

**BYSTRONIC AUSTRALIA PTY LTD
TERMS AND CONDITIONS**

Best choice.

1. DEFINITIONS

Bystronic means Bystronic Australia Pty Ltd (ACN 614 370 973) of 4 Latchford Street Cranbourne West Vic 3977 Australia.

Customer means the business, company or entity, jointly and severally if there is more than one, acquiring Goods and Services from Bystronic;

Goods means the goods offered by Bystronic to the Customer;

Services means the services offered by Bystronic to the Customer; and

GST means Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time); and

Insolvency Event means the happening of any of the following events in relation to the Customer:

- (a) being a company, the appointment of an administrator or controller (within the meaning of section 9 of the Corporations Act 2001 (Cth)) or receiver or provisional liquidator or liquidator over the relevant company, the directors of the relevant company resolving that the company be wound up, the making of an order of a Court that the company be wound up or the company being deregistered for any reason or anything analogous to or having a similar effect under the law of any relevant jurisdiction; or
- (b) being an individual, the appointment of a trustee or controlling trustee (within the meaning of the Bankruptcy Act) over the affairs of the person, or the person being an insolvent under administration (as defined under the Corporations Act 2001 (Cth)).

2. BASIS OF CONTRACT

Bystronic will supply the Goods and Services to the Customer subject to these Terms and Conditions and the Quotation unless otherwise specifically agreed in writing between Bystronic and the Customer. These Terms and Conditions apply to the exclusion of any other agreement or conditions of purchase or other terms that the Customer may submit with an Order (as defined below) or otherwise to Bystronic.

3. ORDERING OF GOODS AND SERVICES

The Customer will order Goods and Services from Bystronic as follows:

- a) **Quotation:** Following an enquiry by a Customer about the Goods and Services offered by Bystronic, Bystronic will provide the Customer with a quotation for the Goods and Services ("Quotation"). Any Quotation provided by Bystronic must be in writing to be valid.
- b) **Order:** The Customer will be deemed to have placed an order by signing and returning the Quotation to Bystronic by way of email, post or fax and paying the non-refundable deposit as stated in the Quotation ("Order"). The Quotation must only be signed by a duly authorised representative of the Customer who is able to bind the Customer. Once Bystronic receives the signed Quotation and payment of the non-refundable deposit, the Customer will be deemed to have placed the Order and must accept delivery of the Goods and Services subject to these Terms and Conditions.

4. PRICE

- (a) Unless otherwise agreed in writing, the price payable for the Goods and Services shall be the price set out in the Quotation to be paid in accordance with these Terms and Conditions and Quotation (as applicable). Once an Order is placed by the Customer, Bystronic will issue an invoice to the Customer setting out the amount payable by the Customer for the Goods and Services ("Invoice").
- (b) All prices are calculated net ex works Bystronic's manufacturing plant, without packaging, in AUD. All ancillary costs e.g. for freight; insurance; export, transit, import, and other authorisations; as well as certifications) shall be borne by the Customer.
- (c) The price for the Goods and Services excludes GST.
- (d) In addition to the price payable under clause 4(a), the Customer, upon provision of an Invoice by Bystronic, must pay to Bystronic any GST payable by Bystronic in respect of any taxable supply made by Bystronic under these Terms and Conditions.
- (e) Unless otherwise confirmed in writing, orders do not include the costs of insurance, delivery, carriage, packaging and any other expense incurred in delivering the Goods and Services to the Customer. Such additional costs shall be borne on the Customer and will be advised to the Customer.
- (f) Where there is any change in the costs incurred by Bystronic in relation to the Goods and Services, Bystronic may vary its prices for the Goods and Services in order to take account of any such changes. The Customer will be notified of such changes to the prices for the Goods and Services and the Customer may terminate an Order within 10 business days of being notified of the price changes if the Customer does not accept the changes to the prices.

5. PAYMENT TERMS - CREDIT FACILITY

- (a) An Invoice will be issued to the Customer in accordance with these Terms and Conditions.
- (b) The Customer must pay each invoice in accordance with these Terms and Conditions.
- (c) For replacement parts, service calls, as well as Services that are not carried out in connection with the delivery of the Goods, the payment deadline shall be 30 days from the date of the invoice, unless otherwise provided in the Quotation.
- (d) Payments shall be made by the Customer in accordance with the agreed-upon payment terms set out in the Quotation, without deducting discounts, expenses, taxes, tolls, duties, tariffs, and the like.
- (e) Bystronic may transfer or assign any amount owing to Bystronic by the Customer to any third party without the prior notification or approval of the Customer.

6. PAYMENT DEFAULT

- (a) If the Customer defaults in payment by the due date of any amount payable to Bystronic or an Insolvency Event occurs in respect of the Customer, then all money which would become payable by the Customer to Bystronic at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Bystronic may, without prejudice to any other remedy available to it:
- (i) charge the Customer interest on any money overdue during the period of the default at the rate that is at least 4% per annum higher than the rate fixed as at the date of the default under Section 2 of the Penalty Interest Rates Act 1983 (Vic) for the period from the due date until the date of payment in full;
 - (ii) charge the Customer for all expenses and costs (including legal costs on a full indemnity basis) reasonably incurred by Bystronic resulting from the default and in taking whatever action it deems necessary to recover any sum due;
 - (iii) take all necessary action in respect of the Goods and Services in accordance with clause 9;
 - (iv) cease or suspend for such period as Bystronic thinks fit, supply of any further Goods and Services to the Customer; and
 - (v) terminate any contract or Order with the Customer so far as unperformed by Bystronic, without effect on the accrued rights of Bystronic under any contract.
- (b) Bystronic reserves the right, at any time and in its absolute discretion, to withdraw credit facilities or impose conditions on them.

7. NO SET OFF

The Customer shall pay any moneys owing to Bystronic under these terms in full, and shall not set off such moneys against debts or liabilities owed or allegedly owed by Bystronic to the Customer.

8. RISK, DELIVERY, INSTALLATION AND QUALITY OF GOODS

- (a) Bystronic will deliver the Goods to the Customer to the delivery location agreed by Bystronic and set out in the Quotation.
- (b) Unless otherwise provided in the Quotation, delivery shall be FCA Bystronic's manufacturing plant Incoterms® 2010.
- (c) Under no circumstances will Bystronic be liable for any loss or damage suffered by the Customer as a result of any late delivery or non-delivery of any Goods.
- (d) Any period or date for delivery of the Goods stated by Bystronic is intended as an estimate only and is not a contractual commitment. Bystronic will use reasonable endeavours to meet any estimated dates for delivery of the Goods.
- (e) If installation is part of the Order, Bystronic shall make available the necessary installers at the tariffs valid at the time of the performance of the work, based on a separate agreement regarding installation.
- (f) 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
- (g) The Customer shall, at no cost, make available assistants necessary for conducting the installation work.

9. RETENTION OF TITLE AND SECURITY

- (a) For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Cth) and all regulations made under that Act. All references to sections are to sections of the PPSA.
- (b) The Customer and Bystronic agree that all right, title and interest in the Goods remains with Bystronic until the Customer has paid all and any amounts owing to Bystronic pursuant to any contract made under these Terms and Conditions ("Outstanding Amount").
- (c) As security for the Outstanding Amount from time to time the Customer grants to Bystronic a security interest in all of its present and after acquired property including, without limitation, the Goods.
- (d) The Customer acknowledges and agrees with Bystronic that:
- (i) these Terms and Conditions constitute a security agreement for the purposes of PPSA; and
 - (ii) Bystronic may at its discretion register a financing statement in respect of any security interest created by these Terms and Conditions.
- (e) The Customer undertakes to:
- (i) sign any and all further documents and provide any and all further information, such information to be complete, accurate and up to date in all respects, which Bystronic may reasonably require to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA;
 - (ii) not register a financing change statement or an amendment demand in relation to any security interest created by these Terms and Conditions without the prior written consent of Bystronic; and
 - (iii) give Bystronic not less than fourteen (14) days prior written notice of any proposed changes in the Customer's name or any other change in the Customer's details.
- (f) The Customer agrees that nothing in sections 130 or 143 of the PPSA will apply to these Terms and Conditions, or the security thereunder.
- (g) The Customer waives its right to do or have done any of the activities referred to in section 95, 132(2), 129(2), 132, 135(1) and 143 of the PPSA.
- (h) Notwithstanding delivery of the Goods to the Customer, all right title and interest in the Goods remains with Bystronic until the Customer has made full payment to Bystronic of all and any amounts due and payable to Bystronic by the Customer ("Outstanding Amount").
- (i) If the Goods are re-sold prior to payment to Bystronic of the Outstanding Amount, the Customer holds the proceeds from the sale of Goods on trust for Bystronic.
- (j) The Customer shall keep the Goods in a fiduciary capacity as bailee for Bystronic.

- (k) Until the date of full payment of the Outstanding Amount the Goods must be clearly identified as the property of Bystronic and if requested, must supply, within the time specified by Bystronic, an inventory of all Goods in the Customer's possession. The Customer must allow any representative of Bystronic access to its premises to conduct any stocktake of the Goods without notice.
- (l) In the event of a default by the Customer in respect of any of the terms of these Terms and Conditions including the payment of any Outstanding Amount under these Terms and Conditions, Bystronic has the right (without giving notice) to retake possession of the Goods and the Customer authorises Bystronic or its representative, servant, agent or employee to enter the Customer's premises upon which the Goods are housed or stored for the purpose of retaking possession of same. Bystronic is not liable for any cost, losses, damages, expenses or other monies incurred or lost by the Customer as a result directly or indirectly of Bystronic retaking possession of the Goods. In the event Bystronic retakes possession of the Goods Bystronic is entitled to sell the Goods free of any claim from the Customer.

10. SUITABILITY OF GOODS AND SERVICES

- (a) Any description of Goods and Services given by Bystronic is for the purposes of identification only and the Customer acknowledges that any sale of Goods and Services under these Terms and Conditions is not a sale by description.
- (b) The Customer acknowledges that it relies entirely upon its own knowledge, skill and judgment and that of its agents and employees in selecting and ordering Goods and Services from Bystronic. Bystronic will not provide any advice, express or implied, as to whether particular Goods are fit for any purpose, unless expressly agreed in writing signed by Bystronic.

11. TESTING OF GOODS AND SERVICES

- (a) 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.
- (b) As part of handover acceptance of the Goods and Services, Bystronic shall conduct acceptance testing of the Goods and Services as soon as practicable after delivery and installation.
- (c) The handover acceptance shall be deemed approved:
 - (i) if the handover acceptance test, for reasons not attributable to Bystronic, cannot be conducted by the stipulated deadline;
 - (ii) if the Customer refuses to conduct handover acceptance without having the right to do so; or
 - (iii) as soon as the Customer utilises the Goods or Services.

12. WARRANTIES & GUARANTEES

- (a) The warranty period for the Goods and Services shall be 12 months or a maximum of 2000 hours of operation, whereby the first limit reached shall be decisive.
- (b) The warranty period shall begin with the delivery in accordance with clause 11(a) or with any agreed handover acceptance of the Goods and Services or, insofar as Bystronic has also undertaken the installation, with its conclusion.
- (c) For repaired or replaced parts, 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 clause 12(a).
- (d) Goods and Services must be used, handled and assembled with due care and in compliance with any instructions given by Bystronic otherwise the warranty on the Goods and Services may be void.
- (e) 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.
- (f) 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.
- (g) 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 clauses 12(a) through 12(g) or as required by any State or Federal legislation.

13. LIMITATION OF LIABILITY

- (a) Subject to any State or Federal legislation, at Bystronic's sole discretion Bystronic's obligations to the Customer in respect of a breach of any of these Terms and Conditions (whether implied by statute or otherwise) including a warranty claim shall be limited to a refund, credit note, repair or the replacement of the Goods and Services. Replaced parts shall become property of Bystronic. Bystronic shall bear the accrued costs of the defect remediation at its works.
- (b) Subject to any State or Federal legislation, Bystronic will not be liable to the Customer or any other persons under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or willful acts of default of Bystronic, or its employees or agents) whatsoever arising from a breach of any of these Terms and Conditions or any other statutory implied warranty, term or condition, including Quotation, in relation to the Goods and Services.
- (c) Subject to any State or Federal legislation, Bystronic will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to Goods and Services whatsoever occurring to the Customer or its employees or agents by reason of:

- (i) the Goods and Services or their design, production or processing;
 - (ii) the loading and delivery of the Goods and Services or any failure to deliver or delay in delivering the Goods and Services;
 - (iii) any act or omission of Bystronic or its servants and agents; or
 - (iv) any statement or representation made by an employee or agent of Bystronic in respect of the Goods and Services.
- (d) Subject to any State or Federal legislation, in no case shall Bystronic be liable for consequential loss or damage.
 - (e) Subject to any State or Federal legislation, except as specifically set out in these Terms and Conditions (as amended from time to time), any warranty in respect of the Goods and Services is hereby expressly excluded to the maximum extent permitted.
 - (f) Subject to any State or Federal legislation, replacement, repair or refund of the Goods and Services is the absolute limit of Bystronic's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Goods and Services or alternatively the sale, use of, storage or any other dealings with the Goods and Services by the Customer.
 - (g) Bystronic will not be liable for any loss or damage suffered by the Customer where Bystronic has failed to meet any delivery date or cancels or suspends the supply of Goods and Services.
 - (h) Nothing in these Terms and Conditions is to be interpreted as excluding, restricting or modifying, or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable, including the Competition and Consumer Act 2010 (Cth)), to the sale of the Goods and Services which cannot be excluded, restricted or modified.

14. INDEMNITY

The Customer will at all times indemnify Bystronic, and Bystronic's officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses) or liability, suffered or incurred by any of those indemnified arising from any claim against those indemnified where the claim is referable to:

- (a) a breach by the Customer of its obligations under these Terms and Conditions; or
- (b) any willful, unlawful, or negligent act or omission of the Customer.

15. TERMINATION

(a) Bystronic may terminate any Order immediately by notice in writing ("Notice"):

- (i) if the Customer is in breach of these Terms and Conditions and the Customer does not remedy any breach within five (5) days of receiving written notification;
 - (ii) if an Insolvency Event occurs in relation to the Customer;
 - (iii) if the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (iv) if the Customer is a company, there is a change in control of the board of directors or the shareholders of the Customer; or
 - (v) if the Customer ceases or threatens to cease conducting its business in the normal manner.
- (b) If Notice is given to the Customer, Bystronic may in addition to terminating any Orders or other agreements:
- (i) repossess the Goods from the Customer for which payment has not been received;
 - (ii) retain any monies paid by the Customer, and set those off against any Outstanding Amounts;
 - (iii) be regarded as discharged from any further obligations under these Terms and Conditions; and
 - (iv) pursue any additional or alternative remedies provided by any State or Federal legislation.
- (c) Subject to any State or Federal legislation, Bystronic may also terminate any Order for any other reason determined by Bystronic provided that 30 days written notice is given to the Customer.

16. POTENTIAL CLAIMS

If there is any claim or likely claim against Bystronic in respect of the Goods and Services which comes to the Customer's attention (other than a claim by the Customer against Bystronic), the Customer will immediately inform Bystronic providing full details of the claim or likely claim.

17. FORCE MAJEURE

- (a) "Force Majeure" shall mean any event beyond the reasonable control of the parties, including, but not limited to, fire, explosion, flood, strikes, war, act of God, act of State, labour unrest or riots.
- (b) The party invoking the case of Force Majeure shall so notify the other party within 7 calendar days after having knowledge of the event constituting the case of Force Majeure. The said party shall likewise immediately notify the other party, within the same period, of the date on which such case of Force Majeure has ceased to exist.
- (c) Neither party shall be held liable for any failure or delay in the performance of any undertaking which has been suspended pursuant to this clause if such failure or delay is due to Force Majeure of which it has notified the other party.
- (d) Should an event of Force Majeure continue for a period of more than 60 days, the parties hereby agree to attempt revising the contract to take into account the consequences of the Force Majeure event, following a notification of the event by one party or the other party.
- (e) If the parties are unable to arrive at a mutually satisfactory solution within 90 days from the beginning of such Force majeure, the contract may be terminated by one or the other party. Neither party shall have the rights to claim damages because of termination of the contract pursuant to this clause 17.

18. WAIVER

Failure by Bystronic to enforce any of these terms in respect of any breach by the Customer shall not be construed as a waiver of any of Bystronic's rights or a waiver of Bystronic's right to enforce the term in respect of that breach in the future. The only persons authorised to waive a breach by the Customer are the Managing Director or Chief

Financial Officer of Bystronic and the Customer shall not seek to rely upon a waiver purportedly given on behalf of Bystronic by any other person.

19. GOVERNING LAW

These terms shall be governed by and construed in accordance with the laws in force in Victoria, Australia and the Customer submits to the jurisdiction of the courts of Victoria, Australia.

20. SEVERANCE

If any provision of these Terms and Conditions are contrary to any State or Federal legislation (for example by being illegal, void or unenforceable) that provision shall be read down to the extent necessary to become valid and enforceable or, if this is not possible, shall be deemed to be severed from these Terms and Conditions, without affecting the remaining provisions of these Terms and Conditions.

21. ASSIGNMENT AND NOVATION

Any rights and benefits arising from these Terms and Conditions must not be assigned by the Customer without Bystronic's prior written consent. Subject only to notice being given to the Customer, the Customer consents to the assignment or novation of these Terms and Conditions by Bystronic.

22. INTELLECTUAL PROPERTY

(a) All intellectual property (including without limitation any trade marks (registered or unregistered), designs, layouts and confidential information copyright in all plans, drawings, designs and text) which are disclosed to the Customer by Bystronic shall be solely owned by Bystronic and shall be delivered up to Bystronic by the Customer immediately on Bystronic's request. The Customer acknowledges that no intellectual property license is granted by these Terms and Conditions.

(b) The Customer is prohibited from reverse engineering any of the Goods and Services.

(c) The Customer will immediately notify Bystronic of any actual or potential infringement of Bystronic's intellectual property rights which comes to the Customer's attention.

23. CONFIDENTIAL INFORMATION

The Customer shall treat all information disclosed to it by or on behalf of Bystronic, or acquired by the Customer concerning Bystronic or the Goods and Services as Bystronic's confidential information and shall not use or disclose the same except:

(a) to the extent necessary in order to make effective use of the Goods and Services;

(b) to obtain professional advice concerning these Terms and Conditions;

(c) to the extent disclosure is required by any State or Federal legislation; or

(d) to the extent any relevant information shall become public knowledge other than through the Customer's act or omission.

24. CUSTOMER WARRANTY

The Customer warrants that it has acted reasonably and in good faith to Bystronic in disclosing to Bystronic, prior to the Quotation, all information which may have materially affected Bystronic's agreement to supply the Goods and Services to the Customer under these Terms and Conditions.