

## 1 BACKGROUND

- 1.1 These General Terms and Conditions of Sale (“GT&C”) shall apply between Mycronic AB, Swedish company registration no. 556351-2374, Nytorpsvägen 9, 183 71 Täby Sweden, (hereinafter called “Mycronic”) and you as the purchaser of Mycronic’s products and services (the “Buyer”).
- 1.2 These GT&C shall apply to all products ordered by the Buyer from Mycronic (the “Products”) as well as any accessories for such Products (“Accessories”), all spare parts (“Spare Parts”) and all services, such as support and training, ordered by the Buyer from Mycronic (“Services”), together the “Deliverables”. All references to the “Agreement” in these GT&C shall jointly mean Mycronic’s order confirmation including Mycronic’s offer and any exhibits thereto, these GT&C and Orgalime S 2012 – GENERAL CONDITIONS for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS. In the event of any discrepancy, the different terms shall apply in following order: (i) Mycronic’s order confirmation; (ii) Mycronic’s offer and exhibits thereto; (iii) these GT&C; (iv) Orgalime S 2012.

## 2 ORDERS

- 2.1 An order by the Buyer shall be regarded as an offer by the Buyer to purchase the Deliverables pursuant to these GT&C, and Mycronic’s order confirmation shall be deemed to be an acceptance of the Buyer’s offer. Any terms and conditions provided by the Buyer shall not apply between the parties.

## 3 DELIVERY

- 3.1 Deliverables are delivered Ex Works (INCOTERMS in the latest version at the time of the order confirmation) from the applicable locations of Mycronic, unless otherwise set out in the Agreement.
- 3.2 The parties agree that Orgalime S 2012 – GENERAL CONDITIONS for the SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS shall apply between the parties to the extent not being contradictory to the provisions of other parts of the Agreement. The Buyer’s sole and exclusive remedy for delay is set out in Orgalime S 2012.
- 3.3 Any claim from the Buyer that a Deliverable is damaged or otherwise deviate from the Agreement shall be made in writing to Mycronic without delay and always within 10 calendar days from receiving the Deliverable. If the Buyer fails to make such a claim, the Buyer shall be deemed to have waived its rights to assert a claim. A claim shall not prejudice or suspend Mycronic’s right to receive payment in full for a delivery.
- 3.4 Except for return of goods replaced under warranty, Mycronic does not accept returns of purchased goods. For warranty conditions and limitations please refer to the Warranty section in these GT&C.

## 4 PACKAGING

- 4.1 Unless otherwise agreed, packaging is not included in the purchase price for Deliverables and will be invoiced according to Mycronic’s current price list.

## 5 SUPPLY OF SPARE PARTS

- 5.1 For commercially active standard Products listed in Mycronic’s price list, Mycronic will make reasonable commercial efforts to supply Spare Parts for a period of seven (7) years from the original shipment date.

## 6 INSTALLATION

- 6.1 Unless otherwise agreed, installation and training are not included in the price for the Deliverables.
- 6.2 If installation is part of the offer, the Buyer shall, prior to the agreed delivery date have prepared the installation site for the Deliverables according to Mycronic’s installation requirements and guidelines.
- 6.3 Buyer acknowledges that Mycronic cannot be held liable for any malfunction or defect of a Deliverable or any other consequence having occurred as a result of non-compliance with Mycronic’s installation requirements and guidelines.

## 7 FEES AND PAYMENT

- 7.1 The price and payment terms are set out in the order confirmation. All prices are exclusive of VAT and other sales taxes. If no price or payment terms are set out in the order confirmation, Mycronic’s current price list shall apply and payment shall be made in advance.

## 8 RETENTION OF TITLE AND FUNCTIONAL CODE

- 8.1 To the extent permitted by applicable laws, the Deliverables shall remain the property of Mycronic until fully paid by the Buyer. The

Buyer shall take all necessary actions in order to secure Mycronic’s rights to the Deliverables in accordance with this Section 8.1.

- 8.2 If Mycronic and the Buyer have agreed on a payment plan with multiple instalments, the Deliverable may be equipped with a functional code. The functional code is a “key” which will disable the Deliverable if the Buyer fails to comply with the instalment plan. After complete and final payment, the functional code will be deactivated.

## 9 WARRANTY

- 9.1 Mycronic warrants that the Deliverables in all material aspects comply with the technical specifications and the order confirmation as set out in this Section 9.
- 9.2 Mycronic undertakes to remedy, at no cost for the Buyer, any defects in the Deliverables, or if Mycronic so chooses, compensate the Buyer for the value of such defective Deliverable up to a maximum amount corresponding to the price for the defective Deliverable, provided that
- Buyer notifies Mycronic in writing within the warranty period promptly upon discovery of defects;
  - the defective Deliverable is returned to Mycronic and shipping charges are prepaid by the Buyer; and
  - Mycronic’s examination of such Deliverable discloses that defects are not outside the scope of Mycronic’s warranty.
- 9.3 Mycronic decides in its sole discretion if a warranty repair shall be made at Mycronic’s or the Buyer’s premises.
- 9.4 Mycronic does not warrant the merchantability, aptness, utility, functionality of the Deliverables or that the Deliverables are fit for a particular purpose, unless specified in Mycronic’s order confirmation.
- 9.5 The warranty above is limited to defects discovered and reported within twelve (12) months from the date of invoice, cover the original purchaser, and protects against failure, breakage and manufacturing defects. The above warranty does not cover refurbished (unless otherwise specified), repaired or second hand Deliverables. The original warranty period for any Deliverable, which has been repaired or replaced by Mycronic will not be extended. Any part replaced under the warranty will become the property of Mycronic.
- 9.6 The warranty does not cover Buyer specific or specifically manufactured items, nor wear and tear parts, such as but not limited to, parts exchanged during preventative maintenance or consumables such as but not limited to, solder paste, assembly fluids, ejectors, dispensing nozzles, tool tips and feed tubes (“Wear & Tear Parts”).
- 9.7 The warranty shall not apply to defects resulting from: a) improper or inadequate maintenance by the Buyer; b) operation of the Deliverables not in accordance with Mycronic’s installation requirements and guidelines; c) unauthorized modification or misuse; d) use of non-Mycronic parts or parts not supplied by Mycronic; e) improper site preparation and site services supplying the Deliverables; f) installation not made by Mycronic or by a Mycronic authorized distributor without Mycronic’s prior approval; g) installation deviating from the instructions provided in Mycronic’s installation requirements and guidelines; h) any operation, repair or other handling performed on the Deliverables by a person not authorized (trained and certified) by Mycronic or by an Mycronic authorized distributor, or i) Wear & Tear Parts.
- 9.8 Warranty claims shall be handled in accordance with Mycronic’s Warranty Return Policy in force at the time of the claim. To make a warranty claim, please contact your local Mycronic sales office.

## 10 LIMITATION OF LIABILITY

- 10.1 The warranty provisions in Section 9 shall constitute Mycronic’s exclusive liability and sole remedy for any damages resulting from defects in the Deliverables. Mycronic does not undertake any responsibility for the consequence of the use of any Deliverable in combination with any other defective material, substance or product.
- 10.2 Mycronic shall not be liable for any indirect loss, including but not limited to loss of business, failure to achieve expected savings, loss of income or loss of data. In any case, Mycronic’s liability under the Agreement is limited to an aggregated amount not exceeding the contract value for the defective Deliverable(s) giving rise to the claim. The limitations of liability do not apply in cases of intent or gross negligence.

**11 INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT**

- 11.1 Mycronic or its third party licensors, shall retain all right, title and interest to all intellectual property rights, including but not limited to patents, copyright, trademark and trade secrets embodied in the Deliverables.
- 11.2 Mycronic grants the Buyer a non-exclusive and non-transferable limited license to use any Mycronic software delivered together with the Deliverables solely for the purpose of operating and maintaining the Deliverables.
- 11.3 Where any Deliverable supplied by Mycronic embody, include or contain computer program(s) related documentation or other rights, which is owned by a third party, all rights and liabilities associated with the use and/or reproduction thereof will be subject to the terms of the applicable end user license terms, to the exclusion of all warranties, liabilities and obligations on Mycronic's part. Applicable end-user license terms and references to such ("**End User License Terms**") are attached hereto as Exhibit 1 (Third Party Rights).
- 11.4 In the event that a Deliverable (that is not subject to End User License Terms), or the use thereof are held to constitute an infringement of any intellectual property rights in the territory where the Deliverable is used and the use is thereby prevented, Mycronic will at its own expense and option either procure for the Buyer the right to continue using the Deliverable or replace the same with a non-infringing product, or modify the Deliverable so that it becomes non-infringing, or may elect to retake possession of the Deliverable and refund the purchase price. Subject to the foregoing, Mycronic shall be under no liability to the Buyer for any loss, damage or enquiry, whether direct or indirect, resulting from any intellectual property right infringement of the Deliverable.

**12 CONFIDENTIALITY**

- 12.1 The Buyer hereby undertakes not to disclose to any third party information regarding the Agreement, nor any other information which the Buyer has learned as a result of the Agreement, whether written or oral and irrespective of form ("**Confidential Information**"). The Buyer agrees and acknowledges that the Confidential Information may be used solely for the fulfilment of the obligations under the Agreement and not for any other purpose. The Buyer further agrees to use, and cause its directors, officers, employees, sub-contractors or other intermediaries to use, the same degree of care (but not less than reasonable care) to avoid disclosure or use of Confidential Information as it uses with respect to its own confidential and/or proprietary information.
- 12.2 This confidentiality undertaking does not apply to information which a) at the date of its disclosure is in the public domain or at any time thereafter comes into the public domain (other than by breach of these GT&C); or b) the Buyer can evidence was in its possession or was independently developed at the time of disclosure and was not obtained, directly or indirectly, by or as a result of breach of a confidentiality obligation.
- 12.3 Neither shall this confidentiality undertaking apply to the extent that the Buyer is required to make a disclosure of information by law or pursuant to any order of court or other competent authority or tribunal or by any applicable stock exchange regulations or the regulations of any other recognized market place. In the event that the Buyer would be required to make any such disclosure, the Buyer undertakes to give Mycronic immediate notice prior to any such disclosure, in order to make it possible for Mycronic to seek an appropriate protective order or other remedy. The Buyer also agrees and undertakes to use its best efforts to ensure that any information disclosed under this section, to the extent possible, shall be treated as confidential by anyone receiving such information.

**13 END-OF-LIFE**

- 13.1 This section only applies on Deliverables originally placed on the market of a European Union member state.
- 13.2 Mycronic, its distributors or local authorized representatives will provide arrangements for the collection, treatment, recycling, recovery and environmentally sound disposal of any qualifying electrical and electronic Deliverables supplied from Mycronic as of August 14, 2005 or later when that equipment eventually reaches its end-of-life and becomes waste.
- 13.3 The Buyer shall bear all costs for the collection, treatment, recycling, recovery and environmentally sound disposal of such waste. Should the Buyer resell a Deliverable supplied from Mycronic as of August 14, 2005 or later, the Buyer shall ensure that such new buyer adheres to this financing obligation and bears all costs for the collection, treatment, recycling, recovery and environmentally sound disposal of such waste.

- 13.4 When any qualifying electrical and electronic Deliverable placed on the market of a European Union member state prior to August 14, 2005 has reached its end-of-life and becomes waste (historical waste), Mycronic or its local authorized representatives will provide arrangements for the collection, treatment, recycling, recovery and environmentally sound disposal of that historical waste provided that Mycronic replaces such historical waste with new equivalent products or new products fulfilling the same function. The Buyer shall bear all costs for the collection, treatment, recycling, recovery and environmentally sound disposal of such historical waste.

- 13.5 To request a return of a Deliverable under the WEEE directive, or to learn about your local arrangements and authorized representatives, the Buyer may contact Mycronic using the online contact request form at [www.mycronic.com](http://www.mycronic.com) and select subject 'WEEE'.

**14 SAFETY AND ENVIRONMENTAL RESPONSIBILITIES OF THE BUYER**

- 14.1 Unless otherwise specifically set forth herein and subject to mandatory laws, during installation and onwards the Buyer is responsible for complying with all applicable laws and regulations including but not limited to rules regarding storage, packaging, transportation, disposal of hazardous material, the proper and safe use and disposal of the Deliverables in a manner to protect human health and environment.

**15 TRADE COMPLIANCE**

- 15.1 The Buyer acknowledges and agrees that the products may be subject to export and trade sanctions laws, regulations, rules and licenses, including without limitation, those of the U.S., the UN and the EU ("**Export Laws**") as applicable to Mycronic. Any delay or incomplete delivery, caused by a denied or delayed export license or authorization required by applicable Export Laws, shall not constitute a breach of contract. All proposals and deliveries are subject to that all necessary export licenses and authorizations are granted.
- 15.2 The Buyer warrants that:
  - (a) it shall comply with Export Laws and agrees that it alone is responsible for ensuring its compliance with Export Laws. In particular, but without limitation, the Buyer shall not, and shall ensure that none of its affiliates shall, use, sell, resell, export, re-export, dispose of, disclose or otherwise deal with the Deliverables, directly or indirectly, to any country, destination or person in violation of Export Laws or in violation of any prohibited end-use pursuant to Export Laws;
  - (b) the Deliverables shall not, in violation of Export Laws, be re-transferred or otherwise made available to any party or parties listed on any "**Prohibited Party List**". A Prohibited Party List shall mean any list of prohibited parties or subject to sanctions imposed by the UN, EU, U.S. or other countries, including, but not limited to, the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the U.S. (OFAC), Department of the Treasury, the Entity List and Denied Persons List maintained by the Bureau of Industry and Security of the U.S. Department of Commerce (BIS), the list of statutorily or administratively debarred parties maintained by the Directorate of Defense Trade Controls of the U.S. Department of State, the Consolidated list of persons, groups and entities subject to EU financial sanctions, and the Consolidated United Nations Security Council Sanctions List, as amended from time to time;
  - (c) the Buyer shall not do anything which would cause Mycronic to be in breach of the Export Laws and shall protect, indemnify, defend and hold harmless Mycronic from any fines, losses and liabilities incurred by the Buyer as a result of the failure of the Buyer to comply with this Trade Compliance clause; and
  - (d) the Buyer is not directly or indirectly owned 50% or more in the aggregate by one or more persons listed on any Prohibited Party List, nor controlled by, or acting on behalf of or for the benefit of, directly or indirectly, any party or parties included on any Prohibited Party List. The Buyer shall immediately inform Mycronic about any change of ownership, control and/or other circumstances that may constitute a breach of this Trade Compliance clause.
- 15.3 Failure by the Buyer to comply with any part of this Trade Compliance clause, including being owned or controlled by any party or parties listed on any Prohibited Party List, shall constitute a material breach of this Agreement. Mycronic reserves the right to refuse to enter into or to perform any order, to cancel any order at its sole discretion, including a right to termination of

this Agreement, if Mycronic believes that the Buyer has failed to comply with any part of this Trade Compliance clause.

## 16 FORCE MAJEURE

- 16.1 Mycronic shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from event or circumstances outside its reasonable control, including but not limited to strikes, lock outs, war, fire, breakdown of plant or machinery, shortage or unavailability of material from a natural source of supply or any other unforeseen circumstances.
- 16.2 In case of Force Majeure, the time for performance of the relevant obligation of Mycronic shall be appropriately extended. If Mycronic is prevented from performing a contractual obligation by such a circumstance for a period of two (2) months or more, Mycronic shall be entitled to terminate the Agreement.

## 17 GOVERNING LAW AND DISPUTES

- 17.1 This Agreement will be construed and governed in accordance with the substantive laws of Sweden.
- 17.2 Any disputes, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity of the Agreement, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The place of arbitration shall be in Stockholm and the language to be used in the arbitral proceedings shall be English.
- 17.3 Claims for unpaid Deliverables or intellectual property infringements may however be initiated by Mycronic in any competent court of jurisdiction.
- 17.4 The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the prior written consent of the other party. This notwithstanding, a party shall not be prevented from disclosing such information in order to safeguard in the best possible way his rights vis-à-vis the other party in connection with the dispute, or if the party is obliged to so disclose pursuant to statute, regulation, a decision by an authority, a stock exchange contract or similar.
- 17.5 In case this Agreement or any part of it is assigned or transferred to a third party, such third party shall automatically be bound by the provisions of this arbitration clause.

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**EXHIBIT 1 THIRD PARTY RIGHTS****1. GENERAL**

The below provisions may, to the greatest extent permitted by applicable laws, be enforced by both Mycronic and relevant third parties.

Where any Deliverable supplied by Mycronic embody, include or contain computer program(s) related documentation or other rights, which is owned by a third party, all rights and liabilities associated with the use and/or reproduction thereof will be subject to the terms of the applicable End User License Terms as displayed on such third parties web sites.

At the time of entering into the Agreement the following third party software may be part of the Deliverables.

Oracle Java Binary Program ([www.oracle.com](http://www.oracle.com))

AEGIS FactoryLogixExpress ([www.aiscorp.com](http://www.aiscorp.com))

Safe net

The Agreement may also include delivery of Dell computers. All such use is limited to Dell's applicable terms of use.

The Buyer's use of third party software and Dell's computers is restricted to applicable End User License Terms and the Buyer will indemnify and hold Mycronic harmless from any claims, actions, loss or damages as a result of the Buyer's breach of such terms.

**2. TRADEMARKS**

WINDOWS® and MS-DOS® are registered trademarks of Microsoft Corp. UNIX® is a registered trademark of X/Open Company Ltd. Other trademarks used in a Deliverable or otherwise mentioned in the Agreement are registered or unregistered trademarks of their respective owners. None of the above mentioned trademarks may be used by the Buyer without a license from the respective owner.

**3. SPECIFIC TERMS**

In addition to the general requirements set out above, the following shall apply with respect to the Oracle Java Binary License.

Java Technology Restrictions - The Buyer may not create, modify, or change the behavior of classes, interfaces, or subpackages that are in, any way identified as "Java", "Javax", "Sun" or similar convention as specified by Oracle in any naming convention designation.

Trademarks and Logos - Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks") and the Buyer agrees to: (a) comply with the Java Trademark Guidelines at <http://www.oracle.com/us/legal/third-party-trademarks/index.html>; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks, and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by the Buyer in any Java Mark.

Source Code - The software may contain source code that, unless expressly licensed for other purposes, is provided solely for reference purposes.

Third Party Code - The Buyer are aware that additional copyright notices and license terms applicable to portions of the software are set forth in the THIRDPARTYLICENSEREADME.txt file.

Commercial Features - The Buyer may not use the Commercial Features not expressly included in the licensed software for any commercial or production purpose and requires a separate license from Oracle. "Commercial Features" means those features identified in Table 1-1 (Commercial Features In Java SE Product Editions) of the Program Documentation accessible at <http://www.oracle.com/technetwork/java/javase/documentation/index.htm>