

Best choice.

TERMS & CONDITIONS FOR BYSTRONIC SOFTWARE SERVICES AND RELATED DIGITAL SERVICES

("SOFTWARE SERVICES T&C")

- These SOFTWARE SERVICES T&C contain the terms of use of Bystronic software provided as a service ("**SOFTWARE SERVICES**" or "**SOFTWARE**"), including updates and upgrades, and related BYSTRONIC digital services ("**Digital Services**"); it being understood that the term "Digital Services" as used herein shall include the SOFTWARE or SOFTWARE SERVICES and that the terms "SOFTWARE" or "SOFTWARE SERVICES" as used herein shall include the "Digital Services").
- SOFTWARE SERVICES gather all the software products belonging to Bystronic Smart Factory being handled as software as a service. Digital Services would be all the added value services generated around the SOFTWARE SERVICES.
- These SOFTWARE SERVICES T&C form an integral part of the software licensing agreement ("**SOFTWARE AGREEMENT**") entered into between Bystronic and the customer ("**Customer**" or "**User**"), it being understood that the term "User" as used herein also includes any of the Customer's employees using the Digital Services.
- For the purpose of these SOFTWARE SERVICES T&C, "**Bystronic**" shall refer to Bystronic Laser AG or any of its affiliates who shall be deemed to be sub-licensors of the SOFTWARE.
- Bystronic Laser AG, Industriestrasse 21, 3362 Niederönz, Switzerland is the licensor ("**Licensor**") of any SOFTWARE related to Digital Services which is installed or used locally on any User's systems, potentially combined with suitable hardware and software on customer infrastructure.
- If Bystronic Laser AG as the Licensor does not itself enter into a SOFTWARE AGREEMENT with the Customer, it shall be treated as a third-party beneficiary with the right to claim directly any of its license rights against the Customer/User. For the avoidance of doubt, the Customer's sole contractual partner is Bystronic (i.e. the Bystronic company defined in the SOFTWARE AGREEMENT).
- By installing, using and accessing the SOFTWARE and Digital Services, the Customer accepts the terms and conditions contained herein. Should the Customer

not accept the terms contained herein, the Customer shall not be entitled to use the SOFTWARE and Digital Services.

- For the purpose of these SOFTWARE SERVICES T&C, "Bystronic" shall refer to Bystronic Laser AG or any of its affiliates who shall be deemed to be sub-licensors of the SOFTWARE.
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- By installing, using and accessing the SOFTWARE and Digital Services, the Customer accepts the terms and conditions contained herein. Should the Customer not accept the terms contained herein, the Customer shall not be entitled to use the SOFTWARE and Digital Services.

1. The SOFTWARE and Digital Services

- 1.1 SOFTWARE SERVICES are a cloud-based software products with underlying systems and infrastructure that will offer the User skills to process the digitization of the Smart Factory and User's End-to-end business. This means that User might need to capture data ("**User Data**") either from manufacturing systems ("**Equipment**") of sheet metal products, other software products and/or manual input from the User. For the correct use of the SOFTWARE SERVICES and Digital Services an Internet connection will be necessary, which are under the User's responsibility. The User shall access the User Data via SOFTWARE SERVICES' web-interface from Bystronic. The categories of User Data may change from time to time, e.g. when a new update, upgrade or release is available. User may request a list of User Data that is stored in the Bystronic SOFTWARE SERVICES database ("**Database**").
- 1.2 The SOFTWARE's main function is the enabling of a proper functioning of the Digital Services.
- 1.3 Bystronic is free to use third party providers in its performance (e.g. for technical infrastructure, telecommunications, hosting, etc.). Bystronic may subcontract performance in part or in full to another Bystronic affiliate or third parties.
- 1.4 Bystronic may execute general maintenance of the Digital Services and the application of updates and upgrades thereof ("**Maintenance Services**") to User. Bystronic may execute Maintenance Services without prior written notice. The User is aware and accepts that the execution of Maintenance Services may affect the availability of Digital Services or is likely to have a material negative impact upon the performance of the Digital Services.
- 1.5 The User is obliged to use the SOFTWARE and Digital Services in accordance with the current user manual.

2. Use Rights and license conditions

- 2.1 Bystronic hereby grants to User a non-exclusive, non-transferable, revocable right to use the SOFTWARE and perform and access the Digital Services ("**Right to Use**"). Permitted uses and restrictions also apply to any materials and documentations related to the SOFTWARE and Digital Services.
- 2.2 Without having validly accepted these SOFTWARE SERVICES T&C, User must not install, copy or otherwise use or access the SOFTWARE and Digital Services on any computer or device.
- 2.3 Any right to use the SOFTWARE and Digital Services is indivisible. User may not separate or use any part of the Digital Services and the SOFTWARE on other computers or devices independently from the other parts of Digital Services.
- 2.4 The SOFTWARE shall only be used in relation to Digital Services and on User's systems through which the SOFTWARE, Digital Services as well as software and hardware prerequisites are rightfully installed or accessed.
- 2.5 Bystronic and the third parties, whose SOFTWARE and/or services are integrated into the SOFTWARE and Digital Services, are and shall remain the proprietors of all their respective copyrights, trademarks and other property rights and/or trade secrets.
- 2.6 SOFTWARE and Digital Services are in particular protected by copyright laws and other intellectual property laws. User must not remove any copyright or other proprietary rights notice or any disclaimer and User shall reproduce on all copies made in accordance with these SOFTWARE SERVICES T&C , all such notices and disclaimers.
- 2.7 User shall access the Digital Services online via the Software web-interface, with a personalized and confidential username provided by Bystronic and a personalized and confidential password (collectively "Access Data"). The following data, amongst other (including but not limited to), is required to configure the access to the Digital Services: User's name, User's address, name of the dedicated user, country where the Digital Services will be used, Equipment-ID to be connected. When accessing the SOFTWARE and Digital Services the first time, the specific User will be required to digitally accept these SOFTWARE SERVICES T&C and specifically provisions pertaining to data protection.
- 2.8 User warrants to use the Digital Services only in accordance with the terms expressly agreed and this SOFTWARE SERVICES T&C and to prevent access by unauthorized personnel or any third parties to the Digital Services, their output or any related confidential information arising out of or in connection with the Digital Services.
- 2.9 User warrants to use the SOFTWARE and Digital Services only in accordance with the terms expressly agreed upon and this SOFTWARE SERVICES T&C and to prevent access by unauthorized personnel or any third parties to the SOFTWARE and Digital Services, their output, or any confidential information. User further warrants not to provide for use, sublicense, rent or otherwise grant access to any third party, copy, further develop, edit, change, create derivatives or otherwise temper with the SOFTWARE and Digital Services or their output in whole or in part, as applicable.
- 2.10 User warrants that it will not try to decrypt any data files provided in connection with the SOFTWARE and Digital Services or to otherwise try to determine the

source code thereof by any means (reverse engineering), including without limitation encouraging any third party to do so or supporting a third party in doing so. Any mandatory provisions and any applicable exemptions under applicable national law remain unaffected by the foregoing.

- 2.11 User and license management of SOFTWARE SERVICES will be done through Microsoft Azure Active Directory™. Thus, user will need to have a Microsoft Azure Active Directory™ account to enable the access to Bystronic SOFTWARE SERVICES.

3. Maintenance services

- 3.1 If software services being subscription-based, the maintenance services ("Maintenance Services") form part of the services package of the SOFTWARE.
- 3.2 The Maintenance Services include the following:
- Availability of the always current prevailing version of the SOFTWARE and updates (e.g. bug-fixes) thereof.
 - Free access to the Licensor's customer portal via the internet to use and download relevant instructions, documentation, tutorials and manuals pertaining to the SOFTWARE.
 - Update of the online documentation of the SOFTWARE.
 - [...e.g. hotline].
- 3.3 In particular, the following services shall not be deemed Maintenance Services:
- Any on-site maintenance services at the Customer's sites.
 - Any maintenance services provided for hardware, networks or machines.
 - Maintenance services that become necessary following the use of the SOFTWARE on a different operating system than that stipulated by BYSTRONIC.
 - Maintenance services that become necessary following an unauthorised modification of the SOFTWARE source code by the Customer.
 - Maintenance services in terms of the interaction between SOFTWARE and other computer programs that are not the subject matter of the Licensor's services.
- 3.4 The User is aware and accepts that the execution of Maintenance Services may temporarily affect the availability of the SOFTWARE or is likely to have temporarily a material negative impact upon the performance of the SOFTWARE.
- 3.5 The Maintenance Services will be provided for as long as the subscription-based LICENSE is in force and effect and as long as the respective subscription fees are paid by the Customer.

4. Cloud Service

- 4.1 Digital Services uses Microsoft Azure™ cloud services ("Cloud Service") to provide its services to User. Any User Data stored, processed and transmitted with Microsoft Azure™ cloud services are subject to the terms and conditions issued by Microsoft Azure™ (Microsoft Online Subscription Agreement and Service Level Agreement for Microsoft Online Services). The Microsoft terms can be accessed on the Microsoft websites in their always current existing version.
<https://azure.microsoft.com/en-us/support/legal/>

- 4.2 The use of Microsoft as a data processor in line with section 6 of the Annex (Data Processing Terms) is deemed to be agreed.

5. User Data. Ownership and right of use

- 5.1 The Digital Services requires the continuous upload of User Data from the User's IT infrastructure to the Database. User Data is transferred to the Database in pseudonymized form, i.e. the User Data's identifying components were replaced by non-identifying components for third parties other than Bystronic.
- 5.2 User Data may also include User's and its personnel's personal data ("**User Personal Data**" or "**User's Personal Data**") depending on the specific use and circumstances at hand. User warrants that any User's Personal Data has been and will be collected and processed in accordance with the requirements of applicable data protection laws.
- 5.3 It is important for User to exercise caution to prevent unauthorized access to User's Personal Data. User is responsible for the confidentiality of its passwords, other access details and information appearing on User's account. Consequently, User must ensure to log out any session on any computer or device in the event of shared use of such computer or device.
- 5.4 User Data, and all rights therein, is owned by the User and may only be used by Bystronic for the purposes of their commercial relation, for statistical purposes, as contained herein, established in the User Data or as otherwise agreed between the Parties.
- 5.5 The User hereby grants to Bystronic a non-exclusive, irrevocable license to use, copy, reproduce, store, distribute, edit, adapt, exploit, translate and analyze the User Data and any further data provided to Bystronic and/or created by the connected machine and software systems over defined interfaces in the context of providing the Digital Services. The description of the interfaces and the data made available over these interfaces may be requested by the User at any time. The type of interfaces used for the specific Digital Services will be driven by technical needs.
- 5.6 Bystronic is hereby granted the right to sub-license these rights to Bystronic's affiliates or third parties (e.g. cloud service provider, telecommunications services provider, hosting provider, etc.) to the extent reasonably required for the performance of Bystronic's obligations and the exercise of Bystronic's rights.
- 5.7 Bystronic shall have the right to gather data from its Users and processes and present it in a summarized format for data and statistical analysis. Aggregate data may be used to evaluate policies, evaluate the SOFTWARE and Digital Services, recognise trends and patterns of processes, gain relevant insights, and assess current measures for strategic planning. The results of the data aggregation shall belong to Bystronic. In any case, applicable laws on data protection shall be observed.
- 5.8 User may request deletion of all User Data in Bystronic's possession at any time. User acknowledges that such deletion may prevent Bystronic from performing its obligations and agrees that Bystronic shall be excused from any delayed performance or non-performance due to such deletion. The right of Bystronic to use the User Data, as further specified, shall remain unaffected.
- 5.9 User Data can be made available to the User through the SOFTWARE SERVICES web-interface following the acquisition/generation of the respective data at

source during the subscription term (or its renewal), i.e. during the term of the contractual relation, and for a period of thirty (30) days following its termination. In such sense, upon termination, should the User wish to receive the User Data, the User shall inform Bystronic in writing within thirty (30) days from termination of the contractual relation. After said period of thirty (30) days, Bystronic shall have the right to erase such User Data and/or use it for aggregate data purposes as above indicated.

- 5.10 Bystronic maintains adequate administrative, physical and technical safeguards to protect User Personal Data from loss, misuse and unauthorized access, disclosure, modification and destruction in accordance with legal requirements. As part of those safeguards, Bystronic uses sophisticated technology designed to protect User's Personal Data during its transmission, storage and processing and prevent unauthorized acts of third parties. In light of the inevitable risks of data transmission over the Internet as well as the use of cloud services, Bystronic cannot guarantee full protection against any error occurring during the course of User's Personal Data transmission, storage and processing that is beyond Bystronic's reasonable control. Bystronic reserves the right to report incidents involving User's Personal Data to authorities with jurisdiction over such incidents to the extent required by law.
- 5.11 Further details on how Bystronic may process User Data are set forth in the Data Processing Terms (see [Annex](#)). User agrees and consents to the processing of User's Personal Data as herein specified.

6. Responsibility for the selection and use of the SOFTWARE and Digital Services

- 6.1 Unless otherwise expressly agreed, the SOFTWARE and Digital Services are provided "as is".
- 6.2 User is responsible for the selection, installation, provisioning, monitoring, managing and control of the use of the SOFTWARE and Digital Services and for the output results to be achieved with the Digital Services. User is obliged to make appropriate backups to prevent loss of data stored on the User's systems in the case of malfunction of the SOFTWARE or Digital Services. Digital Services are tools designed for the exclusive use of duly trained personnel. Digital Services cannot serve as a replacement for professional assessment or independent testing of physical prototypes in relation to product stress, safety or utility or insights based on the data processed. User assumes sole responsibility as to the results to be achieved from the use of Digital Services.
- 6.3 Neither Digital Services nor any of its components are intended for the planning or operation of nuclear facilities, life support systems, aircrafts or other activities, where any failure of Digital Services, their components or both could lead to death, personal injury, severe physical or environmental damage. It is hereby explicitly stipulated that some of the components are only approximate representations and possibly may not be suitable for certain applications.
- 6.4 Where User Personal Data is processed, User is responsible for compliance with all applicable data protection laws in relation to the processing of personal data under the Digital Services. This in particular includes compliance with the data subject's rights under applicable laws (e.g. right for information, deletion, etc.).
- 6.5 When not provided by Bystronic, User has to provide the hardware, on which the Bystronic Bystronic Data Hub will be installed. User has to install the Bystronic Data Hub software on its IT infrastructure and to connect the Equipment to the

Bystronic Data Hub and is responsible to provide the communication capabilities required to run the Digital Services in accordance with these SOFTWARE SERVICES T&C.

- 6.6 User is responsible of configuring its IT infrastructure to allow the User Data required to run the Digital Services to be sent to the Database. User is also responsible to protect its IT infrastructure through adequate technical and organizational measures to ensure an appropriate level of data protection, including against the risk of unauthorized or accidental destruction, accidental loss, technical faults, forgery, theft or unlawful use and unauthorized alteration, copying, access or other unauthorized processing. User is further responsible for keeping related components of the IT infrastructure up to date, corresponding to the current state of the art.
- 6.7 User must treat the Access Data as confidential and may not disclose such data to third parties. User must immediately notify Bystronic of any unauthorized use of its Access Data or any security incident related to the data. Bystronic has the right to ask User to change its password and take any additional necessary measures in the event that Bystronic believes that the account is no longer secure. Bystronic assumes no liability for any losses or damages of the User that arise from misuse of the Access Data or the SOFTWARE.
- 6.8 User represents and warrants that User has taken all required measures to allow for the transfer of information protected under any business secret in favour of User's clients to Bystronic and its use for the provision of the Digital Services.

7. Acknowledgements and warranty limitations

- 7.1 The SOFTWARE is licensed "as is". Bystronic makes no warranty that the SOFTWARE and the Digital Services meet the requirements of the User.
- 7.2 Digital Services shall be made available via the Internet. User thus acknowledges that Bystronic offers no warranty with regard to the uninterrupted availability of Digital Services nor the uninterrupted functionality of the Internet connection. In addition, User acknowledges that information that is conveyed via the Internet can be lost, or be purloined or modified by third parties. Bystronic reserves the right to modify and maintain Digital Services in order to improve the service level for User.
- 7.3 User acknowledges that complex SOFTWARE is never wholly free from defects, errors and bugs, nor entirely free from security vulnerabilities. Bystronic gives no warranty or representation that the SOFTWARE will be wholly free from any defects, errors and bugs, nor that they will entirely secure.
- 7.4 Any warranty claims for Digital Services are in particular excluded in the following cases: (i) accident, damage, misuse or negligent use of the SOFTWARE and/or Digital Services, (ii) acts or omissions, for which Bystronic is not responsible, (iii) the use of the SOFTWARE and/or Digital Services in conjunction with products, materials or SOFTWARE not offered by Bystronic or not intended and/or designed for combination with the SOFTWARE and/or Digital Services or (iv) in cases where the User has neglected to install and use all upgrades and updates to the SOFTWARE and Digital Services.
- 7.5 User may have additional consumer rights under its local laws which these provisions may not change. To the fullest extent permissible under present laws, Bystronic excludes any warranties of merchantability, fitness for a particular purpose and non-infringement for its SOFTWARE and Digital Services.

8. Limitations and exclusions of liability

- 8.1 As far as legally permissible, the liability of Bystronic and third parties, whose software may be integrated in the SOFTWARE and Digital Services, for all damage occurred during a subscription term and on whatever legal basis (e.g. contract, tort, negligence) shall be limited to the amount of the license fee, which User paid for Digital Services, or the fee, which User paid for the corresponding subscription service or other support arrangement.
- 8.2 Under no circumstances shall Bystronic or third parties, whose software may be integrated in Digital Services, be liable for special, indirect, accidental, punitive or consequential damages (including losses, which result from uselessness, data loss, loss of income, loss of profit, loss of goodwill or orders) or other damage, including for fines or similar, regardless of the legal basis for any claim which may arise as a result of defective performance of the SOFTWARE and/or Digital Services or other reasons connected to the SOFTWARE and/or Digital Services. This shall apply even where Bystronic or third parties, whose software may be integrated in Digital Services, had been informed of the possibility of such damages.
- 8.3 Under no circumstances shall Bystronic be liable to the User for Bystronic's failure to perform any of its obligations during any period in which such performance is delayed, rendered impractical or impossible due to Force Majeure, as this term is defined in the ICC Force Majeure Clause 2020. If a case of Force Majeure occurs, Bystronic will inform User of such occurrence in due course.

9. Export provisions

- 9.1 The SOFTWARE and Digital Services may contain software and technical data which are regulated by export control laws of the United States, Great Britain and / or other countries. User shall not directly or indirectly export or re-export the SOFTWARE and Digital Services without the approval of the relevant competent authorities of the User's country of origin, of any other country concerned, nor without the written consent of Bystronic and the Licensor. User must comply with all domestic and international export laws and regulations.

10. Compensation

- 10.1 The subscription fees and payment terms for the SOFTWARE and Digital Services shall be those expressly agreed between Bystronic and the User.
- 10.2 Bystronic reserves the right to modify the subscription fees agreed on an annual basis.
- 10.3 To the extent required by local legislation, the payment due to Bystronic shall be subject to VAT and other applicable taxes which are added to the applicable subscription fee.
- 10.4 Payments for subscription fees become due at the first day of every subscription term. Bystronic may block the access to the Digital Services in case of delayed payment until the amount due was credited to Bystronic's bank account.
- 10.5 With the end of the subscription and/or if the User does not fulfill its obligations to pay the license fee despite a reminder and granting of another payment period, the User's right to use the SOFTWARE ends and Bystronic has the right to

prevent any access to any data generated during the entire subscription term and to the cloud with immediate effect.

11. Termination

11.1 Without prejudice to the termination of the subscription term or its renewal, Bystronic has the right to terminate the contract, the license rights and the Digital Services in writing:

- (i) immediately and without giving prior warning upon breach of any of the User's obligations as agreed or contained in the SOFTWARE SERVICES T&C or in the SOFTWARE AGREEMENT; or
- (ii) if the User breaches any essential provision of these SOFTWARE SERVICES T&C or in the SOFTWARE AGREEMENT, or any other agreement concluded in connection with the Digital Services and such breach is not remedied within fifteen (15) days of Bystronic giving written notice thereof.

Bystronic shall not be liable for any damage as a result of termination. Termination shall take place without prejudice to any other rights or remedies of Bystronic.

11.2 Upon termination, User must promptly and according to Bystronic's instructions return or destroy all copies of SOFTWARE related to the Digital Services and of all Access Data.

12. General Provisions

12.1 In the event that individual provisions of these SOFTWARE SERVICES T&C or parts hereof should be or become inoperable or invalid, this shall not affect the validity of the remaining provisions. In place of the inoperable or invalid provision, or part thereof, the Parties shall insert a rule that corresponds as closely as possible to the economic intentions of the Parties at the time of signing.

12.2 The SOFTWARE SERVICES T&C shall in all respects be governed by substantive Swiss law, subject to inalienable, mandatory provisions of local law. The rules of conflict of laws and the United Nations Convention on the International Sale of Goods (CISG), if the latter might be applicable at all, shall not apply.

12.3 Any dispute, controversy, or claim arising out of, or in relation to, the SOFTWARE AGREEMENT and/or these SOFTWARE SERVICES T&C, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution and the Association for IT Dispute Resolution (ITDR) Recommendations for Arbitration, both in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules and Recommendations. The number of arbitrators shall be one. The seat of the arbitration shall be Zurich/Switzerland. The arbitral proceedings shall be conducted in English language.

12.4 The SOFTWARE AGREEMENT and these SOFTWARE SERVICES T&C establish the agreements, clauses and conditions of use among the Parties, which shall apply unless they may be contrary to mandatory law of the state, province or country of the User, morality or public order.

Annex: Data Processing Terms

1. Subject matter and duration of the Order

- 1.1 The subject matter of these Data Processing Terms ("**Terms**") results from the SOFTWARE AGREEMENT and the SOFTWARE SERVICES T&C entered into between Bystronic and the User and relates to the processing of User Personal Data (as defined in the SOFTWARE SERVICES T&C and as further specified in section 2 below) by Bystronic.
- 1.2 The duration of these Terms corresponds to the duration of the contractual relation between the Parties under the SOFTWARE AGREEMENT and the SOFTWARE SERVICES T&C.
- 1.3 Any defined terms with capital letters or starting with capital letters used and not specifically defined in this Annex shall have the meaning as laid down in the SOFTWARE SERVICES T&C of which these Terms form an integral part.

2. Specification of the Terms or Contract Details

- 2.1 Where processing is to be carried out, Bystronic shall process the User Personal Data in such a manner that processing will meet the requirements of Swiss Federal Act on Data Protection ("**FADP**") and if applicable additional of REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("**GDPR**") and ensure the protection of the rights of the Data Subject.
- 2.2 Bystronic shall process the User Personal Data to comply with its obligations under the contractual relation and during the provision of services. Nature and purpose of processing of User Personal Data by Bystronic for the User are further defined in the SOFTWARE AGREEMENT and the SOFTWARE SERVICES T&C and may include the following:
 - Predictive Maintenance: Bystronic will analyze the data to discover patterns in the sensor data of a machine which precede and indicate breakdowns or need for maintenance prior to occurrence. Based on such analysis, Bystronic can predict when Equipment is likely to require maintenance in the near future before it actually does and will proactively propose suitable time slots for corresponding maintenance work (which may also include delivery of spare parts).
 - Remote Service Assistance: A Bystronic service employee will access historical or real-time streaming data of Equipment in order to derive and propose suitable measures for maintenance or service support.
 - Benchmarking re Bystronic Equipment: Bystronic will analyze the data to derive a baseline of the overall equipment efficiency („OEE") KPI of the Bystronic Equipment used by Customers. This will allow Customers to benchmark their performance with their Bystronic Equipment against the baseline (i.e. "Inter-Customer Comparison") and help identify optimization opportunities.
- 2.3 The type of User Personal Data used is further defined in the SOFTWARE AGREEMENT and the SOFTWARE SERVICES T&C and includes:
 - Name and contact details of Customer/User and third parties (if applicable)
 - Access Data (as defined in the SOFTWARE AGREEMENT)
 - User Data:
 - Equipment operator ID
 - picture, sound and video data: photos, sound and/or video streams or files taken and sent by Customer with handheld devices or similar on

- its premises, e.g. photos of an employee showing a jammed machine part or videos of an employee demonstrating a defective process.
- RAM-dump data: exhaustive collection of files and logs from the Equipment control unit, including among others actual job lists (loaded cutting plans and cutting parameters) on the machine at the time the RAM-dump is triggered, history of machine operators signed in, and their interactions with the respective machine and its interfaces.

2.4 The categories of data subjects comprise:

- Customer/User
- Employees of Customer/User
- Third parties
- Persons who may access or receive the User Personal Data
- Employees of Bystronic

3. Technical and Organisational Measures

- 3.1 Bystronic shall establish the security in accordance with Article 8 FADP and as far as applicable in accordance with Article 28 Paragraph 3 Point c, and Article 32 GDPR in particular in conjunction with Article 5 Paragraph 1, and Paragraph 2 GDPR. The measures to be taken are measures of data security and measures that guarantee a protection level appropriate to the risk concerning confidentiality, integrity, availability and resilience of the systems. The state of the art, implementation costs, the nature, scope and purposes of processing as well as the probability of occurrence and the severity of the risk to the rights and freedoms of natural persons within the meaning of Article 32 Paragraph 1 GDPR must be taken into account. [Details in Appendix 1 to these Terms (Technical and Organisational Measures)]
- 3.2 (3) The Technical and Organisational Measures in Appendix 1 are subject to technical progress and further development. In this respect, it is permissible for Bystronic to implement alternative adequate measures. In so doing, the security level of the defined measures must not be reduced.

4. Rectification, restriction and erasure of data

- 4.1 Bystronic may not on its own authority rectify, erase or restrict the processing of User Personal Data that is being processed on behalf of the Customer/User, but only on documented instructions from the Customer/User.
- 4.2 Insofar as a Data Subject contacts Bystronic directly concerning a rectification, erasure, or restriction of processing, Bystronic will immediately forward the Data Subject's request to the Customer/User.
- 4.3 Insofar as it is included in the scope of services, the erasure policy, 'right to be forgotten', rectification, data portability and access shall be ensured by Bystronic in accordance with documented instructions from the Customer/User.

5. Quality assurance and other duties of Bystronic

- 5.1 In addition to complying with the rules set out in these Terms, Bystronic shall comply with the statutory requirements referred to in Articles 19 to 24 FADP and if applicable to in Articles 28 to 33 GDPR; accordingly, Bystronic ensures, in particular, compliance with the following requirements:

- (i) A designated contact person of Bystronic for data protection questions will be provided to the Customer/User upon request.
- (ii) Confidentiality in accordance with Article 9 Paragraph 2 FADP and if applicable with Article 28 Paragraph 3 Sentence 2 Point b, Articles 29 and 32 Paragraph 4 GDPR. Bystronic entrusts only such employees with the data processing who have been bound to confidentiality and have previously been familiarised with the data protection provisions relevant to their work. Bystronic and any person acting under its authority who has access to User Personal Data, shall not process that data unless on instructions from the Customer/User, which includes the powers granted in the SOFTWARE AGREEMENT, the SOFTWARE SERVICES T&C and these Terms.
- (iii) Implementation of and compliance with all Technical and Organisational Measures necessary for this Order in accordance with Article 9 Paragraph 2 FADP and if applicable with Article 28 Paragraph 3 Sentence 2 Point c, Article 32 GDPR [details in Appendix 1].
- (iv) The Customer/User and Bystronic shall cooperate, on request, with the supervisory authority in performance of its tasks.
- (v) The Customer/User shall be informed proactively of any inspections and measures conducted by the supervisory authority, insofar as they relate to these Terms. This also applies insofar as Bystronic is under investigation or is party to an investigation by a competent authority in connection with infringements to any Civil or Criminal Law, or Administrative Rule or Regulation regarding the processing of User Personal Data in connection with the processing of these Terms.
- (vi) Verifiability of the Technical and Organisational Measures conducted by the Customer/User as part of the Customer's/User's supervisory powers referred to in section 7 of this Annex.

6. Subcontracting

- 6.1 Subcontracting for the purpose of this Agreement is to be understood as meaning services which relate directly to the provision of the services under the SOFTWARE AGREEMENT. This does not include ancillary services, such as telecommunication and hosting services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment. Bystronic shall, however, use reasonable endeavors to make appropriate and legally binding contractual arrangements and take appropriate inspection measures to ensure the data protection and the data security of the User Personal Data, even in the case of outsourced ancillary services.
- 6.2 The Customer/User agrees to the commissioning of subcontractors in accordance with Article 9 FADP and if applicable with Article 28 (1) sent. 1 of the GDPR. Bystronic shall inform the Customer/User of any intended changes concerning the addition or replacement of other subcontractors, thereby giving the Customer/User the opportunity to object to such changes.

7. Supervisory powers of the Customer/User

- 7.1 The Customer/User has the rights as further specified in Article 9 FADP and if applicable in Article 28 of the GDPR, after consultation with Bystronic.
- 7.2 If GDPR is applicable Bystronic shall ensure that the Customer/User is able to verify compliance with the obligations of Bystronic in accordance with Article 28 GDPR.
- 7.3 Bystronic may claim remuneration for enabling Customer/User inspections.

8. Communication in the case of infringements by Bystronic

- 8.1 Bystronic shall assist the Customer/User in complying with the obligations concerning the security of User Personal Data, reporting requirements for data breaches, data protection impact assessments and prior consultations, referred to in Articles 22 to 24 FADP and if applicable to in Articles 32 to 36 of the GDPR. These include:
- (i) Ensuring an appropriate level of protection through Technical and Organizational Measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (ii) The obligation to report a User Personal Data breach immediately to the Customer/User.
 - (iii) The duty to assist the Customer/User with regard to the Customer's/User's obligation to provide information to the Data Subject concerned and to immediately provide the Customer/User with all relevant information in this regard.
 - (iv) Supporting the Customer/User with its data protection impact assessment.
 - (v) Supporting the Customer/User with regard to prior consultation of the supervisory authority.
- 8.2 Bystronic may claim compensation for support services which are not included in the description of the services and which are not attributable to failures on the part of Bystronic.
- 8.3 Bystronic reserves the right to report FADP and GDPR incidents involving User Personal Data to authorities with jurisdiction over such incidents to the extent required by law.

9. Authority of the Customer to issue instructions

- 9.1 The Customer/User shall immediately confirm oral instructions (at the minimum in text form).
- 9.2 Bystronic shall inform the Customer/User immediately if he considers that an instruction violates data protection regulations. Bystronic shall then be entitled to suspend the execution of the relevant instructions until the Customer/User confirms or changes them.

10. Deletion and return of User Personal Data

- 10.1 Copies or duplicates of the User Personal Data may need to be created for technical reasons in order to ensure the performance of the Digital Services offered.
- 10.2 After conclusion of the services, or earlier upon request by the Customer/User, at the latest upon termination of the SOFTWARE AGREEMENT, Bystronic shall hand over to the Customer/User or – subject to prior consent – destroy all documents, processing and utilization results, and data sets related to the SOFTWARE AGREEMENT that have come into its possession, in a data-protection compliant manner. The same applies to any and all connected test, waste, redundant and discarded material. The log of the destruction or deletion shall be provided on request. The right of Bystronic to anonymize Customer/user Personal Data and use this anonymized data for aggregate data purposes and as further specified in the SOFTWARE AGREEMENT and the SOFTWARE SERVICES T&C shall remain unaffected.

Appendix 1 to Data Processing Terms - Technical and Organisational Measures

1. Confidentiality

- **Physical Access Control**
No unauthorised access to Data Processing Facilities, e.g.: magnetic or chip cards, keys, electronic door openers, facility security services and/or entrance security staff, alarm systems, video/CCTV Systems
- **Electronic Access Control**
No unauthorised use of the Data Processing and Data Storage Systems, e.g.: (secure) passwords, automatic blocking/locking mechanisms, two-factor authentication, encryption of data carriers/storage media
- **Internal Access Control** (permissions for user rights of access to and amendment of data)
No unauthorised Reading, Copying, Changes or Deletions of Data within the system, e.g. rights authorisation concept, need-based rights of access, logging of system access events
- **Isolation Control**
The isolated Processing of Data, which is collected for differing purposes, e.g. multiple Customer support, sandboxing;
- **Pseudonymisation**
The processing of Customer Personal Data in such a method/way, that the data cannot be associated with a specific Data Subject without the assistance of additional Information, provided that this additional information is stored separately, and is subject to appropriate technical and organisational measures.

2. Integrity

- **Data Transfer Control**
No unauthorised Reading, Copying, Changes or Deletions of Data with electronic transfer or transport, e.g.: Encryption, Virtual Private Networks (VPN), electronic signature;
- **Data Entry Control**
Verification, whether and by whom Customer Personal Data is entered into a Data Processing System, is changed or deleted, e.g.: Logging, Document Management.

3. Availability and Resilience

- **Availability Control**
Prevention of accidental or wilful destruction or loss, e.g.: Backup Strategy (online/offline; on-site/off-site), Uninterruptible Power Supply (UPS), virus protection, firewall, reporting procedures and contingency planning
- **Rapid Recovery**

4. Procedures for regular testing, assessment and evaluation

- Data Protection Management;
- Incident Response Management;
- Data Protection by Design and Default;
- Order or Contract Control

No third party data processing without corresponding instructions from the Customer, e.g.: clear and unambiguous contractual arrangements, formalised Order Management, strict controls on the selection of the Service Provider, duty of pre-evaluation, supervisory follow-up checks