

General Terms and Conditions of Purchase

BYTEC Medizintechnik GmbH

Hermann-Hollerith-Str. 11

52249 Eschweiler

Germany



I Scope

1. These terms and conditions apply exclusively to orders made by BYTEC Medizintechnik GmbH, Hermann-Hollerith-Str. 11, 52249 Eschweiler, Germany, hereinafter referred to as "BYTEC".
Conflicting or deviating conditions of the Contractor will not be accepted.
2. These conditions only apply to Contractors who participate as merchants in business transactions and to them for all other transactions.
Differing terms and conditions of the Contractor shall also not be part of the contract if BYTEC does not expressly reject them in individual cases or if the services are accepted or if the Contractor's confirmation is not rejected, having been carried out with regard to its terms and conditions.

II Orders/Delivery Times/Acceptance

1. All orders from BYTEC must be made in text form (§ 126b BGB [German Civil Code]). They are effective without personal signature with an appropriate endorsement on the order form. The Contractor is obliged to accept the order in the same form within a period of two (2) weeks. After this period BYTEC is entitled to revoke the order. The delivery times or execution dates specified in the order are binding. If the delivery or execution is delayed, for reasons for which the Contractor is responsible, the Contractor defaults without warning. The Contractor is obliged to inform BYTEC without delay if circumstances arise or become apparent indicating that the agreed delivery time or the agreed execution date cannot be complied with. BYTEC may instruct the Contractor to deliver or render the service with the effect of fulfilment to a third party – hereinafter referred to as "beneficiary". If BYTEC requires a change of the item to be delivered, the Contractor shall immediately report and verify any higher or lower prices and future effects to BYTEC in text form. Production disruptions due to inevitable events (force majeure, e.g. labour dispute) entitle BYTEC to cancel orders; moreover, the delivery and payment date shall be extended according to the duration of the delay for all obstacles without fault.
2. Each service under contract requires an acceptance, the result of which must be recorded in writing. If the Contractor has rendered the service, it must notify BYTEC and the beneficiary named in the order in text form. The submission of the final invoice, a statement of completion in text form and the use or commissioning of such contractual services within the trial operation shall not constitute acceptance. § 640 para. 2 sentence 1 of the German Civil Code remains in effect. This regulation does not apply to contracts where an acceptance is materially and technically impossible.

III Provision of Service

1. The deliverables shall be made in compliance with the relevant service specifications. This is defined in the order letter (order) by the specifications set out therein. For machines that are subject to the Machinery Directive, or electrical equipment that falls under the Low Voltage Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014, the Contractor shall carry out a conformity assessment procedure and provide the goods with CE marking as well as with a manual. The Declaration of Conformity and operating instructions are to be handed to BYTEC or the beneficiary. Machines not ready for use shall be provided with a manufacturer's declaration. Key factors to assess if contractual services of the Contractor have been fulfilled are compliance with the following specifications:
 - a) the specification conformity of materials,
 - b) the adherence to delivery dates,
 - c) the quality of delivered items,
 - d) the reliability of prices and
 - e) the observance and compliance with all relevant rules and regulations, which results from the production, storage and transportation of the materials mentioned, in particular, compliance with relevant technical standards such as DIN or CE norms.

Before changing production processes, materials or vendor parts for the delivered goods, relocating production locations, changing processes or equipment used to examine the delivery items or any other action which may affect the quality and/or safety of the delivered goods, the Contractor must notify BYTEC in due time before delivery. Changes in the established specifications shall not be made without the consent of BYTEC. Any changes to the delivery items and product-related changes in the process chain shall be documented in a product history.

To be documented here are, among others, changes to drawings, deviation permits, changes to processes, changes to test methods and test frequencies, changes of suppliers, vendor parts and supplies. The documentation on the product life cycle must be disclosed to BYTEC upon request. Upon agreement for a series and/or long-term delivery, the Contractor is obliged to inform BYTEC immediately about a termination of its upstream suppliers (discontinuation) for building and/or accessories that are the subject of a delivery. BYTEC will then check with the contractor whether it is possible to find a replacement or whether a last buy is available. The contractor is obliged to support BYTEC up to this point accordingly and to name its suppliers.

2. If the Contractor delivers standard software products, the validity of the license and usage conditions of the Contractor shall be agreed upon exclusively for the regulations governing the type and extent of usage rights in individual cases. More far-reaching regulations, in particular those governing warranty claims or liability, do not apply here. Delivery will be made solely on recording media that can be read by machines and which the Contractor has to deliver free of viruses. BYTEC or the entitled beneficiaries will not incur extra charges for the necessary data media. The Contractor will provide BYTEC with user documentation in German or English language in written or electronic form free of charge for software programs covered by the contract.
The Contractor transfers the non-exclusive, spatially and temporally unlimited rights of use along with the delivery of licenses to BYTEC. Under this Agreement, BYTEC is entitled to the supply non-exclusive rights of use to its customers.
3. If dissociable copyrightable products are created during contract development of pre-existing standard software and its documentation contracted by BYTEC to the contractor, or if other copyright-relevant services or those falling under the Act on the Legal Protection of Designs (e.g. designs, technical drawings, texts, images, graphics and rendered the like) are provided, BYTEC is exclusively entitled to any use and exploitation rights, especially the right to edit, modify, develop, reproduce, translate, communicate, either wired or wireless, to the public and to rent as well as to other changes to those copyrightable services.
4. As far as pure development services are to be provided as part of the commissioning, the Contractor shall transfer the exclusive, transferable, sub-licensable, time, space and content unlimited usage rights on all results, which are the subject of the contract services (e.g. mechanical/technical devices and objects, models, custom software, software created as part of customizing, documentation, concepts, etc.), or other copyright-related or services covered under the Act on the Legal Protection of Designs (e.g. designs, technical drawings, texts, images, graphics, and the like). The Contractor shall ensure that all employees' inventions arising from providing the contractual services can be transferred to BYTEC free of charge.
5. For the provision of services, the concrete content of the service obligation is defined in each case in the individual order and the designated appendices. The Contractor shall provide the services independently and autonomously and is fully responsible for the deployment and performance of its employees in connection with the provision of services. The Contractor has the exclusive right to give instructions to employees employed by him to perform the services, even if the staff works on the grounds and in the rooms of customers of BYTEC or at BYTEC.
6. If the contractor would like to commission a third party with the provision of services, he must obtain prior consent in text form from BYTEC. This is also valid if subcontractors change or others are involved.

IV Open Source

1. The use of open-source software (OSS) as part of the contractual services by the contractor is permitted only with explicit prior consent in text form of BYTEC. The extent of usage rights granted to the OSS is defined in the consent agreement.
2. In the event that OSS becomes part of the subject matter of the Agreement, the Contractor shall, with respect to the OSS brought in, provide all necessary licence texts, copyright notices, disclaimers, the necessary source codes (source codes), build scripts and all other necessary items, documents, information and data with respect to the OSS components made available to the Contractual Partner together with the respective assignment to the individual OSS components, so that BYTEC is in a position to (i) fulfil any licence obligations with regard to third party components, in particular with regard to OSS licence provisions, and (ii) produce an executable version (Executable) of the third party software, including OSS to the extent required under the licence conditions. The Contractor shall submit the aforementioned licence texts, copyright notices and other further notices in a machine-readable and structured format suitable for automated further processing by BYTEC. The assignment to individual OSS components referred to in sentence 1 shall be made at least at the level of the individual software components and, if necessary, at directory or file level. In an attachment to be created after completion of the development, the information on the respective components, in particular name of the associated OSS component, origin URL and the version number relevant for the respective OSS component and the relevant licence conditions shall be summarised and transferred to BYTEC.
3. If the Contractor uses OSS without the prior consent in text form of BYTEC, the Contractor has to make every reasonable effort, at BYTEC's request, to replace the OSS by equivalent proprietary software.
4. The Contractor shall release BYTEC – without any upper limit – from all claims of third parties and related costs due to the use of OSS by the Contractor without the prior consent of BYTEC, unless the Contractor is not responsible for its use.

V Quality Control/Product Safety/Product Recall

1. For his goods and services, the Contractor shall comply with the specifications according to the order, the recognized rules of technology, safety regulations, any directives or standards and the agreed technical data.
2. The Contractor warrants that he complies with the requirements of the EU chemicals regulation REACH (Regulation (EC) No.1907/2006 of 30 Dec. 2006),

taking into account Annexes 1 to 11 in the current version, hereinafter referred to as REACH. The contractor also guarantees not to supply products that contain materials for products according to their field of application (i) pursuant to Appendix 1 to 10 of the REACH regulation in its current version, (ii) to the Council Decision 2006/507/EC (the Stockholm Convention on Persistent Organic Pollutants) in the current version, (iii) to the EC regulation 1005/2009 on ozone-depleting substances in the current version, (iv) to the Global Automotive Declarable Substance List (GADSL) in its current version (under www.gadsl.org) as well as (v) RoHS2 (2011/65/EU) and the extended delegated directive ROHS 2015/863/EU. Should the goods supplied contain substances that are on the so-called "Candidate List of Substances of Very High Concern for Authorisation" of the European Chemicals Agency, the Contractor shall disclose this immediately. This is even valid for current deliveries if substances not previously listed are added to this list.

The current list can be found at <http://echa.europa.eu/web/guest/candidate-list-table>.

3. In the event that a customer or third parties make a claim upon BYTEC due to a defect or error which can be traced back to an item that the Contractor supplied, BYTEC shall inform the Contractor without delay. The Contractor is obliged to release BYTEC of all claims related thereto if any damage has been caused by a defect from the item delivered by the Contractor. Otherwise, the statutory provisions apply.

VI Shipping

Shipping shall be carried out CIP by the Contractor in accordance with Incoterms 2010. Shipping addresses should be observed closely. Costs incurred through non-compliance with shipping regulations shall be borne by the Contractor, provided that this does not prove that he is not responsible. Dispatch notifications shall be sent along with specially marked order information to BYTEC, to the delivery address as well as to any other recipient addresses specified in the order and should be enclosed in the shipment.

VII Ownership Structures/Provisions/Processing

1. When it is handed over, the goods are property of BYTEC; a simple reservation of title in favour of the Contractor remains unaffected.
2. The Contractor must separate material provided by BYTEC from other materials, marked as property of BYTEC and stored with the attention of a diligent businessman. The contractor is obligated to prevent access by third parties and to immediately inform BYTEC of changes in the quantity and condition of the materials provided.
3. Processing or reworking by the Contractor shall be carried out for BYTEC. If goods for which BYTEC has reserved ownership are processed with other items not belonging to BYTEC, BYTEC shall acquire joint ownership of the new items in proportion to the purchase value plus VAT of the goods belonging to BYTEC along with the other processed items at the time of processing. The latter is valid in accordance with mixing and connection, unless another object not belonging to BYTEC is considered as the main item.

VIII Export Authorisation

After an order has been accepted, the Contractor shall inform BYTEC immediately in text form of a possible national export or re-export permit obligation – due to US or other export regulations.

IX Prices

The prices specified in the order are fixed prices. Prices are to be indicated without legal value added tax. The turnover tax must be shown separately. Where no prices have been stated, BYTEC reserves the right to recognise prices that are calculated subsequently. The prices are understood to be carriage paid, incl. packing, customs duties and insurance up to the stated shipping address/place of use, unless otherwise agreed to in text form. Insofar as BYTEC or the recipient does not retain the packaging, this will be returned at the expense of the Contractor and any packaging costs will be deducted; this also applies to pallets of all types, including exchange.

X Invoicing and Payment

1. Insofar as no other contractual arrangement has been made, the invoice shall be sent to BYTEC as a single copy, indicating the value added tax at the rate applicable at the time of delivery/performance separately. Prepayments/partial payments shall be shown individually in the invoice.
2. Insofar as deviating payment terms have not been agreed to in the order, payment must be made within 45 days of receipt of the invoice and delivery or acceptance of the service less 2% discount. Payments shall always be made subject to an adjustment if complaints subsequently arise.
3. Insofar as a Contractor of construction works does not present a valid exemption certificate pursuant § 48b para. 1 sentence 1 EStG (German Income Tax Act) when the account is settled, a tax deduction equal to 15% of the invoice amount (including value added tax) shall be made due to the law to curb illegal activity in the construction sector and paid to the responsible tax office. To cover the resulting additional expenses, BYTEC is entitled to deduct a reimbursement of expenses equal to €100.00 from the invoice of the contractor. Further claims on other legal grounds shall remain unaffected.

XI Assignment of Claims/Compensation

Notwithstanding this assignment of a monetary claim pursuant § 354a HGB [German Commercial Code], the contractor is not entitled to assign its claims against BYTEC to third parties or have them collected by third parties without prior written consent (§ 126 German Civil Code) of BYTEC. Compensation is only allowed for mutually undisputed or judicially established claims.

XII Liability for Defects

1. BYTEC is entitled to legal claims for defects in full. The Contractor shall be liable for freedom from defects of the goods/service with a statute of limitations lasting 24 months; this begins with the delivery or acceptance of the respective service. These arrangements apply, however, only when longer warranty periods or statutes of limitations are not valid by virtue of contractual or legal provisions.
2. Any faults or defects that occur during the period in the statute of limitations shall be rectified at the discretion of BYTEC at Contractor's own expense or resolved by a new delivery according to the contract.
3. If the Contractor fails to rectify the defect within a reasonable period of time, after the first complaint on the part BYTEC, BYTEC is entitled to rectify the defect itself or have this done by third parties without giving further warning or granting further extension. BYTEC is also entitled to subtract the costs incurred by offsetting them from the invoice amounts of the Contractor.
4. In cases where this rectification fails, BYTEC has the right of withdrawal and reduction; Claims for damages, in particular, the right to compensation for damages in lieu of fulfilling the service, shall remain unaffected.

XIII Property Rights

1. The contractor is responsible for ensuring that no third party rights are violated within the European Union in connection with his delivery. This is also valid outside the European Union insofar as the contractor knows in which country his delivery goods are delivered.
2. If a third party, thus, makes a claim against BYTEC or the purchaser of BYTEC, the Contractor is obliged to indemnify BYTEC from these claims at first demand. BYTEC is not entitled, without the consent of the Contractor, to make any agreements with the third party, in particular, to agree on a settlement.
3. The indemnity obligation applies to all expenses that BYTEC or purchasers of BYTEC necessarily incur out of or in connection with the claim.

XIV Termination

1. The contract begins on the date that BYTEC makes the order and is unlimited. As a purchase agreement/contract for work, it ends with the expiry of the guarantee, as a service contract with complete performance of the service and payment of the contracted fee. In all other cases (e.g.: framework agreement), the agreement may be terminated on both sides with a period of three months to the end of the quarter. The right to extraordinary termination remains unaffected. All terminations of the contract must be made in writing in accordance with § 126 German Civil Code.
2. In the case of contractual services, the contract can be terminated by BYTEC at any time. In this case, the Contractor shall receive the portion of the compensation that corresponds to the proportion of services previously rendered in terms of overall performance, unless the Contractor can prove that its savings are lower than the services not provided. § 648 clause 3 German Civil Code is excluded.
3. If, however, a termination is made for a serious reason for which the contractor is responsible, he shall receive only the portion of the remuneration that corresponds in terms of overall performance to the proportion of services previously rendered. Any further claim to remuneration by the contractor shall be excluded in this case. The Contractor shall be liable to BYTEC for compensation for losses incurred by BYTEC as a result of the termination, including any consequential losses.
4. BYTEC may terminate the contract extraordinarily without setting any deadline if the Contractor suspends payments or if insolvency proceedings have been filed for or opened covering the Contractor's assets.

XV Preparatory Documents/Confidentiality

1. BYTEC reserves the property rights and copyrights to illustrations, drawings, calculations, samples, models and other documents; they must be kept secret from third parties and may not be made available to them without express written consent of BYTEC. The Contractor shall be liable for loss or misuse. They may only be used for the production due to the order of BYTEC and are based exclusively on this purchase contract.
2. In the framework of executing this contract, the Contractor undertakes to
 - a) keep business secrets of BYTEC within the meaning of the German Business Secrets Act (GeschGehG) as well as knowledge and results obtained and evident therefrom, strictly confidential in particular all information and confidential documents BYTEC and their clients have provided, in particular information about software components and the related know-how and other skills; in particular information on contractual relationships, service descriptions, technical procedures, prices and margins as well as all in-house operations; in particular name, address and/or phone lists of employees, as operating and business secrets, whether disclosed or not, and any other business and operational facts about BYTEC or its customers, including the integrated software, independent of whether this knowledge is supplied in writing or orally and
 - b) not make copies of any documents handed over and not to use results files, unless these copies are given with express instruction to fulfil the contract, and
 - c) pay a contractual penalty to the amount of €30,000 in the event Section XV

- 2a) and b) of this purchase contract are breached, for each individual case of the disclosed act of infringement, regardless of any fault of the infringer. The contractual penalty is due 14 days after receipt of the notification, which must include all specific facts to found the claim. Claims for damages from the violation of Section XV 2a) and b) are not affected.
3. Upon completion of this contract, all procedures provided in connection with the execution of this contract are to be automatically returned or destroyed. BYTEC must be notified that they have been destroyed. The Contractor shall, on demand of BYTEC, provide information about their whereabouts.
 4. Apart from the above provisions concerning the confidentiality of proprietary information, the Contractor is not responsible for the following published or used information:
 - a) if information has been made available to the Contractor even without an agreement of confidentiality,
 - b) if the information has been made public by marketing of the product or in other legal ways and there is no underlying no breach of the Contractor is based against contractual provisions,
 - c) if the information was partially or completely provided by a third party and this happened via legal channels, without violating contract terms, and
 - d) if the information has been made available to a third party by BYTEC in whole or in part.
4. In the case individual clauses are totally or partial invalid in these conditions of purchase, ineffective regulations shall be reinterpreted, supplemented or replaced so that economic purpose of the objective pursued by the invalid provision is achieved. The same applies in the event that regulatory gaps in this agreement should exist.

XVI Safety Regulations

In carrying out and completing the contract, the Contractor shall observe the relevant provisions and recognized rules of technology, in particular on health and safety, as well as the construction, industrial, and road traffic regulations (in particular supervisory and traffic safety duties on construction sites and other workplaces); this also applies to the applicable environmental and disposal regulations.

Supplies and services must comply with the current laws, ordinances and regulations at the time of delivery or acceptance.

XVII Compliance, data protection, Act Regulation a Minimum Wage

1. The Contractor shall ensure that all relevant statutory provisions are complied with in its area of responsibility. This applies in particular to compliance with anti-corruption, anti-trust, data protection laws and the General Equal Treatment Act. In particular, the contractor undertakes to oblige the employees entrusted with the contractually agreed tasks and activities to comply with data protection. Insofar as the Contractor collects, processes or uses personal data on behalf of BYTEC within the scope of commissioned data processing, the parties shall be obliged to conclude a supplementary agreement in advance in which the details of such collection, processing and use of personal data on behalf shall be regulated.
2. Insofar as orders are placed by BYTEC for services or work performance within Germany, the Contractor undertakes to comply with the provisions of the Act Regulating a German Minimum Wage ("Gesetz zur Regelung des allgemeinen Mindestlohns" of 11 August 2014, "MiLoG" as amended).
3. The Contractor shall provide BYTEC with information on the subcontractors and rental companies engaged by it for the execution of the orders. The Contractor shall not engage any subcontractors or rental companies for the execution of the orders if it has not satisfied itself of their compliance with the Act Regulating a Minimum Wage by exercising due diligence. Other subcontractors or lenders - also in a subcontractor chain - are not permitted. In the event of an official inspection, the Contractor undertakes to immediately provide BYTEC with all necessary evidence of compliance with the Act Regulation a Minimum Wage by the Contractor and its subcontractors or lenders - also in a subcontractor chain. 4.
4. In the event of a breach of the obligation under the aforementioned paragraph, BYTEC shall be entitled to an extraordinary right of termination.
5. If claims for payment pursuant to section 13 MiLoG in conjunction with section 14 AEntG (Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany) are made against BYTEC by employees of the contractor or employees of subcontractors or rental companies commissioned by the contractor to perform the orders. section 14 AEntG, the contractor undertakes to indemnify BYTEC in the event of a breach of the provisions of the Act Regulation a Minimum Wage or in the event of a breach of the obligations pursuant to paragraph 2 from such claims to the extent regulated in section 14 AEntG. The Contractor shall also be obliged to indemnify BYTEC if and to the extent that such a breach by the Contractor of the provisions of the Act Regulation a Minimum Wage or of the obligations under paragraph 2 causes damage to BYTEC in any other way.

XVIII Text Form

Changes and additions to existing contracts must be in made in text form in the manner described in Section II. This also applies to the amendment of the text form itself.

XIX Place of Performance/Jurisdiction/Choice of Law

1. Place of performance for goods and services provided by the Contractor is the delivery address/point of use indicated by BYTEC or the agreed place of provision of services.
2. Unless otherwise expressly provided for by law, the place of jurisdiction for any disputes arising under or in connection with the contract shall be Aachen.
3. The laws of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be precluded.