation, reports, expert appraisals, evaluations of measurements and inspections that are to be carried out in connection with the Contract. Material costs shall also include the costs for the usage of special tools and equipment along with consumable and incidental material.

Travel time and a reasonable period of time for preparation and reworking shall count as working time. The Customer shall sign the service report referred to in Section 3.4. If the Customer without reason does not sign the service report or does not do so in a timely manner, the records kept by Bystronic's personnel shall be used as the basis for invoicing.

5.2 Unless otherwise agreed, transportation, disassembly, assembly, installation and the like shall be carried out at the cost and risk of the Customer.

5.3 Bystronic shall invoice the Customer for travel, transportation, stays (meals and accommodation) and other expenses at cost.

5.4 Unless otherwise agreed, all prices shall be net prices in freely disposable Swiss francs without any deductions.

All charges for, by way of example, freight, insurance, export, transit, import and other permits and certification shall be borne by the Customer. Likewise, the Customer shall bear all taxes, levies, fees, customs duties and similar costs along with the related administrative costs which are charged in connection with the Contract or its performance. If such costs are charged to Bystronic or its auxiliary agents, they shall be reimbursed by the Customer upon presentation of receipts.

5.5 Bystronic shall inform the Customer of the result of the inspection prior to the commencement of the services. Bystronic does not provide any warranty as to the level of costs that may be expected. If the Customer dispenses with the completion of the services after the inspection, Bystronic shall invoice the Customer for the costs of the inspection along with the costs of dismantling and assembly.

5.6 In accordance with the agreed payment terms, the Customer shall make payments at the domicile of Bystronic without any deductions for discounts, expenses, taxes, levies, fees, customs duties etc. All invoices shall be payable net within 30 days of their issuance.

5.7 Bystronic may request an advance payment from the Customer prior to the performance of services. If the advance payment is not made in accordance with the terms of the Contract, Bystronic shall be entitled to affirm or withdraw from the Contract and, in either case, to demand compensation for damages.

5.8 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.

6. Warranty

6.1 Bystronic shall be liable for the careful performance of the services. The Customer shall promptly notify Bystronic in writing of any defects arising in connection with the services and request their remediation. If the Customer does not provide prompt notice of a defect, it shall forfeit its right to remediation.

6.2 Upon receiving the defect notice, Bystronic shall remedy the defect at its own cost within a reasonable period. However, the Customer shall bear any costs that would have arisen even if the performance had been free of defects. All other rights on the part of the Customer in respect of defects including, in particular, withdrawal from the Contract, mitigation or compensation of consequential damages, are expressly excluded to the extent permitted by applicable law.

6.3 If Bystronic fails to remedy the defects or fails to do so in a timely manner, on account of reasons for which Bystronic is responsible, the Customer shall be entitled, after setting a reasonable grace period and providing written notice thereof to Bystronic, to reme-

dy the defects itself or have them remedied by third parties. Withdrawal from the Contract is excluded. Bystronic shall compensate the Customer for all costs incurred by the Customer in connection with such remediation of defects. Bystronic shall not owe any compensation for costs if Bystronic is not responsible for the delay. If the Customer is responsible for the delay, the Customer shall compensate Bystronic for all additional costs.

6.4 Bystronic shall only be liable for work carried out by the personnel of the Customer in the event of gross negligence with regard to instruction or supervision.

6.5 No warranty shall be provided if the Customer or a third party carry out alteration or repairs without the written approval of Bystronic or if, in the event that a defect is discovered, the Customer fails to take all appropriate measures promptly in order to mitigate the damage or does not allow Bystronic any opportunity to remedy the defect.

6.6 Defects resulting from circumstances outside Bystronic's control, e.g. natural wear and tear, improper usage or maintenance, the failure to comply with operating instructions, excessive strain, improper measures to mitigate losses, unsuitable operating materials, chemical or electrolytic influences, or maintenance, servicing, construction or assembly work not carried out by Bystronic are excluded from Bystronic's warranty and liability obligation.

6.7 Any further claims and rights in relation to defects other than those expressly specified under Sections 6.1 to 6.4 are excluded.

7. Non-performance, poor performance and their consequences

7.1 In all cases of poor performance or non-performance not expressly regulated by these Terms and Conditions, in particular if Bystronic, without valid reasons, commences the services so late that timely completion can no longer be expected, or if it is clearly foreseeable that performance will be in breach of the Contract due to fault on the part of Bystronic, or if the services were performed in breach of the Contract due to fault on the part of Bystronic, the Customer shall be entitled to grant a reasonable grace period for Bystronic in respect of the affected services under threat of withdrawal from the Contract in the event of non-compliance. If Bystronic culpably fails to act within this grace period, the Customer may withdraw from the Contract in respect of the services that were performed in breach of the Contract or of which it is clearly foreseeable that they will be performed in breach of the Contract and claim a refund of any payments already made in respect thereof

7.2 In such a case, the provisions of Article 8 shall apply in respect of any damages claims brought by the Customer and the exclusion of further liability. Entitlement to claim damages shall be capped at 10% of the contractual price of the services in respect of which the withdrawal occurs.

8. Exclusion of further liability of Bystronic

8.1 All cases of breach of contract and their legal consequences as well as all claims of the Customer, irrespective of their legal basis, 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 deficient performance, the total amount of such claims shall be limited to the price paid by the Customer. However, any claims for compensation of damages not expressly indicated shall be excluded, in particular the right to claim damages on the grounds of, by way of example, loss of production, loss of usage, loss of orders, recall costs, loss of profit and any other direct or indirect or consequential damages, as well as the rights to reduction, rescission of the Contract or withdrawal from the Contract.

8.2 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.

8.3 This exclusion of further liability of Bystronic shall not apply to unlawful intent or gross negligence of Bystronic or if precluded by mandatory law.

9. 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.

10. Miscellaneous

10.1 All agreements and legally relevant declarations of the contractual parties shall only be valid if executed in writing.

10.2 Should any provision contained in these Terms and Conditions prove to be invalid in full or in part, the contractual parties shall replace this provision with a new provision that is as close as possible to the legal and economic effect of the invalid provision.

10.3 The place of jurisdiction for both the Customer and Bystronic shall be Bützberg, Switzerland. Bystronic shall, however, be entitled to bring suit against the Customer in the courts of the place where the Customer has its registered office.

10.4 The legal relationship shall be subject to the substantive law of Switzerland, excluding its private international law conflict of laws provisions and also excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention).