



## TERMS & CONDITIONS OF SALE – Version as of 1 January 2018

Any and all products, services, and replacement parts sold or provided by or through HBC-radiomatic, Inc. ("HBC") to its customer ("Customer") are sold and provided on and subject to the following terms and conditions:

### 1. Priority of These Terms and Conditions.

HBC hereby notifies Customer, and Customer hereby acknowledges and agrees, that these Terms and Conditions of Sale shall prevail over any terms and conditions contained in any Customer purchase order or other document that conflict with or are additional to and/or different than these Terms and Conditions of Sale. By purchasing HBC products, services or replacement parts, Customer agrees to and accepts these Terms and Conditions of Sale and acknowledges and agrees that any prior or subsequent Customer purchase order or other written instrument of Customer, or any agreement between Customer and HBC that may be purported to have been established through performance or other conduct of the parties, shall be deemed to include these Terms and Conditions of Sale, and that these Terms and Conditions of Sale shall supersede and replace any conflicting and/or additional or different terms and conditions of any such Customer purchase order, document or agreement.

### 2. Price and Order Acceptance.

Prices are "ex works" (INCOTERMS) HBC's facility and do not include packing or shipping charges. Customer is responsible for, and will indemnify HBC against, all applicable duties, levies, governmental charges and taxes, including without limitation sales, use, excise, V.A.T., withholding and property taxes, relating to the purchase, modification, repair or service of an HBC product or replacement part or its sale or use. All such charges and taxes are in addition to the purchase price and may be invoiced by HBC to Customer at any time. Prior to acceptance, the price quoted for an HBC product, service, or replacement part is subject to change. Once accepted by HBC, orders are not subject to cancellation, except with HBC's consent and upon terms that will indemnify HBC against loss or damage arising from the cancellation.

### 3. Payment and Security Interest.

Payment is due in accordance with any payment schedule agreed to in writing by the parties, or if no such schedule has been agreed to in writing, then within 30 days after the date of HBC's invoice to Customer. With respect to invoices for the purchase of original HBC equipment, HBC may apply a cash discount for payments in full of the invoiced amount made within 10 days after invoice date. If payment is overdue, HBC may charge Customer interest at the rate of 1.5% per month from the date of the default until HBC receives payment in full, or if such amount exceeds the amount permitted by applicable usury laws, then the maximum lesser amount then permitted by applicable usury laws. HBC may apportion any partial payments made by Customer against any outstanding principal or interest, as HBC may determine. All payments shall be made without setoff or reduction of any kind for any reason. Restrictive endorsements or other statements on checks will not apply to HBC. In order to secure payment of the purchase price and the performance of Customer's other obligations to HBC, Customer by its order grants HBC a purchase money security interest in each HBC product and part purchased, and, upon request by HBC, Customer promptly will execute any additional documents required by HBC to perfect this security interest.

At HBC's request, Customer will establish an irrevocable letter of credit in favor of HBC in the amount of the purchase price and applicable taxes and charges, issued by a bank satisfactory to HBC, confirmed by HBC's U.S. bank, and in a form satisfactory to HBC. Such letter of credit will permit periodic or multiple draws, will permit HBC to draw cancellation charges as provided herein, will be negotiable against the shipping documents specified below, will not limit HBC's choice of shipping point, port or carrier, and will remain valid for 180 days after the last scheduled shipment date of the HBC product or replacement part. Except as otherwise agreed by HBC in writing, the sole documents to be required under such letter of credit will be: (i) complete set of clean on-board shipped bill of lading, marked "freight prepaid," made out to order, and endorsed in blank, with notification to be made to the consignee specified by HBC; (ii) insurance certificate in duplicate; (iii) four copies of commercial invoice; and (iv) two copies of packing list describing the HBC products and replacement parts being shipped.

### 4. Shipping; Completion Schedule.

Any shipping, delivery, modification, repair or service schedule provided by HBC to Customer is only HBC's then current estimate of the dates of completion, delivery or availability for shipment. HBC will use reasonable efforts to meet any such schedule, but does not warrant or guarantee any particular shipping, delivery or completion dates. HBC shall not be liable for any damages, including indirect, incidental or consequential damages, in connection with the delivery or non-delivery of any products or parts, including but not limited to damages incurred during shipment or caused by a delay in delivery or completion. Customer's acceptance of any product or part constitutes a waiver of any claim for delay. HBC shall have the right to select the carrier for delivery of any product or part unless otherwise agreed to by HBC in writing. Shipments will be made "ex works" HBC's facility. The carrier shall be deemed to be Customer's agent, and Customer bears all risk of loss or damage during transit.

### 5. Limited Warranty.

HBC warrants to the original purchaser only, on and subject to the terms, conditions and exceptions set forth below, that HBC's radio control systems, spare transmitters and receivers, and spare parts, attachments, add-on parts and accessories (collectively, "HBC Products") will be free from defects in material and workmanship for the applicable Warranty Period commencing with the date of shipment to Customer. With respect to repair services which HBC has been engaged to perform on any HBC Product ("HBC Services"), HBC warrants to its Customer only, on and subject to the terms, conditions and exceptions set forth below, that such HBC Services will be performed with due care and in a manner consistent with industry standards, and that any HBC replacement parts provided as part of the HBC Services ("HBC Replacement Parts") will be free from defects in material and workmanship, in such cases for the applicable Warranty Period commencing with the date of shipment to Customer.



Product Type / Subject of warranty*	Warranty Period (commencing date of shipment to Customer)
HBC radio control systems, spare transmitters and receivers, spare parts, attachments, add-on parts and accessories, excluding Wear-and-Tear Parts	Two (2) years
Wear-and-Tear Parts, defined as any of the following HBC Products: <ul style="list-style-type: none"> <li>• electromechanical output elements (such as relays)</li> <li>• antennas</li> <li>• seals</li> <li>• rubber bellows</li> <li>• rechargeable batteries</li> <li>• water protective caps</li> <li>• switches, except for joysticks and linear levers</li> <li>• buttons</li> <li>• carrying or handling accessories and devices</li> </ul>	One (1) year
HBC electronic components, linear levers, joysticks (only in case of a module)	Three (3) years
Repair work and material used for repair, including repair of Wear-and-Tear Parts	One (1) year

\*Expressly excluding prototypes, development samples and initial samples.

This warranty expressly excludes the following:

- shipping costs to and from HBC, which shall be paid by Customer;
- prototypes, development samples and initial samples;
- damage resulting from misuse, neglect, accident, alterations, failure to follow instructions, fire, or acts of God;
- damage or defect resulting in whole or in part from a customer's or user's non-compliance with the instructions for handling, maintenance, care and operating conditions, intentional action or disregard, or use of undue force;
- radio control systems, spare components (spare transmitters and/or spare receivers), spare parts, attachments/add-on parts and/or accessories that have been previously repaired, serviced or maintained by a person or entity not authorized by HBC in writing, by the customer or user, or by a service partner not certified by HBC in writing, regardless of whether or not the defect is in any way a direct result of the unauthorized repair, service or maintenance;
- any HBC Product that has been modified to use or contain one or more spare parts manufactured by a third party not been expressly approved by HBC in writing (including rechargeable batteries), built-in parts or add-on parts or accessories that have been mounted or attached, and/or any other technical modification performed that has not been expressly approved by HBC in writing, regardless of whether or not the defect is in any way a direct result of this action;

- defect or damage resulting from the prevalence of any adverse environmental condition, e.g. due to electromagnetic physics, causing temporary or permanent interference of radio operation at the respective place of use;
- defect or damage occurring due to any specification or regulation restricting radio operation at the respective place of use; and
- any damage or defect if the claimant is in delay of payment owing to HBC.

**HBC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE HBC PRODUCTS (INCLUDING ELECTRICAL COMPONENTS), AND HBC SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM INFRINGEMENT CLAIMS.**

Warranty claims must be made before the end of the applicable Warranty Period by written notice sent by (a) registered mail, postage paid, and with return receipt requested, to HBC at the following address: HBC-radiomatic, Inc., 1017 Petersburg Road, Hebron, KY 41048, Attn.: Warranty Claims Manager or (b) electronic mail to HBC at [warranty@hbc-usa.com](mailto:warranty@hbc-usa.com) with delivery confirmed. All warranty claims will be deemed made on the date such written notice is received by HBC. HBC Products alleged to be defective must be returned during the applicable Warranty Period to HBC at the above address. If a warranty claim is made with respect to an electrical component, Customer must return the entire Product and not just the electrical component. HBC, at its option, will repair or replace any HBC Product (including any electrical component) under warranty that is found to be defective in materials or workmanship. The foregoing remedy is exclusive and is granted in lieu of all other remedies. In no event will HBC be liable for consequential, incidental or special damages of any kind.

#### 6. No Other Representations.

Customer acknowledges and agrees that no employee, officer, agent or representative of HBC has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that Customer is not entering into this contract or transaction in reliance upon any representation, statement or promise of HBC except as expressly stated herein.

#### 7. Limitation of Remedies and Liabilities.

Customer's sole and exclusive remedy pursuant to any claim of any kind against HBC with respect to an HBC Product shall be (a) the repair or replacement of the HBC Product, or (b) at HBC's sole option, a refund of the purchase price paid by Customer to HBC for the HBC Product. For any claim of any kind against HBC concerning an HBC Product (including, but not limited to, any claim that HBC has failed to satisfy its repair/replacement obligation under this paragraph), Customer shall be limited (subject to the exclusions set forth below) to recovering only its direct damages up to but not in excess of the purchase price paid by Customer to HBC for such HBC Product.

HBC SHALL NOT BE LIABLE TO CUSTOMER, ITS CUSTOMERS, EMPLOYEES OR AGENTS, UNDER ANY CLAIM OR CIRCUMSTANCES (INCLUDING WITHOUT LIMITATION ANY CIRCUMSTANCE INVOLVING A FINDING THAT A WARRANTY OR REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE), WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT OR OTHER LEGAL THEORY, FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUE, LOST SALES, LOST GOODWILL OR LOSS OF USE OF ANY PRODUCT.



## 8. Inspection and Acceptance.

Customer promptly will inspect each product or replacement part upon receipt. Unless Customer timely notifies HBC in writing that Customer rejects the product, service or replacement part and sets forth with specificity the reasons for such rejection, the product, service or replacement part shall be deemed accepted by Customer upon expiration of 14 days after delivery to Customer. Acceptance arising from a failure to timely reject a product, service or replacement part shall be final and irrevocable.

## 9. Safe Operation.

Customer shall use, and require all persons operating an HBC Product to use, any and all proper and safe operating procedures set forth in the operator's manual and instruction sheets relating to the HBC Product. Customer shall not remove or modify any safety device or warning sign installed on or attached to an HBC Product. Customer shall defend, indemnify and hold harmless HBC, its affiliates, and their respective officers, agents, and employees from and against all loss, liability, claim action, or expense, including reasonable attorneys' fees, arising from or attributed, in whole or in part, to Customer's misuse or modification of any HBC Product or failure to observe any safety or other instructions, warnings or procedures for proper operation, maintenance or storage of an HBC Product.

## 10. Governing Law; Forum Selection; Costs; and Limitation Period.

These Terms and Conditions of Sale constitute a contract between HBC and Customer, and the construction of this contract, all rights and obligations between the parties to this contract, and any and all claims arising out of or relating to the subject matter of this contract (including all tort claims), shall be governed by the laws of the State of Ohio, U.S.A., without regard to its conflicts of law principles. The applicability of the U.N. Convention on the International Sale of Goods is hereby expressly excluded. Any litigation or other legal proceeding of any kind based upon or in any way related to this contract, its subject matter, or the rights or obligations of the parties to this contract, shall be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in Hamilton County, Ohio U.S.A. (if the action is brought in state court) or in the Southern District of Ohio, U.S.A. (if the action is brought in

federal court); provided that nothing contained herein will prevent HBC from bringing any action or exercising any rights against Customer or its property within any other state or nation. Any such proceeding must be brought within two years from the date on which the claim accrued, subject to such shorter or longer period as may be applicable with respect to warranty claims as set forth in Section 5. Any action brought in such courts shall not be transferred or removed to any other court or tribunal. The parties consent to the exercise of jurisdiction over them by the above-named courts as their freely negotiated choice of forum for all actions subject to this forum selection clause. HBC shall be entitled to collect all reasonable attorney fees and costs from Customer in any action required to enforce these Terms & Conditions of Sale.

## 11. Severability of Terms.

If any provision of these terms and conditions shall be held to contravene any applicable law, such provision shall be modified and reformed and thereafter enforced to the extent permitted at law or equity, and in all other respects these terms and conditions shall remain in full force and effect.

## 12. Force Majeure.

In no event shall HBC be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, governmental action or restraint, strikes, work stoppages, failures of public utilities or common carriers, unavailability or scarcity of supplies, fuel or transportation, cyber incidents and disruptions, accidents, forces of nature, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes, or acts of God.

## 13. Rights Retained.

HBC retains all rights in all intellectual property, such as trade secrets, patents, confidential information, trademarks, trade dress, or copyrights possessed by HBC that are protected by state, federal and/or common law, and nothing in these Terms & Conditions of Sale shall be deemed or construed to be a transfer or license of any of HBC's intellectual property.