

## **General Terms and Conditions for the Supply of Goods and Services**

of Anker Foundations GmbH, with registered office in Lichtenfels, Germany, and registered with the commercial register of the local court of Korbach, Germany, under HRB 2355.

In the text below, the customer shall be referred to as "**Customer**" and Anker Foundations GmbH as "**Anker**".

### **1. Applicability**

- 1.1 All supplies, services and offers of Anker shall be made exclusively on the basis of these general terms and conditions (the "**General Terms and Conditions**"). The General Terms and Conditions are an integral part of all offers and contracts concluded by Anker with its contractual partners. They shall also apply to all future supplies, services or offers to the Customer, even if they are not separately agreed upon again.
- 1.2 Business conditions of the Customers or third parties will not apply, even if they are not objected by Anker individually. Even if Anker refers to a document containing or referring to the terms and conditions of the Customer or a third party, this does not constitute an agreement to the applicability of those terms and conditions.

### **2. Offers and Conclusion of Contract**

- 2.1 Offers made by Anker are subject to changes without notice and are non-binding, unless they are expressly marked as binding or contain a specific period of acceptance. Anker may (but does not have to) accept orders or commissions from the Customer within 21 days of receipt.
- 2.2 The legal relationship between the Customer and Anker shall be governed solely by the written contract between the Customer and Anker, including these General Terms and Conditions. This contract fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Oral promises made by Anker prior to the conclusion of this contract are not legally binding and oral agreements between the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.
- 2.3 Information provided by Anker on the subject matter of the supply or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances, technical data, etc.) as well as

presentations of the same (e.g. drawings and illustrations), in particular in the corresponding performance descriptions of Anker, are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or identifications of the supply or service.

- 2.4 Divergences customary in the trade and/or based upon legal prescriptions or technical improvement, as well as the replacement of modules by parts of equal value, are admissible in as far as they will not impair the use contractually targeted and the approvals under the laws governing construction supervision or, if applicable, the immission control laws for the wind turbines or radio towers to be erected by the Customer do not expire as a result of the modification.
- 2.5 Anker retains the ownership or copyright for all offers and cost estimates issued by it as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Customer. The Customer must not allow third parties access to these items as such or in terms of content, disclose them, use them himself or through third parties, or reproduce them without the express approval of Anker. The Customer has to return these objects completely if Anker so demands and destroy any copies made if they are not required any more in the regular course of the business or if the negotiations do not lead to the signing of an agreement.

### **3. Remuneration and Payment**

- 3.1 The total agreed remuneration of Anker shall apply to (i) the production of prefabricated concrete foundations, as well as the transport and (ii) (if separately agreed) the erection of the foundations by Anker, in each case in the scope of service and supply agreed between the parties. Additional or special services will be charged separately.
- 3.2 The remuneration is understood to be in EUR plus the VAT at the statutory rate, in the case of export deliveries plus customs duty, as well as fees and other public charges. Costs for transport and packaging are included in these prices. If Anker uses common facilities for building electricity, building water, etc. during the construction of the foundations (to be agreed separately), the costs arising from this shall be covered by the Customer.
- 3.3 Payment for the construction and supply of the foundations (not for the erection) shall be made in the following stages:
- 25% of the remuneration for preparation of the foundation design (see Section 5.1);
  - 25% of the remuneration for obtaining the foundation test certificate (see Section 5.1);
  - 20% of the remuneration when the foundation is handed over to a forwarding agent, carrier or other third party designated to carry out the shipment;
  - 30% of the remuneration upon acceptance by the Customer according to Section 8.

After each of the above steps, Anker shall be entitled to issue a respective invoice to Customer; Section **Fehler! Verweisquelle konnte nicht gefunden werden.** shall apply.

- 3.4 Invoicing for the erection of the foundations shall take place upon acceptance by the Customer in accordance with Section **Fehler! Verweisquelle konnte nicht gefunden werden.;** Section **Fehler! Verweisquelle konnte nicht gefunden werden.** shall apply.
- 3.5 Invoiced amounts have to be paid within ten (10) banking days without any deduction. Authoritative shall be the date of receipt by Anker. Payment by check is excluded, unless it is agreed separately in the individual case. Should the Customer fail to effect payment as per the due date, the outstanding amounts shall accrue interest at 5% p.a; the possibility to claim higher interest and additional damages in cases of default shall remain unaffected.
- 3.6 Retention with payments because of counterclaims of, or offsetting against such claims by, the Customer are permissible only if these counterclaims are undisputed or have been determined with legal effect.
- 3.7 In case of non-compliance with the payment terms or publicity of circumstances which lead to doubts about the creditworthiness of the Customer, all claims of Anker – without regard to deferment – shall become due immediately. The same shall apply, if the Customer suspends his payments, is heavily in debt, insolvency proceeding are filed against the Customer or the filing of such insolvency proceedings are refused due to lack of substance. In this case, Anker is also entitled to perform or render outstanding supplies or services only against advance payment or provision of security and to interrupt the performance of services.

#### **4. Price Adjustment**

If prices of individual raw materials, products or wages used in the manufacture of the foundation increase after the conclusion of the contract and lead to an increase of the index defined below by more than 3%, Anker retains the right to increase the agreed remuneration for the manufacture of the foundation by means of a unilateral declaration to the Customer, which must be made no later than 4 weeks before the start of the manufacture of the foundation, taking into account the relevant share of the increased price of the raw materials, products or wages in the total remuneration for the manufacture of the foundation. The relevant index is the latest index published by the German Federal Statistical Office (Statistisches Bundesamt): Subject-matter series 17 series 2 (Prices and price indices for industrial products), Serial no. No.: 281 / GP nr.: 24 10 62 100 / Ref.: reinforcing steel in bars, hot-rolled and the Ref. no.: 21 / GP nr. 08 12 1 / Ref.: gravel and sand; crushed natural stone.

#### **5. Scope of Performance**

- 5.1 The construction and supply of the precast concrete foundations owed by Anker includes

- a) the construction of a foundation design (the "**Foundation Design**") based on the information provided by the Customer in accordance with the information request as **annexed** to these General Terms and Conditions regarding the planned wind turbines or towers at the locations intended for them (the "**Turbine-Location**"),
- b) the obtaining of a certificate from the respective certification body (e.g. TÜV Nord in Germany) in accordance with the requirements of the IEC 61400, Deutsches Institut für Bautechnik (DIBT) or comparable guidelines [with regard to the type-tested statics or standard statics of the foundation design] (the "**Test Certificate**"),
- c) the manufacture of the foundations according to the Foundation Design and the Test Certificate, and
- d) the shipment of the foundations to the Turbine-Locations.

5.2 Insofar as the Customer has commissioned Anker to erect the precast concrete foundations, the obligation to erect the foundations by Anker includes

- a) the assembly of the components of the foundations at the Turbine-Locations and
- b) the the placement or erection of the foundations in the earth excavations prepared by the Customer for the foundations.

5.3 Anker is not obligated or otherwise responsible for ensuring that wind turbines or towers can or may actually be erected at the Turbine-Locations as intended by the Customer. Nor does Anker have any obligation to create the actual and/or legal possibilities and circumstances to be able or permitted to supply or erect the foundations it has manufactured at the Turbine-Locations, but only (if agreed separately) to erect the foundations themselves. Accordingly, Anker shall in particular not be obliged to obtain any public law permits and certificates required for the use, construction or supply of the foundations (including the road traffic permits required for the supply of the foundations) and to verify whether the information provided by the Customer regarding the Turbine-Locations in accordance with the annexed request for information is correct.

5.4 For the purpose of enabling supply of the foundations, the Customer will in particular provide the following advance performance:

- a) Providing access to the construction site (also for heavy trucks, assembly vehicles and cranes (up to 55 tons in total or 12 tons per vehicle axle)) suitable for carrying out the transport and (if separately agreed) construction work required for the performance of the contract, in particular by establishing the load-bearing capacity, paving or widening of existing roads or access to the construction site in coordination with Anker; the Customer must coordinate the type and scope of the access route

with Anker in good time before delivery. Access roads must be permanently maintained during the warranty period;

- b) The construction and maintenance of crane sites suitable for carrying out the transport and (if separately agreed) construction work necessary for the performance of the contract. The Customer shall consult with Anker in good time prior to delivery on the type and scope of the design of the crane site. The crane site must be permanently maintained during the warranty period;
- c) Obtaining road permits for travel on any weight or otherwise restricted roads to the Turbine Location below county roads or for any sidewalk closures.

5.5 For the purpose of enabling erection of the foundations (if agreed), the Customer shall also provide the following advance performance, in particular:

- a) Establishing the legal and actual ground-related requirements for building the foundation (including site coordination);
- b) Establishing a proper subgrade free of trees, shrubs, overhead wires, superstructures, ditches, terrain ledges, and other obstructions;
- c) Establishing the legal and actual ground conditions for the construction of the foundation (including site coordination and measurement of the center of the foundation);
- d) Improvement of the building ground such as soil replacement as well as soil surveys and other geological measures;
- e) Excavation of the ground as well as the preparation of the ground conditions for the construction of the foundations (including dimensionally accurate foundation pits);
- f) Providing other conditions necessary or customary for the construction of the foundations;
- g) Dewatering / Water retention, if necessary;
- h) Execution of the foundation groundin system (Fundamenterdungssysteme);
- i) Locating and (if necessary) rerouting of utility lines and drainages;
- j) any measures associated with deep foundation.

5.6 If the Customer fails to comply with the obligations in Sections **Fehler! Verweisquelle konnte nicht gefunden werden.** and **Fehler! Verweisquelle konnte nicht gefunden werden.** and the performance of the services by Anker is delayed as a result, Anker is entitled, but not obligated, to render substitute performance (*Ersatzvornahme*) even without setting a deadline in advance. The costs of a substitute performance shall be borne by the Customer. The Customer's liability for damages remains unaffected.

## 6. Delivery

- 6.1 Deliveries by Anker shall be ex works. Otherwise, delivery of foundations shall be made in accordance with the contract, offer or order confirmation.
- 6.2 Anker shall not carry out the delivery itself, but shall commission a forwarding agent, carrier or other third party designated to carry out shipments for this purpose. The costs for the delivery are included in the contract, the offer or the order confirmation and will not be invoiced separately to the Customer beyond that.
- 6.3 Scheduled delivery dates and terms are subject to unhindered manufacturing process and the unhampered transportation- and delivery opportunities.
- 6.4 Anker is not liable for impossibility of delivery or for delivery delays if these are due to (i) Acts of God or other events unforeseeable at the time the agreement was signed (e.g. operational disruptions of all kinds, problems in obtaining materials or energy, transport delays, strikes, lawful lockouts, lack of employees, energy or raw materials, difficulties in procuring the necessary permits from the authorities, official provisions, pandemics or the absence, not orderly or non-timely delivery by the suppliers), or (ii) circumstances and obstacles the Customer is responsible for (even only in part). If such events make performance or deliveries considerably more difficult or impossible and the hindrance is not only temporary, Anker is entitled to withdraw from the contract. In the event of impediments that are of temporary duration the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period.
- 6.5 Anker's obligation to deliver and manufacture shall be suspended as long as the Customer is in default vis-à-vis Anker with respect to a due obligation.
- 6.6 Irrespective of any rights arising as a result of default by the Customer, Anker shall be entitled to demand an extension of periods for the delivery of goods and the performance of services or the postponement of the delivery of goods and the performance of services for a period of time equivalent to that for which the Customer fails to fulfill its contractual duties (in particular under Sections **Fehler! Verweisquelle konnte nicht gefunden werden.** and **Fehler! Verweisquelle konnte nicht gefunden werden.**) towards Anker.
- 6.7 In case Anker is in default with a supply or service, or a supply or service is impossible for Anker, for whatever reason, then Anker's liability is limited in accordance with Section **Fehler! Verweisquelle konnte nicht gefunden werden.** of these General Terms and Conditions.

6.8 If the Customer enters into acceptance default or infringes other cooperation duties, Anker shall be entitled to demand compensation for each week of delay at a flat rate of 3% of the delivery value, but not more than 20% of the delivery value. Anker remains entitled to claim and evidence a higher damage; the Customer reserves the right to evidence that Anker has not suffered any damage or has suffered significantly less damage as a result of the delay in acceptance.

## **7. Place of Performance, Passage of Risk**

7.1 The place of performance for all obligations of Anker arising from the contractual relationship shall be the place where the erection is to take place; this shall apply irrespective of whether Anker also owes the erection of the foundation parts or only the manufacture and delivery.

7.2 If only the manufacture and delivery, but not the erection and assembly of the foundation parts is owed, the risk shall pass to the Customer upon delivery of the delivery item to the Customer. This also applies if partial deliveries are made. If the handover is delayed due to circumstances caused by the Customer, the transfer of risks to the Customer takes place on the day when Anker has offered the delivery item to the Customer for handover. If Anker is also obliged to erect and assemble the foundation parts, the risk shall pass to the Customer as soon as the Customer accepts the foundation parts erected by Anker or refuses acceptance of the foundation parts despite the fact that they are ready for acceptance.

## **8. Acceptance**

8.1 Unless an erection of the foundations has been agreed, the Customer is obliged to inspect the foundations delivered by Anker without undue delay (within one week at the latest) after delivery and to notify Anker of any defects. If the Customer fails to give notice of defects, the foundation(s) shall be deemed accepted or approved and the Customer shall not be entitled to any warranty rights due to recognizable defects.

8.2 If erection of the foundations has been agreed, Anker shall invite the Customer, who shall be entitled at any time to call in an expert surveyor for the purpose of acceptance, to accept the foundations within a period of at least one week. If, for reasons the Customer is responsible for, the Customer does not comply with the request after a further deadline of one week, the foundation shall be deemed to have been accepted or approved and the Customer shall not be entitled to any warranty rights on account of recognizable defects.

8.3 Acceptance cannot be withheld because of insignificant defects. Only defects that impair the safety of the wind turbines or towers to be erected on the respective foundation or that verifiably lead to a reduction in profits are considered to be significant.

8.4 Anker must also be notified of concealed defects without delay (at the latest within one week of their discovery and in any case before processing, combining or mixing the foundations); otherwise, the Customer shall not be entitled to any warranty rights due to such defects.

## **9. Warranty**

9.1 The foundation precast elements are produced by Anker - as far as specified - according to the state of the art. Claims for defects by the Customer do not exist in the case of merely immaterial deviations from the agreed quality, in case of immaterially impaired use of the delivery object, in case of natural wear and tear or damages occurred after the transfer of risk as a result of faulty or negligent handling (also by the third party commissioned with the delivery), excessive stress, unsuitable operating materials, defective construction work (not carried out by Anker), unsuitable building ground or which occurs due to special external influences which are not assumed under the contract.

9.2 If improper modifications or repairs are made by the Customer or third parties these and the consequences resulting thereof are no basis to assert claims for damages. The Customer's rights due to a defect shall also be excluded if the defect is due to a service to be provided by the Customer under the contract concluded between the Customer and Anker, these General Terms and Conditions or the offer made by Anker.

9.3 Warranty claims by the Customer are limited to rectification of defects or replacement with the exception of cases in which a claim for damages exists in accordance with Section 10. However, the Customer reserves the right to reduce the remuneration if the subsequent performance fails. Anker shall have the right to choose the manner of subsequent performance. As a rule, subsequent performance shall be deemed to have failed if the defect has not been remedied even after the third attempt at subsequent performance.

9.4 The obligation to remedy defects shall not apply if the Customer modifies the delivery item or has it modified by a third party without Anker's consent and the remedy of defects is thereby made impossible or unreasonably difficult. In any case, the Customer has to bear the additional costs for the elimination of defects arising from this alteration.

## **10. Liability for Compensation**

10.1 Claims of the Customer for damages, also due to delay or a defect of the foundation are excluded. The exclusion of liability does not apply to damages based on intent, gross negligence, negligent injury to life, physical injury, injury to health or negligent breach of essential contractual obligations, or in the case of defects that were fraudulently concealed or whose absence was guaranteed, as well as for claims under the Produkthaftungsgesetz (German Product Liability Act). This applies to both, Anker and its vicarious agents.



- 10.2 The liability is limited to damages which Anker has foreseen when concluding the contract as a possible consequence of a contractual infringement or which Anker, by applying due care and attention, should have foreseen. Anker shall only be liable for indirect losses and consequential damages caused by defaults in the delivered objects produced by Anker, if such damage can be typically expected and when the delivered object is used in conformity with its intended purpose.
- 10.3 In case of liability for simple negligence Anker's obligation to pay compensation for property damage and further financial losses resulting therefrom is limited to 10% of the net remuneration per each case of damage (even if this involves a breach of material contractual obligations).
- 10.4 The aforementioned disclaimers and limitations of liability also apply to the same extent for the benefit of Anker's corporate bodies, legal representatives, employees and other vicarious agents.
- 10.5 Insofar as Anker provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services owed by Anker, this is provided free of charge and under the exclusion of any liability.

## **11. Property Rights**

- 11.1 Unless otherwise agreed, Anker shall be obligated to provide the delivery free of commercial property rights and copyrights of third parties (hereinafter: property rights) only in the country of the place of delivery. Each contracting partner will immediately inform the other contracting partner in writing in the event that claims are made against it due to the infringement of such rights.
- 11.2 In the event that the item supplied infringes a third party industrial property right or copyright then, according to its choice and at its own costs, Anker will either alter or exchange the item supplied in such a way that it no longer infringes any third party rights, but so that the item supplied continues to fulfil its contractually agreed functions, or procure the right of use for the Customer by concluding a license contract. If Anker does not manage to conform with the aforementioned within an appropriate period, the Customer is entitled to withdraw from the contract or reduce the remuneration appropriately. Any claims for damages by the Customer are subject to the limitations in Section 10 of these General Terms and Conditions.
- 11.3 In case of infringements of rights by products supplied by Anker but manufactured by other manufacturers, then Anker shall, at its own discretion, make its claims against such manufacturer and supplier on the Customer's account or transfer its title to the Customer.

## **12. Reservation of Proprietary**

- 12.1 The delivered and, if agreed, erected foundations shall remain the property of Anker until full payment of all claims of Anker resulting from the business relationship with the Customer, irrespective of their legal basis or time of origin. This shall also apply if individual or all claims have been included in a current invoice and the balance has been drawn and accepted. In case of the acceptance of exchange and checks, Anker reserves the right of ownership until they have been honored.
- 12.2 In case of breach of contract by the Customer, in particular in case of default of payment, Anker shall be entitled to disassemble and take back the foundations. This shall not constitute a withdrawal from the contract unless Anker has expressly declared this in writing. After taking back the foundations, Anker shall be authorized to liquidate them; the proceeds of liquidation shall be credited against the Customer's liabilities, after deducting reasonable liquidation costs.
- 12.3 Anker shall release the securities to which Anker is entitled upon the Customer's request to the extent that the realizable value of the securities exceeds the claim to be secured by more than 20%. The selection of the securities to be released shall be at the discretion of Anker.
- 12.4 In the event of seizures or other interventions by third parties, the Customer must inform Anker immediately in writing so that Anker can take legal action in accordance with section 771 ZPO (German Code of Civil Procedure); as far as such third party is unable to reimburse the court and out-of-court costs of a lawsuit, the Customer is liable for the loss incurred by Anker.

## **13. Applicable Law**

- 13.1 German law shall be applicable and court of jurisdiction for all disputes shall be shall Marburg, Germany.
- 13.2 In the event of any inconsistency between the German version and the English version, the German version shall prevail.