

General Purchase Conditions of Bystronic Manufacturing Americas LLC



PURCHASE ORDER TERMS AND CONDITIONS

1. **SCOPE.** This purchase order is an offer by Bystronic, Inc. ("Bystronic") for the purchase of the goods or services specified on the face of this purchase order from the party to whom the purchase order is addressed ("Seller") in accordance with and subject to these terms and conditions (these "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to this Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, and

communications, both written and oral, with respect to the subject matter of this Order. This Order expressly limits Seller's acceptance to the terms of this Order. These Terms prevail over any terms or conditions

contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. This Order shall be deemed accepted by Seller upon the commencement of performance, shipment of product, or by written acceptance or other indication of agreement, whichever occurs first. Seller may not subcontract its obligations under this Order to any party without Bystronic's prior written consent. In the event that Bystronic consents to Seller's use of a subcontractor, Seller shall remain liable for all acts, omissions and other performance of such subcontractor.

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2. **DELIVERY; TIMING.** Time is of the essence for Seller's obligations under this Order. Unless otherwise specifically stated in this Order, Seller shall deliver purchased goods to Bystronic at such location designated on the face of this Order. All freight, shipment, insurance, and other transportation expenses shall be borne solely by Seller. If any anticipated or actual delays arise in Seller's performance of this Order, Seller shall notify Bystronic immediately of the delay and its cause. If in order to comply with Bystronic's required delivery date it becomes necessary for Seller to expedite this Order, Seller shall pay any increased costs of expediting. The delivery quantity must not deviate from the agreed quantity in the Order without Bystronic's written consent. Partial deliveries and advanced deliveries are allowable only after Bystronic's express written consent. If Seller fails to deliver the applicable goods or services by the date required on the Order, then Bystronic shall be entitled to a credit of Two Percent (2%) of the price of the goods or services at issue for each week or part of a week that delivery is delayed, with the amount of credit not to exceed Ten Percent (10%) of the price for the goods or services at issue. Such credit shall not constitute Bystronic's sole remedy in the event of late delivery by Seller and Bystronic shall be entitled to seek any and all other legal or equitable remedies available to Bystronic.

3. **PRICING.** The products and services, including quantity and price, shall be as set forth on the face of this Order. All prices are stated in USD. The price is firm and may not be increased for any reason, including, without limitation, any raw materials issues or force majeure events. Unless otherwise specifically stated in this Order, all prices include shipping and taxes. Seller shall only be reimbursed for expenses incurred in connection with the performance of services under this Order if such expenses were stated in writing in the face of this Order. Seller shall provide Bystronic with copies of all receipts, ledgers, and other records, and upon request of Bystronic, originals of said documents that verify the amount and nature of such expenses.

4. **INVOICE AND PAYMENT TERMS.** Unless otherwise instructed by Bystronic in writing, Seller will invoice Bystronic upon Bystronic's acceptance of the products or services delivered. Unless otherwise indicated on the face of the purchase order, payment terms are net 60 calendar days from the date of Bystronic's receipt of Seller's invoice; provided that if required by Bystronic, Seller must provide to Bystronic properly executed waivers of mechanics or any other liens (for itself and from each of Seller's approved subcontractors) as a precondition to payment hereunder. If there is no valid dispute of the invoice, and if Bystronic fails to pay by the date required on the invoice, then the vendor shall be entitled to a fee of One Percent (1%) of the value of the invoice for each month that payment is delayed, with the amount of the fee not to exceed Ten Percent (10%) of the value of the invoice.

5. **CHANGES.** Bystronic may make changes in the quantities or specifications of any products or services ordered. Any such changes must be in writing. In the event a change to such quantities or specifications is made, an equitable adjustment will be made to any price, time of performance, and/or other provisions of this Order required to be changed thereby. Seller must make any claim for such an adjustment within 2 business days from the date of receipt by Seller of such change. Unless otherwise agreed to in writing, Seller shall not make any changes to supplied products or services that may affect the quality, performance, and function without prior written consent from Bystronic.

6. **RISK OF LOSS; INSPECTION.** Risk of loss or damage to any products shall only pass to Bystronic when said products have been delivered to the designated place of delivery on the Order. Seller is liable for damages to goods during shipping, including loading and unloading, and as a result of inadequate packaging. Upon delivery of any products to the location designated on the Order or any other location designated by Bystronic in writing, Bystronic shall have the right (but not the obligation) to inspect the products to determine whether the products conform to the specifications and conditions of the subject Order. Bystronic reserves the right to revoke any acceptance of goods in the event of latent defects or nonconformities. Payment shall not constitute acceptance by Bystronic. In the event all or any portion of the products or services do not conform to the specifications and conditions of this Order, Bystronic may reject any portion or all of the products or services and shall not be obligated to pay for any rejected products. If any of the goods or services are found at any time to be defective or non-conforming, Buyer and Seller shall agree to correct or have corrected the nonconformity at Seller's expense inclusive of any additional costs and expenses incurred. The foregoing shall include Bystronic's ability to require Seller to rectify any defective or non-conforming goods or services at Seller's expense. If Seller is unable to rectify any defective or non-conforming goods or services to Bystronic's satisfaction within the deadline set by Bystronic, then Bystronic shall be entitled to cancel the Order and receive a full refund of any payments made by Bystronic in connection with the Order, which remedy shall not be Bystronic's exclusive remedy with respect to such breach by Seller. Acceptance of any products or services by Bystronic shall not relieve Seller from any of its obligations and warranties hereunder.

7. **WARRANTIES.** In addition to and without prejudice to any other warranties, both express and implied, Seller represents and warrants as follows: (a) that all products and services (i) will be free from defects in materials, workmanship, (ii) will conform to the specifications, drawings and other descriptions set forth in this Order and as otherwise mutually agreed upon, (iii) will be merchantable, (iv) that all products and services conform and are compliant with applicable law, and (v) if ordered for a stated purpose, the applicable products or services will be fit for such purpose; (b) all services will be performed in a professional and workmanlike manner in accordance with the drawings; (c) the products and services do not and will not infringe upon or violate any intellectual property or proprietary rights of any third party; and (d) if any product, service or other deliverable includes or uses any open source or third party software, Seller has the right to incorporate such open source or third party software and license the same to Bystronic. All warranties shall inure to the benefit of Bystronic, its customers and end users.

8. **INSURANCE.**

a. **Required Insurance.** Seller shall maintain, throughout the performance of its obligations under this Order and for 1 year thereafter, (i) commercial general liability insurance, (ii) comprehensive automobile liability insurance providing for coverage on an occurrence basis covering all owned, non-owned and hired vehicles, (iii) adequate errors and omissions insurance providing coverage against liability for the performance of any negligent actions by Seller, or any of its employees, contractors or agents, under this Order; (iv) product liability insurance; and (v) workers' compensation and employers' liability insurance in any state in which Seller or its contractors or subcontractors may be subject to any statutory or other liability arising in any manner whatsoever out of the actual or alleged employment of others or hiring of subcontractors. Unless a different amount is required by this Order, the coverages specified in clauses (i) through (iii) shall have limits of not less than \$2,000,000 annual general aggregate.

b. **Increased Coverage.** Notwithstanding the foregoing, the coverage amounts described above shall be increased by Seller if reasonably requested by Bystronic, or if requested generally by any customer of

Bystronic for which Seller is to provide services under this Order.

c. Certificate; Waiver of Subrogation. Seller shall provide, and upon request by Bystronic, Seller's approved subcontractors shall provide, certificates from its insurers evidencing compliance with this Section prior to commencement of any work under this Order. Seller shall also provide such certificates at any other time requested by Bystronic. The insurance coverage and limits set forth in this Section shall not limit any of Seller's obligations under this Order or as required by law. Seller, and if applicable, Seller's approved subcontractors, must list as an additional insured Bystronic, and if applicable, Bystronic's customer to which this Order relates and any other party that Bystronic in its discretion deems necessary. All insurance certificates must state that coverage will not be altered, cancelled or allowed to expire without 30 calendar days written notice by certified mail to Bystronic. Bystronic reserves the right to refuse Seller's and/or its approved subcontractors' entry to any project site and to withhold payments due to Seller until properly executed certificates of insurance are received by Bystronic. Should Seller, or if required, any of Seller's approved subcontractors, fail or neglect to provide the required insurance, Bystronic shall have the right, but not the duty, to purchase such insurance and deduct from any money that may be due or become due to Seller for any and all premiums or costs Bystronic incurs related to the purchase of such insurance. All policies of insurance required to be carried by Seller under this Section shall include a clause and endorsement (on any certificate of insurance required hereunder) denying to the insurer rights by way of subrogation against Bystronic.

9. INDEMNIFICATION. Seller agrees to indemnify, defend and hold harmless Bystronic, its affiliates, and their respective owners, officers, employees, agents, assigns and successors, from and against any and all claims, demands, damages, liabilities, losses, costs (including reasonable attorney's fees), judgments and other expenses arising out of, resulting from, or related to: (i) any breach by Seller of any provision of this Order; (ii) the acts or omissions of Seller, its employees, subcontractors or its other agents pursuant to this Order or otherwise (including, without limitation, any personal injury or property damage arising from the acts, omissions or work of Seller, its employees, subcontractors and its other agents); (iii) any product liability claims with respect to goods provided by Seller to Bystronic due to Seller's negligence.

10. PROPRIETARY MATERIALS. Seller agrees that all materials in whatever form prepared or produced by Seller under this Order ("Work Product") with Bystronic's aid and assistance shall be considered a "work made for hire" under the copyright laws of the United States and are assigned to and shall become the sole property of Bystronic. At Bystronic's request, Seller shall execute all papers and provide reasonable assistance to Bystronic necessary to vest ownership in Bystronic of all such Work Product. Any goods or other materials provided by Bystronic to Seller with respect to the Order shall remain the sole property of Bystronic.

11. MISCELLANEOUS.

a. Notices. Any notice sent pursuant to this Order shall be in writing and sent by certified mail, proper postage prepaid, return receipt requested, or by properly paid overnight mail, to the addresses on this Order, or to such address as either Seller or Bystronic may in the future designate in writing. Notices sent by certified mail shall be effective two (2) business days after being placed in the United States mail, and if sent by recognized overnight carrier, upon delivery.

b. Severability. If and to the extent any provision of this Order is held invalid or unenforceable at law, such provision will be deemed stricken from this Order and the remainder of this Order will continue in effect and be valid and enforceable to the fullest extent permitted by law.

c. Attorneys' Fees and Expenses. Bystronic shall be entitled to recover from Seller Bystronic's costs and expenses incurred in the enforcement of these Terms, including without limitation court costs and reasonable attorneys' fees and expenses. The vendor shall be entitled to recover from Buyer, the vendor's cost and expenses incurred in the enforcement of these Terms, including without limitation, court costs and reasonable attorneys' fees and expenses. The legal costs and expenses shall be paid by the prevailing party.

d. Non-Waiver. Failure by Bystronic to demand compliance or performance of any term or condition of this Order shall not constitute a waiver of Bystronic's rights hereunder.

e. Binding Effect. This Order shall be binding upon and inure to the benefit of the parties, and their respective successors and permitted assigns.

f. **Governing Law and Venue.** This Order shall be governed by the laws of the State of Illinois without regard to conflicts of law principles. Any lawsuit, action or proceeding arising out of or relating to this Order shall be brought in a federal or state court in the jurisdiction where Bystronic maintains its principal place of business in the United States, and each of Seller and Bystronic hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

g. **No Assignment.** Seller may not assign its rights, interests or obligations under this Order without the express written consent of Bystronic.

h. **Independent Contractor.** The relationship of Bystronic and Seller is that of independent contractors. Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the parties hereto or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

i. **Amendments.** This Order may not be amended, supplemented, changed, or modified, except by in writing signed by the parties or as expressly provided in Section 5 hereof. No change to this Order is binding upon Bystronic unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Bystronic.

j. **Signatures.** Electronic or facsimile signatures (including PDF) shall be deemed and accepted as originals.

k. **Survival.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including without limitation the following provisions: Invoice and Payment Terms, Warranties, Insurance, Indemnification, Proprietary Materials, and Miscellaneous.