



## General Terms of Sales and Delivery

These General Conditions of Sale and Delivery shall apply to all sales and deliveries of Products from AnkerAndersen to its customers unless otherwise specifically agreed in writing. Acceptance of a tender or a quotation and acceptance of the deliverance of Products implies the acceptance of these terms and conditions, which always are an inseparable part of any contract or agreement accepted by us. We will supply equipment, products and certain services only, on the terms and conditions described herein.

### Definitions

"Customer" shall mean the third party that is a party to a sales contract, a purchase order or a sales quotation and other contracting party or parties other than AnkerAndersen.

"AnkerAndersen" shall mean Anker Andersen A/S.

"Date of Delivery" shall mean the date when the Products are to be physically delivered at a delivery address as this is agreed in the Sales Contract in accordance with Incoterms 2000.

"Date of Installation" shall mean the date when the installation of the Products is performed if installation is included in the Sales Contract and if that is not the case, the date where the Products are delivered.

"Embedded Software" shall mean Software Products manufactured and delivered by AnkerAndersen and parts thereof, when installed on a Hardware Product from AnkerAndersen.

"Software Products" shall mean any software products sold under the Sales Contract.

"Hardware Products" shall mean any hardware products sold under the Sales Contract.

"Products" shall mean both Hardware and Software Products.

"Articles" shall mean the cans, bottles and any other sorts of containers that the Products is handling.

"Sales Contract" shall mean a sale contract, purchase order or quotation and the like in relation to the Customer.

## 1 Commercial terms

### 1.1 Prices

Unless otherwise specified in our tender, quoted prices are firm and valid for thirty (30) days from the date of the tender. The price being firm is however conditional that the goods may be manufactured and delivered not later than 90 days from the date of the tender. All prices are ex-works exclusive of packing, crating and the like. Furthermore, all prices are exclusive any and all tax, fee or duty which is or later might be imposed on the purchased Products and services, such as but not limited to V.A.T., import duties and other local levies.

### 1.2 Terms of payment

Terms of payment are net cash on the due date, which unless otherwise agreed or stated is 15 days from receipt of invoice. In the event that any amount is not received properly on the due date, we reserve the right without prejudice to any other right;

- a) To charge the Customer interest at a rate of 2% per overdue month.
- b) To suspend our performance of the Sales Contract by providing a written notice hereof to the Customer and/or
- c) To terminate the Sales Contract providing a further written notice hereof to the Customer.
- d) To collect any costs and other damages to us as a consequence of the delay irrespective of whether the Sales Contract is terminated or maintained.

### 1.3 Terms of delivery

The terms of delivery are unless otherwise agreed in writing DK-7160 Toerring, Denmark according to EXW Incoterms2000. The risk of loss of or damage to the Products is passed to the customer in accordance herewith. If it is agreed that AnkerAndersen shall arrange and pay for shipment the terms of delivery are DDU Incoterms2000 at the agreed destination.

## 2 Warranty for Products

### 2.1 Warranty for Hardware Products

AnkerAndersen warrants that all Hardware Products manufactured and delivered by it and parts thereof shall be free from defects in material and workmanship for a period of twelve (12) months from the Date of Installation with a maximum of 2,000 performing hours or ultimately thirteen (13) months after delivery ex-works, whatever comes first (the "Warranty Period").

## 2.2 Warranty for Software Products

AnkerAndersen warrants that during the Warranty Period, no Software Products will fail to perform substantially in accordance with the accompanying materials and documentation due to defects in workmanship. However, AnkerAndersen does not warrant that the operation of the Software Products shall be uninterrupted or error free. AnkerAndersen expressly waives any liability for lack of compatibility with or failures in computer hardware and/or firmware from a third party on which the Application Software is installed, whether supplied by AnkerAndersen or the Customer.

## 2.3 Repair or replacement

During the Warranty Period, AnkerAndersen shall rectify any defects in material and/or workmanship of the Products by replacement or at its option by repair, provided that the Products or a part thereof have been found to be defective by AnkerAndersen.

If the Products have been moved from the original place of delivery, AnkerAndersen reserves the right to charge the Customer for the extra costs (e.g. extra shipping, travel and accommodation) related hereto and at its choice to claim prepayment hereof by the Customer.

## 2.4 Notification by Customer

The Customer shall notify AnkerAndersen in writing within five (5) business days after discovery of defects covered by the Warranty.

## 2.5 Terms of repair or replacement

AnkerAndersen is obliged and entitled to rectify or replace the defective Products or parts thereof as soon as possible after having received the written notice hereof from the Customer. If it has not succeeded hereto within a reasonable time, the Customer is entitled to issue a further written notice to AnkerAndersen with a further last reasonable time for rectification. The length of the reasonable time referred to above depends on the complexity of the Products and the defects in question.

If AnkerAndersen does not succeed in rectifying the defects and this is due to circumstances within its reasonable control, the Customer is entitled to

- (i) have the defect part repaired or replaced by a third-party contractor at the account of AnkerAndersen, provided that this is performed in a reasonable and cost effective manner, or
- (ii) receive a reduction of the price paid for the defective part in question, corresponding to the reduction of the value of the defective part.

Such reduction shall be limited to 10% of the purchase price related to the defective part, or

- (iii) if the defects are of substantial character and affect the functionality of the Products to such an extent that the Customer is substantially hindered in the use of the Products, the Customer is by a written notice to AnkerAndersen entitled to terminate the Sales Contract concerning the defective part in question and to have the purchase price corresponding to that defective part reimbursed. Furthermore, the customer is entitled to claim compensation for any direct losses caused by and corresponding to the defect. Such reduction shall be limited to 10% of the purchase price corresponding to the defective part.

## 3 Limitations of Warranty

3.1 The Warranty shall not apply to the following circumstances and Products:

- Normal wear and tear of the Products or parts thereof, such as but not limited to belts.
- Any defects arising out of materials provided by, or a design stipulated or specified by the Customer.
- Products, or parts thereof, that have not been installed or used in accordance with instructions provided by AnkerAndersen, including but not limited to instructions which are set forth in AnkerAndersen manuals for the relevant Products and in the Sales Contract.
- Products, or parts thereof, that have been subject to improper use or operation, misuse, negligence or accident or improper or insufficient maintenance.
- Products where spare parts not approved in writing by AnkerAndersen have been installed.
- Products, or components thereof, that have been repaired by a person who is either not from AnkerAndersen or has not been approved in writing by AnkerAndersen as a certified professional in the applicable field of work.
- Products, or parts thereof, that have been modified in any way without AnkerAndersen approving such modification in writing.
- Operator induced faults and sub-standard operator performance.
- Article induced faults, hereunder faults that are due to Articles that diverge from normal, average interna-

tional standards as to size, form, durability, or any other characteristic.

- Use or connection of machinery, equipment or software not supplied by AnkerAndersen.
- Insufficient power supply, earth connection, cabling or accommodation.
- Use of the equipment outside its application or physical specifications.
- Violence, overload, fire, flood, excessive electrical mains noise, electromagnetic interference (EMI), or radio frequency interference (RFI), which are disturbances caused by electromagnetic radiation emitted from an external source, lack of electromagnetic compatibility (EMC) namely the unintentional generation, propagation and reception of electromagnetic energy with reference to the disturbances that such an energy may induce, welding, lightning or similar.
- Any other circumstances outside the reasonable control of AnkerAndersen.

#### **4 General Warranty and Liability Provisions**

- 4.1 Unless specifically agreed in writing, there is no other warranty, representation or condition of any kind that AnkerAndersen is bound by towards the Customer regarding the Products, except as is expressly set forth in these General Terms of Sale and Delivery and according to the terms of the Sales Contract. To the extent permitted by applicable laws, any other warranty, expressed or implied, is hereby excluded and disclaimed including implied warranties of merchantability and of fitness for a particular purpose.
- 4.2 It is understood and agreed that AnkerAndersen' sole liability and the Customer's sole remedy, whether in contract, under warranty, in tort (including negligence), in strict liability or otherwise, shall under no circumstances exceed the value of the purchase price paid by the Customer for the Product in question. If the claim of liability is related to software, the liability is limited to the value of the software. This limitation of AnkerAndersen' liability and Customer's remedy is reflected in the amount of the purchase price of the Products.
- 4.3 AnkerAndersen is only responsible for the capacity and the performance of the Products being sufficient and/or suitable for the Customer's purpose, provided that the Customer before the Sales Contract is concluded shall have given full and accurate particulars, in writing, of the Customer's requirements in this respect and of the conditions under which the Products will be required to operate.

4.4 Under no circumstances shall AnkerAndersen be liable for consequential loss of any kind suffered or claimed by the Customer as having arisen out of or in connection with these General Terms of Sale and Delivery and/or the Sales Contract, and without prejudice to the generality of the foregoing, AnkerAndersen shall not be liable for loss of contracts or profits or any other losses (loss of goodwill, business, profits, revenue or use, cost of renting replacements and other additional expenses, even if AnkerAndersen has been advised of the possibility of such damages) whatsoever, claimed as arising from the incorrect processing of the Articles and/or the non-functioning of any of the Products.

4.5 AnkerAndersen is insured as required by law for Employer's Liability and AnkerAndersen maintains a reasonable level of Public Liability Insurance cover.

4.6 The Customer shall be responsible for obtaining Occupier's Liability Insurance and providing safe working conditions on the Customer's premises. AnkerAndersen can only accept liability for personal injury and damage to property if caused by its negligence or by that of any of its employees. In case any Products directly cause physical personal injury or damage to property, due to a defect in the Products, AnkerAndersen shall be liable for such injury or damage to the extent such liability is imposed on AnkerAndersen as a result of court proceedings under clause 12 below. The total liability for personal injury and damage to property shall be equal to the damages or losses suffered.

#### **5 Regulatory Requirements Regarding Safety and Hygiene**

5.1 AnkerAndersen warrants that the Products comply with the regulatory requirements regarding safety and hygiene made by the European Union (CE standards) at the date of the Sales Contract. If additional regulations are applicable, the Customer is obliged to provide information of such to AnkerAndersen, before the Sales Contract is concluded. Modifications as a result of such additional regulations are for the account of the Customer.

5.2 AnkerAndersen gives no warranty as regards compliance of the Products with other regulatory requirements regarding safety and hygiene other than those referred to above, and, to the extent permitted by applicable laws, excludes and disclaims any other warranty, express or implied, as regards such compliance.

## **6 Intellectual Property Rights and Authority-over Products**

### **6.1 Warranty for Patent and other Intellectual Property Rights**

AnkerAndersen warrants that it holds all applicable patent and other intellectual property rights to the Products, that it has full authority to sell the Products, and that the Products do not infringe or violate the patent or other intellectual property rights of third parties. If the Customer's use of the Products is enjoined, partially or in whole, because of breach of this warranty, AnkerAndersen at its own expense and option shall

- (1) procure for the Customer the right to continue using the Products
- (2) modify the Products so as to be non-infringing
- (3) replace the Products or components of the Products with non-infringing material or
- (4) terminate the Sales Contract and return the amount of the purchase price paid by the Customer against the return of the sold Products. AnkerAndersen shall not be required to make any further compensation to the Customer in case of such enjoinder or termination.

AnkerAndersen expressly excludes any other liability than is provided in this provision towards the Customer on the basis of this warranty.

### **6.2 Intellectual Property Rights remain with AnkerAndersen**

The Sales Contract shall not in any way affect the rights, title or interest of AnkerAndersen to any intellectual property rights that are related to the Products, including, but not limited to, patents, copyright, trademark rights and know-how.

### **6.3 Grant of license**

AnkerAndersen grants to the Customer a non-exclusive, non-transferable, non-sublicenseable, limited license to use the Software Products, subject to these General Terms of Sale and Delivery and the Sales Contract. The Software Products are protected by international copyright law and international copyright treaties, as well as by other intellectual property laws and treaties. Embedded Software may only be sold, rented, lent or otherwise transferred or delivered to a third party by the Customer as an integral part of the relevant Hardware Products from AnkerAndersen. Application Software may not be sold, rented, lent or otherwise transferred or delivered to a third party, except for the purpose of demonstration, test or evaluation of the relevant Application Software. There is no

assignment of rights in the Software Products under these General Terms of Sale and Delivery or the Sales Contract and AnkerAndersen shall hold all ownership rights and intellectual property rights in and to the Software Products at all times.

## **7 Confidentiality**

### **7.1 Confidentiality obligations**

AnkerAndersen and the Customer shall maintain full confidentiality as regards their contractual relationship. The party receiving information (hereinafter "Receiving Party") shall not disclose to any third party, nor use for any purpose other than for the proper fulfilment of the purpose of these General Terms of Sale and Delivery and the Sales Contract, any technical, financial or commercial information, or other information marked as confidential (hereinafter jointly "Information") received from the other party (hereinafter "Disclosing Party") in whatever form under or in connection with these General Terms of Sale and Delivery or the Sales Contract, without the prior written consent of the Disclosing Party. These confidentiality obligations shall not apply to Information which:

- (1) Was in the possession of the Receiving Party prior to disclosure; or
- (2) Was in the public domain at the time of disclosure or later became part of the public domain without breach of the confidentiality obligations herein contained; or
- (3) Was disclosed by a third party without breach of any obligation of confidentiality owed to the Disclosing Party; or
- (4) Was independently developed by personnel of the Receiving Party having no access to the Information; or
- (5) Was disclosed in accordance with applicable mandatory laws, regulations, court or judicial order provided that the Receiving Party shall give the Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order.

### **7.2 Limited access to Information**

Each party shall limit access to Information to those of its personnel for whom such access is reasonably necessary for the proper performance of these General Terms of Sale and Delivery and the Sales Contract. Such personnel shall be bound by written confidentiality obligations not less restrictive than those provided for in this clause 7.1. Confidentiality obligations hereunder are not limited in time.

## **8 Retention of Title/Right of Property**

8.1 The Products delivered by AnkerAndersen under the Sales Contract shall remain the property of AnkerAndersen, and be subject to its full ownership, until they have been fully paid by the Customer under the Sales Contract. The Customer shall, at the request of AnkerAndersen, assist AnkerAndersen in taking any measures necessary to protect AnkerAndersen's title to the Products in the country concerned. The retention of title shall not affect the passing of risk in respect of the Products that has been agreed between the parties.

## **9 Defaults of the Customer**

- 9.1 AnkerAndersen shall have the right, at its option, to terminate the Sales Contract by written notice to the Customer, effective immediately upon receipt of such notice, upon the occurrence of any of the following events:
- (1) Upon any default in the performance of or breach of these General Terms of Sale and Delivery or the Sales Contract, or any other agreement, covenant, obligation or undertaking of the Customer made hereunder, if such default or breach is not remedied to the satisfaction of AnkerAndersen within thirty (30) days of written notification of such default or breach;
  - (2) Should the Customer become the subject of voluntary or involuntary bankruptcy, liquidation or wind-up procedure or should a direct enforcement action be held upon the Customer that might detrimentally affect his ability to perform under the Sales Contract.
- 9.2 Upon sending a written notification under clause 9.1, AnkerAndersen is entitled to delay delivery of Products until the default or breach has been remedied to the satisfaction of AnkerAndersen. Upon termination by AnkerAndersen under clause 9.1, the Customer shall return to AnkerAndersen at the Customer's cost any Products that may have been delivered to the Customer under the Sales Contract, in the same condition as they were delivered, and pay to AnkerAndersen all costs that AnkerAndersen has incurred because of its performance of the Sales Contract, including but not limited to all development and production costs associated with the Products and all travelling costs, plus 30% of the purchase price under the Sales Contract. This payment shall, however, never exceed the amount of the purchase price under the Sales Contract, with interests where appropriate.

## **10 Default of AnkerAndersen**

### **10.1 Extension of delivery date**

Events that entitle AnkerAndersen to an extension include, but are not limited to, events of Force Majeure under clause 11 and delays in development, production and delivery of the Products caused by acts or omissions of the Customer or other circumstances that he is responsible for. The extension shall be reasonable having regard to all the circumstances. AnkerAndersen may be entitled to an extension regardless of whether the reason for the delay occurs before or after the agreed time of delivery.

### **10.2 Delayed Delivery**

AnkerAndersen is in delay when the Products are not delivered at the time of delivery as defined in the Sales Contract, provided that such time of delivery is a fixed time and not an estimated time and agreed upon by both parties, provided that AnkerAndersen is not entitled to an extension of the time of delivery as stipulated in clause 10.1. If an extension is applicable, AnkerAndersen is in delay when the Products are not delivered at the expiry of said extension.

### **10.3 Liquidated damages when delays**

AnkerAndersen's delay entitles the Customer to liquidated damages from the date on which the Products should have been delivered. The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price under the Sales Contract for each completed week of delay beyond 3 weeks. If delivery of only a part of the Products is delayed, the liquidated damages shall be calculated on the part of the purchase price which is attributable to such part of the Products as in consequence of the delay cannot be used as intended for production.

### **10.4 Limitation on the amount of liquidated damages**

The liquidated damages can never exceed 5.0 per cent of the purchase price attributable to the Products delayed as defined in clause 10.3 above. The liquidated damages become due at the Customer's request in writing, but not before delivery of the Products or termination of the Sales Contract in accordance with clause 10.5 below. The Customer's right to liquidated damages shall be forfeited if such request has not been submitted within one (1) month after the due time for delivery.

### **10.5 Right of Customer to terminate the Sales Contract**

If AnkerAndersen's delay is such that the Customer has become entitled to the maximum liquidated damages under clause 10.4 above and the Products have still not been delivered, the Customer may demand in writing

completion within a final reasonable period which shall not be less than four (4) weeks. If AnkerAndersen does not complete the delivery within such final period and this is not due to any circumstance for which the Customer is responsible or any circumstance outside the control of AnkerAndersen, then the Customer may by notice in writing to AnkerAndersen terminate the Sales Contract in respect of such part of the Products which, due to AnkerAndersen's failure, cannot be used as intended.

If the Customer terminates the Sales Contract, it shall be entitled to compensation for the loss it has suffered as a result of AnkerAndersen's delay, to the extent that the loss exceeds the maximum of liquidated damages to which the Customer has become entitled. The total compensation, including the liquidated damages which are payable under clause 10.3 can never exceed 10 per cent of that part of the purchase price which is attributable to the part of the Products in respect of which the Sales Contract is terminated.

#### **10.6 Remedies for Customer**

Liquidated damages and termination of the Sales Contract with limited compensation under clauses 10.4 to 10.5 above are the only remedies available to the Customer in case of delay on the part of AnkerAndersen and are in full and final settlement of the possible consequences of the delay. All other claims against AnkerAndersen based on delay shall therefore be excluded. The Customer shall have no further termination rights as regards the Sales Contract for any other reasons. The Customer shall not be entitled to withhold payments of the purchase price at the agreed time for payment under the Sales Contract unless there has been a delay of delivery of the Products of more than seven (7) weeks or a substantial breach of AnkerAndersen's warranties has been manifested. Any withholding of payments of the purchase price shall always be proportional to the delay or breach of warranty in question.

#### **11 Force Majeure**

- 11.1 Neither AnkerAndersen nor the Customer shall be deemed to be in default of or to have breached any provision of these General Terms of Sale and Delivery or the Sales Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from events of Force Majeure or any other circumstances beyond the Party's reasonable control, such as – but not limited to - acts of God, acts of civil or military authority, civil disturbance, war, acts of terrorism, strikes or other labour disputes, fires, transportation contingencies, laws, regulations, acts of a government agency or officials thereof, and other like catastrophes.
- 11.2 If an event of Force Majeure results in delay or non-performance of a party for a period of six (6) months or longer, then either party shall have the

right to terminate the Sales Contract with immediate effect without any liability towards the other party, except that the Customer shall indemnify AnkerAndersen of any costs it might have had from the termination. This includes, but is not limited to, all production and development costs of the Products, travelling costs and other associated costs.

#### **12 Miscellaneous**

##### **12.1 Assignment or transfer of rights and obligations**

Neither party shall be entitled to assign nor transfer all or any of its rights, benefits nor obligations under the Sales Contract without the prior written consent of the other party, except that AnkerAndersen may undertake such assignment and transfer within the AnkerAndersen's group of companies.

##### **12.2 Severability**

If, at any time, any provision of these General Terms of Sale and Delivery or the Sales Contract, or a part thereof, is or becomes illegal, invalid or unenforceable in any respect under applicable laws, neither the legality, validity nor enforceability of the remaining part of the provision and other remaining provisions hereof, shall in any way be affected or impaired thereby. The invalid provision shall be replaced by a valid provision that achieves, to the extent possible, the original purpose and commercial goal of the invalid provision. No failure to exercise, nor any delay in exercising, on the part of the parties any right or remedy under these General Terms of Sale and Delivery or the Sales Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy.

##### **12.3 Sales Contract Confirmation**

All information and data contained in product information and price lists are binding only to the extent that they are by reference expressly included in the Sales Contract. No collateral agreement between AnkerAndersen and the Customer shall be binding upon AnkerAndersen unless it is in writing and duly signed by AnkerAndersen. Verbally agreed alterations to Sales Contract must be confirmed in writing by AnkerAndersen for validity.

##### **12.4 Parties to the Sales Contract**

These General Terms of Sale and Delivery and the Sales Contract only bind and commit the company of the group of companies of AnkerAndersen that is party to the Sales Contract. In no circumstances shall other companies within the AnkerAndersen's group of companies be considered as party to the Sales Contract without its express agreement hereto in the Sales Contract.

### **13 Applicable Law and Dispute Resolution**

- 13.1 These General Terms for Sale and Delivery shall always form an inseparable part of any Sales Contract and these General Terms for Sale and Delivery shall in any respect and for any purpose be subject to and construed in accordance with Danish law.
- 13.2 The parties hereby submit to the exclusive jurisdiction of at the choice of AnkerAndersen "Retten i Horsens" (The City Court of Horsens) or "Sø- og Handelsretten i København" (The Maritime and Commercial Court of Copenhagen) in relation to any disagreement or claim, including any disputes regarding the existence, validity or termination that might arise out of these General Terms of Sale and Delivery and/or the Sales contract. Notwithstanding the foregoing, AnkerAndersen shall be entitled to initiate legal proceedings against the Customer in any other court which may have jurisdiction in the matter.