



**NICON INDUSTRIES** A/S

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## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

### **TERMS AND CONDITIONS OF DELIVERY**

**Table of contents**

1. Scope ..... 3

2. Commencement of the Agreement ..... 3

3. Power of attorney ..... 3

4. Prices ..... 3

5. Terms of delivery..... 4

6. Terms of payment ..... 5

7. Liability for defects/complaints ..... 6

8. Force majeure ..... 7

9. Caveat emptor ..... 8

10. Product liability ..... 8

11. Product information ..... 9

12. Protection of rights ..... 9

13. Drawings and descriptions..... 9

14. Governing law and arbitration ..... 9

## **1. Scope**

- 1.1 Any delivery from Nikon Industries A/S is based on these terms and conditions of sale and delivery which are binding on all deliveries between the parties. These therefore override all agreements and practices that are contrary to the meaning and scope of these terms and conditions, including terms and conditions prepared and submitted by the Buyer, unless otherwise indicated in the order confirmation submitted by Nikon Industries A/S.
- 1.2 Any delivery and installation should be carried out in accordance with "General Terms and Conditions for Works and Deliveries in Building and Construction Companies" (AB 92). This means that AB 92 in its entirety is deemed to be accepted between the parties insofar as separate written agreements or the following terms and conditions of delivery do not deviate from AB 92 explicitly or by implication.

## **2. Commencement of the Agreement**

- 2.1 Nikon Industries A/S is under obligation in terms of the statements it has made no earlier than the date on which Nikon Industries A/S has submitted its order confirmation, irrespective of the way in which these statements are described. Nikon Industries A/S reserves the right to withdraw the statements submitted by Nikon Industries A/S until the moment at which the order confirmation comes to the Buyer's knowledge.
- 2.2 Offers submitted by Nikon Industries A/S are valid for 4 weeks from the date on which the offer is made.

## **3. Power of attorney**

- 3.1 No independent person/company, such as an agent, representative or broker is authorised to impose obligations on Nikon Industries A/S without obtaining prior written agreement.

## **4. Prices**

- 4.1 All prices are current prices, exclusive of VAT, other taxes and packaging and delivery charges.

- 4.2 The price excludes any work incurred because of defects in the material that the Buyer has supplied, overtime incurred because of work having to be carried out faster than usual, storage of completed work and ownership of manufactured tools even if the Buyer has paid a proportion of the cost.
- 4.3 Insofar as there are increases of more than 3 % in production and delivery costs and in suppliers' prices including purchases made by Nikon A/S in the run-up to delivery, Nikon Industries A/S shall reserve the right to adjust prices for documented cost increases.
- 4.4 The price is also based on exchange rates applicable at the time at which the order was submitted. Changes in the exchange rate amounting to more than 3 % therefore give Nikon Industries A/S the right to adjust the price accordingly.

## **5. Terms of delivery**

- 5.1 Nikon Industries A/S shall indicate delivery time to the best of its ability. To be able to comply with the delivery time, we need to have all measurements and details of the construction project no later than the date on which the offer is submitted. Final agreement on delivery date may, however, be made no earlier than the date on which details of the order are fully set out, i.e. no earlier than the date on which Nikon Industries A/S has received ALL the buyer's specifications relating to the production of the order.
- 5.2 In the event that the Buyer does receive the delivery at the time the delivery is made, and this includes the Buyer defaulting on his duty of collection, Nikon Industries A/S reserves the right to cancel the Agreement and claim for compensation. Furthermore, Nikon Industries A/S reserves the right to sell off or store the product at the Buyer's expense. The Buyer accepts any risk incurred in Nikon Industries A/S storing the product.
- 5.3 If the Buyer is not able to receive the goods at the time of delivery, the Buyer undertakes to notify Nikon Industries A/S immediately by telephone or in writing, stating the reason why the Buyer is not able to take delivery. The Buyer must also indicate the date on which he expects delivery can take place.

- 5.4 Items that are not taken by the time the agreed deadline for delivery has expired may be charged for by submitting an invoice. After payment has been made, items may remain at Nikon Industries A/S's storage facilities at the Buyer's risk, provided there is sufficient storage space for this purpose. Nikon Industries A/S reserves the right to sell the item to a third party or to dispose of the item after making a prior written request to the Buyer for the Buyer to collect and pay for the item. If the Buyer does not adhere to the deadline specified in the written request, the Buyer is not entitled to make any claim of any kind against Nikon Industries A/S, and the Buyer shall remain liable for paying the amount invoiced in full, irrespective of whether the item has been sold to a third party.
- 5.5 Return of products and packaging can only take place once written agreement has been given. The costs of this will be charged to the Buyer. Pallets, boxes or other forms of packaging which are charged separately will not be credited.

## **6. Terms of payment**

- 6.1 Payment must be made in cash within 30 days, unless a written agreement has been made to the contrary.
- 6.2 Nikon Industries A/S reserves the right to request an interim payment at any time for up to 90 % of the work carried out to date.
- 6.3 If the due date is exceeded, the amount claimed is subject to interest at 1.5 % per month or part thereof.
- 6.4 Nikon Industries A/S reserves the right to request that the Buyer provides a full guarantee for payment of the delivery.
- 6.5 Any payment reminders that are sent shall incur a reminder charge of DKK 150 per payment reminder.

In the event of any default on payment, Nikon Industries A/S reserves the right to claim for any

costs Nikon Industries A/S incurs in recovering the debt including any legal charges and therefore not just the maximum tariffs stipulated in the Danish Interest Act.

- 6.6 The Buyer is not entitled to offset all or part of the purchase amount for any claim the Buyer may have. Likewise, any claim made by the Buyer under section 9 does not entitle the Buyer to withhold the purchase amount.
- 6.7 The product is sold with retention of title. This means that Nikon Industries A/S reserves the right to claim back any product it has sold if the Buyer defaults fully or partially on his payment obligations.
- 6.8 If the Buyer defaults on one or more of the stipulated obligations including the Buyer's obligations set out in section 5, Nikon Industries A/S reserves the right to cancel the Agreement, sell the product at the Buyer's expense to a third party and/or make a claim for compensation. Nikon Industries A/S may claim compensation for any loss including indirect losses.

## **7. Liability for defects/complaints**

- 7.1 If the product is defective or faulty, Nikon Industries A/S reserves the right - at its discretion - to rectify the defect or fault, to offer a replacement, to offer a proportionate price reduction or pay compensation. The Buyer is not entitled to assert any additional rights. The Buyer shall pay for transport, insurance, travel, installation and other costs relating to repair or replacement. Nikon Industries A/S's liability shall amount to no more than the invoice price for the defective product. The liability to pay compensation shall under no circumstances include indirect losses such as operational losses, loss of time and loss of profits.
- 7.2 Rectification of defects carried out on behalf of Nikon Industries A/S shall only be paid for if there is an agreement note signed by Nikon Industries A/S.
- 7.3 Defects only cover proven design, manufacturing and material defects in the goods supplied and work that has been carried out incorrectly. Nikon Industries A/S's liability for defects does not cover wearing parts and normal wear and tear.

- 7.4 Nikon Industries A/S shall not be liable for defects or faults caused by materials or semi-finished products supplied by the Buyer or for materials specified by the Buyer being unfit for purpose. Nikon Industries A/S shall not be liable for errors in the Buyer's specifications, drawings, etc., and Nikon Industries A/S shall not be obliged to verify whether what is indicated or shown in these is correct, appropriate or such like.
- 7.5 Complaints about coating shall only be accepted if the Buyer has chosen the correct treatment and maintained the structure in accordance with any instructions, guidance or similar such information relating to coating. Nikon Industries A/S therefore accepts no liability for the chosen coating being the correct one.
- 7.6 Nikon Industries A/S's liability shall cease 12 months after delivery has taken place.

## **8. Force majeure**

- 8.1 Nikon Industries A/S shall not be liable to pay damages. Nikon Industries A/S shall not be liable in any other way for non-fulfilment of its obligations, provided that Nikon Industries A/S can demonstrate that such non-fulfilment is due to an impediment beyond its control such as (but not limited to) war, war-like situations, fire, strikes, lockouts, export or import bans, embargoes, delayed or inadequate supply of materials from suppliers, production stoppages, power cuts or any form of transport disruption.
- 8.2 In the event of a situation arising as described in clause 8.1, Nikon Industries A/S reserves the right to postpone delivery time accordingly or to cancel the Agreement. In such circumstances, the Buyer cannot assert a claim of any kind against Nikon Industries A/S. As soon as the obstacle or impediment has been removed, both parties are bound to the terms and conditions of the Agreement, unless the Agreement has already been cancelled by Nikon Industries A/S. The Buyer is only entitled to cancel a signed Agreement because of a delay caused by any of the circumstances described in clause 8.1, if the delay has lasted for more than 3 months or because of another delay if this is deemed to be very significant.

## **9. Caveat emptor**

- 9.1 The Buyer undertakes to inspect the product on delivery. The Buyer also undertakes to submit a written complaint regarding any defects as soon as the Buyer has (or should have) identified any defects. If the Buyer fails to comply with the specified deadlines, the Buyer forfeits the right to claim for the defect.
- 9.2 If the Buyer fails to inspect the product on delivery or if the Buyer has been given an opportunity to inspect the product before completion of the purchase, the Buyer cannot claim for defects which should have been identified during any such inspection.
- 9.3 If a defect arises during the liability period (cf. 7.6), the Buyer undertakes to submit a complaint about this immediately and within 5 days of the date on which the defect has been or should have been identified. If the Buyer fails to comply with the specified deadlines, the Buyer forfeits the right to claim for the defect.

## **10. Product liability**

- 10.1 Nikon Industries A/S is only liable for damage to an individual or property caused by the product, if it can be proven that the damage is due to the fault or negligence of Nikon Industries A/S, and only if there is a causal link between the damage and fault or negligence of Nikon Industries A/S.
- 10.2 Nikon Industries A/S is not liable for damage to fixed or movable property, incurred while the product is in the Buyer's possession. Nikon Industries A/S is not liable for damage to products manufactured by the Buyer that incorporate the product. Similarly, Nikon Industries A/S is not liable for any loss in terms of operations, time and profit or any other indirect losses.
- 10.3 If Nikon Industries A/S is made responsible insofar as this goes beyond the scope of accountability stipulated above, the Buyer undertakes to absolve Nikon Industries A/S of any liability for this. The Buyer undertakes to take out product liability insurance including any product liability which may be claimed against the Buyer.



10.4 The Buyer is liable to be prosecuted in the same court/tribunal that deals with the issue concerning Nikon Industries A/S's product liability.

## **11. Product information**

11.1 The technical specifications and other objectives stated in catalogues are for purposes of guidance and instruction only. Nikon Industries A/S accepts no liability for errors in this material. All information and data contained in this material including price lists is only binding insofar as the parties have made an express agreement to this effect.

## **12. Protection of rights**

12.1 The Buyer shall acquire no entitlement to Nikon Industries A/S's industrial property rights at the time the product purchase is made. The Buyer is not entitled to misuse any information about the product, which would then infringe Nikon Industries A/S's rights.

## **13. Drawings and descriptions**

13.1 All drawings, documentation and descriptions of the product, irrespective of whether such material is produced by Nikon Industries A/S or others, and which is given to the Buyer in connection with sale, delivery or otherwise, shall remain the property of Nikon Industries A/S. The material shall not be used by the Buyer for any other purpose than installing, operating and maintaining the product and may not be copied or transferred to third parties without Nikon Industries A/S's prior written consent. If there is no agreement on delivery of the product, the material should be returned to Nikon Industries A/S.

## **14. Governing law and arbitration**

14.1 Any dispute arising from deliveries from Nikon Industries A/S shall be governed by Danish law, but not the referral rules contained in Danish international private law.

14.2 Any dispute arising in relation to deliveries from Nikon Industries A/S shall be resolved ultimately in arbitration in accordance with the law on arbitration in force at the time.