

## **These are the Terms and Conditions of Business of the NicLen GmbH**

### **Section 1**

#### **Scope of application**

1. These terms and conditions of business (hereinafter known as T&Cs) are the basis and constitute an integral element of all contractual relationships between NicLen Gesellschaft für Elektronik Handel und Vermietung GmbH (hereinafter known as NicLen) and its contractual partners (hereinafter known as Hirers) and which covers the hire of items and associated services by NicLen.
2. The following hire periods and conditions alone shall apply. The terms and conditions of business of a Hirer shall not apply if they differ from these terms and conditions of business.

### **Section 2**

#### **Offer and Conclusion of a contract**

1. The offers made by NicLen are subject to change without notice and non-binding as a matter of principle. Orders placed by the Hirer as well as the order confirmation by NicLen must be made in writing to be legally valid.
2. The Hirer's corresponding order placement constitutes a binding offer. NicLen may accept this offer in writing up to 10 days before the beginning of the hire, no later however than within 14 days from the receipt of the placed offer.

### **Section 3**

#### **Hire period**

The hire period shall begin with the day agreed for the collection of the hire objects from the stores by NicLen (beginning of the hire period) and shall end on the day agreed for the return of the rented items to NicLen's stores (end of the hire period). Even if transport is provided by NicLen, the departure from the stores and the redelivery to the stores shall determine the beginning and end of the hire period respectively. Those days on which the hire items are collected / delivered by NicLen and returned / collected by NicLen shall also count as the hire period (even if they are just part days).

### **Section 4**

#### **Rental Price**

Unless different prices in the form of Section 2 Paragraph 1 have been agreed upon with legal effect for the specific performance, the prices in the price list valid when the contract is signed shall apply for the hire items handed over.

### **Section 5**

#### **Additional services**

Additional services, in particular deliveries, assembly and support provided by specialist staff shall be charged on the basis of a separate agreement. Section 2 Paragraph 1 shall likewise govern the legally valid conclusion of such a contract. Provided that the amount of the fee has not been agreed separately, NicLen shall be entitled to demand the payment of a reasonable fee.

### **Section 6**

#### **Cancellation by the Hirer**

The Hirer shall be entitled to terminate the contract up to 3 days prior to the beginning of the hire period without observing other notice periods upon the payment of a reservation lump sum (cancellation). Notice of termination must be

served in writing to be legally valid. The reservation lump sum shall be payable at the point in time at which notice of termination is given and amounts to 20% of the agreed rental price, if the cancellation is 30 or more days prior to the beginning of the hire period, 50% of the agreed rental price if cancellation takes place between 29 to 10 days prior to the beginning of the hire period and 80% of the agreed rental price if cancellation takes place from 9 and 3 days prior to the beginning of the hire period. If cancellation takes place 2 or less days prior to the beginning of the hire period the full rental price agreed shall have to be paid by the Hirer. The receipt of the notice of termination by NicLen shall determine the point in time at which cancellation is made.

The above hire periods and conditions shall also apply with regard to those remunerations and parts thereof which have been agreed for services within the meaning of Section 5, in so far as the Hirer cannot prove that NicLen has not sustained any loss at all or that the loss sustained is significantly less than the corresponding reservation lump sum payable towards the remuneration.

## **Section 7**

### **Payment**

1. Unless other hire periods of payment as in Section 2 Paragraph 1 have been agreed with legal effect for specific services, the whole remuneration shall be payable in full without prompt payment discounts by the agreed beginning of the hire period (at the latest) (payment in advance). NicLen shall only be obliged to hand over the hired items for use concurrently against the full payment of the remuneration.
2. It shall be the point in time at which money arrives (in particular if a non-cash payment is made too) and not when it is sent which shall count.
3. The Hirer shall not be entitled to any offsetting rights and rights of retention, unless his counter claims have been adjudicated or are not contested.
4. Interest is to be paid on the remuneration and all other claims under the contractual relationship during default in accordance with Section 288 II of the German Civil Code (BGB) at 8 percentage points above the base rate (section 247 I of the German Civil Code "BGB") as calculated by the Deutsche Bundesbank at the time.

## **Section 8**

### **Handing over of use and Warranty**

1. NicLen shall undertake to hand over the hired item from the NicLen stores in Dortmund in a suitable condition for the contractual use for the duration of the agreed hire period. Hired items may only be collected during collection times (Monday to Friday from 14:00 to 18:00).
2. The Hirer is obliged to inspect the hired items when they are handed over to him and if a defect is noted to inform NicLen of this without undue delay. If the Hirer fails to carry out an inspection and / or notify NicLen of any defects, the hired items handed over shall consequently be regarded as having been approved by the Hirer /fault-free, unless the defect could not have been identified during an inspection. If such a defect only comes to light subsequently, notification must be made without undue delay after it has been discovered. Otherwise the condition of the hired item handed over shall also be regarded as having been approved / fault-free. If the Hirer fails to notify NicLen of a defect, he shall consequently not be entitled to assert claims under warranty of any type and / or to terminate the contract or to demand compensation for damages on account of non-fulfilment or claims based upon unjustified enrichment , irrespective of other claims asserted by NicLen.
3. If an initial defect in the hired item exists in accordance with Para 2 above, NicLen shall consequently be entitled as it chooses, to supply a replacement / supply an additional item, or to carry out a repair. If NicLen is not able to complete the above

or rectify the defect on time, the Hirer may demand a reasonable reduction in the rental price, with regard to the individual defective / missing hired items. If more than one item has been hired, the entire contract can only be terminated on account of one individual item being faulty if hired items have been hired as belonging together and the defects impair the functioning of the hired items assumed in the contract significantly. If the Hirer is partly responsible for the disruption, he shall not be able to serve notice of termination.

4. If equipment with regard to which NicLen offers and recommends that specialist staff are also hired because the equipment is highly technical or difficult to use, but such equipment is hired by the Hirer without the specialist staff from NicLen, NicLen shall only be responsible for such equipment breaking down if the Hirer can prove that improper handling has not caused or contributed to the defects.
5. The Hirer's warranty rights, on account of non-fulfilment and defects which arise in the course of the hire period under the custody of the Hirer, in particular compensation claims for damages, regardless of who is responsible, will conversely not be admitted in accordance with Section 536d. Regardless of this, the Renter shall have to notify the Hirer without undue delay if a defect arises or precautionary measures to protect the thing against unforeseen risks become necessary (section 536c of the German Civil Code BGB).
6. The Hirer is obliged to obtain any public-law licences which may possibly be necessary in time in connection with the planned use of the hired items at his own expense. In so far as assembly is to be carried out by NicLen, upon request the Hirer shall have to prove to NicLen that he has obtained the necessary licences before work commences. NicLen shall not furnish any guarantee that a licence will be granted for the intended use of the hired item.

## **Section 9**

### **Compensation for damages**

None of the Hirer's compensation claims for damages (also including those for additional services, in particular transportation and assembly as well) shall be admitted, in particular also including those compensation claims for damages based upon impossibility of performance, on account of non-fulfilment resulting from a breach of contract other than delay or impossibility and from unlawful acts. The exclusion of liability shall also apply for all types of consequential damages, lost profit or other pecuniary loss. Not covered by the above exclusion of liability are those compensation claims, the cause of which is attributable to a grossly negligent or intentional act by NicLen and compensation claims for damages on account of the lack of an express characteristic guaranteed in writing. In so far as the liability of NicLen is not admitted, this shall also apply for the personal liability of the employees of NicLen.

## **Section 10**

### **Obligation to exclude liability for the benefit of NicLen**

The Hirer shall for his part undertake to agree the above provision in contracts with third parties, in particular artists, sportsmen or spectators etc. for the benefit of NicLen, provided that he has himself agreed a comparable exclusion of liability or is able to agree a comparable exclusion of liability for the benefit of NicLen without unreasonable economic disadvantages. If he fails to fulfil this obligation, he shall have to exempt NicLen from the above compensation claims for damages, in so far as NicLen is not liable to third parties on account of grossly negligent or intentional conduct.

## **Section 11**

## **The Hirer's obligations during the hire period**

1. The hired items are to be treated with care and consideration. The Hirer is obliged to service the hired items at his own expense. NicLen is entitled, but not obliged however, to service the hired items during the hire period.
2. The hired items may only be set up, used and dismantled by trained specialists in compliance with technical regulations. If material is hired without staff, the Hirer has to ensure compliance all the time with all the safety guidelines in force, in particular the accident prevention regulations (UVV) and the guidelines of the German Association for Electrical, Electronic and IT Technologies (VDE). In addition, the Hirer is obliged to comply with the applicable laws and standards in the country of deployment for use and storage of the hired items.
3. The Hirer shall have to ensure that the power supply for running the rented plant is fault-free. The Hirer shall be responsible for breakdowns and damage to the hired things as a result of power cuts, or interruptions to the power supply or current fluctuations, regardless of whether he to blame or not. The Hirer shall be liable for damage, losses or similar up to the value of the equipment when new. The Hirer shall have to refund the cost when new of blown, defective or lost bulbs or other parts, including small accessory parts.

## **Section 12**

### **Insurance**

The Hirer shall be obliged to take out proper and adequate insurance to cover the general risk associated with the respective hired thing (loss, theft, damage, legal liability). Proof that an insurance policy has been taken out must be submitted to NicLen upon request. NicLen shall take out an insurance policy at the Hirer's expense at the Hirer's express request.

## **Section 13**

### **Third Party rights**

The Hirer shall have to indemnify the equipment and hold it harmless from all encumbrances, claims, liens and other third party legal presumptions. He shall be obliged to notify the Renter and hand over all necessary documents without undue delay if the hired equipment is nevertheless taken in execution or claimed by third parties in any other way. The Hirer shall bear the costs (in particular including the costs of taking legal action as well) required to mount a legal defence to prevent such third party seizures.

## **Section 14**

### **Hire term of the contract**

1. Irrespective of the provisions laid down in Section 6, the contract may only be terminated by either Party for an important reason. This shall also apply in particular if additional services are to be rendered by NicLen.
2. NicLen shall be entitled to serve immediate notice of termination if an important deterioration occurs in the economic status of the Hirer. In particular if sustained or other enforcement measures are taken against him or if insolvency proceedings are opened or out-of-court composition proceedings are opened upon his assets.
3. The breach of the provisions in Section 11 Paragraph 2 shall be regarded as use of the hired items in breach of contract and shall entitle NicLen to serve immediate notice of termination upon the entire contract, without NicLen having to send out a warning letter beforehand.
4. In so far as the Parties have agreed that the Hirer shall pay instalments, NicLen may terminate the entire contract with immediate effect if the Hirer is in default with the payment of two successive instalments or a not inconsiderable part of the remuneration or if the Hirer is in default with the payment of a remuneration of a

sum amounting to two payments instalment for more than two payment dates, having agreed to pay regular instalments.

## **Section 15**

### **Return of the Hired items**

1. The hired items shall be returned in the stores of NicLen in Dortmund and they may only be returned on Monday to Friday between 10:00 and 18:00.
2. The Hirer is obliged to return all the equipment in a clean, orderly and perfect condition. NicLen shall reserve the right to conduct the incoming inspection of the returned hire items following receipt. If no complaints are raised following receipt this shall be regarded as approval that all the hired goods have been returned and that the condition of the returned hire items is satisfactory.
3. It is absolutely essential that the hired items are returned prior to the end of the hire period. If this is not possible the Hirer shall have to notify NicLen of this without undue delay in writing. The Hirer shall have to pay the full remuneration agreed for each day after the return date. NicLen shall reserve the right to assert a claim for other damages. The remuneration per day is to be worked out by dividing the originally agreed total price by the days of the hire period originally agreed.

## **Section 16**

### **Items hired on a long-term basis**

1. In so far as the hire period originally agreed is in excess of two months, (items hired long-term) the following terms and provisions shall also apply.
2. The Hirer shall be obliged to service and repair the hired items.
3. The Hirer shall be obliged to carry out the technical inspections and service the hired items himself as laid down by law and at his own expense.  
At the Hirer's request, NicLen shall hand out information about impending inspection dates and service schedules.
4. If the Hirer returns items without having carried out the work owed in Paragraph 1 and 2 above, NicLen shall be entitled to carry out or to have the necessary work carried out by third parties at the Hirer's expense without sending the Hirer a written reminder and setting him a period of time to carry out such work.
5. The above obligations shall also apply from the point in time at which the entire hire period (calculated from the original beginning of the hire period onwards) amounts to more than two months as a result of an extension agreed subsequently or in which the Hirer has had the rental item thing in his possession for more than two months for other reasons.

## **Section 17**

### **Consumables, Goods purchased for resale**

1. Consumables and goods purchased for resale shall remain the property of NicLen until the invoice for them has been paid in full, even if they have been combined or modified together with other equipment, parts and things of the Hirer. Moreover, these T&Cs shall apply accordingly.
2. The sale of used items shall not be covered by any warranty.
3. Defective bulbs shall be for the Hirer's / Buyer's account.
4. The purchase price of bulbs replaced by the Hirer during the hire period shall only be reimbursed if the bulbs believed to be defective are returned to NicLen. NicLen shall make a decision on refunding the purchase price depending upon the results of an inspection (of the defect bulb of the respective manufacturer).

## **Section 18**

### **Written form**

In so far as the requirement for written form has been agreed in accordance with these terms and conditions, this shall also be satisfied by a fax message or e-mail etc.

## **Section 19**

### **Final Provisions**

1. These terms and conditions of business and all legal relationships between NicLen and the Hirer shall be governed by the laws of the Federal Republic of Germany. German is the language of negotiation and contract.
2. The place of fulfilment as well as place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Dortmund.
3. Should a provision in these terms and conditions of business be or become invalid or not incorporated in the contract, the validity of all other provisions or agreements shall not be affected as a result. The Parties shall undertake to agree that legal arrangement which comes closest to the recorded intention of the Parties as a replacement.
4. No verbal side agreements have been made. Amendments to these provisions must be made in writing to be legally valid.
5. All technical information in the price list in force at that time shall be furnished without guarantee. Modification of models, prices and availability is reserved.

### **The following sections apply to transport and warehouse logistics services provided by Badger Transport and Logistics Services:**

## **Section 20**

### **Scope of ADSp 2017**

If not specified in these terms and conditions, the German Freight Forwarders' Standard Terms and Conditions 2017 (ADSp 2017) apply to transport and warehouse logistics services. NicLen is the Freight Forwarder and the customer is the Principal.

## **Section 21**

### **Storage and stored goods**

1. The agreed storage location is the headquarter of NicLen GmbH in Dortmund.
2. The storage of Theft-Sensitive Goods according to No. 1.3 ADSp 2017 is excluded. The stored goods must correspond to categories 1 to 3 according to VdS CEA 4001. The Principal assures that the goods intended for storage meet the requirements listed.
3. In case of a violation to No. 2 of this section, NicLen assumes no liability for the stored goods and is entitled to terminate the contract without notice. In this case, the Principal must arrange the collection at his own expense.
4. The Principal has to compensate NicLen for the damage to persons, rights or property resulting from the violation or the increased risk caused by the violation.