

## General Terms and Conditions for Delivery and Payment (as of April 2019)\*

**ABITRON Germany GmbH**

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**ABITRON**  
Safety Radio Remote Controls



### **1. Preamble**

- 1.1. These General Terms and Conditions for Delivery and Payment (hereinafter called GTCDP) shall govern all legal transactions, be it contracts for the supply of goods and services or contracts for work and labour, between us (hereinafter referred to as „we“, „us“, or „Supplier“) and Buyer. In each case the version as amended at the time the contract is entered into, which can be downloaded from our homepage [www.abitronremote.com](http://www.abitronremote.com), shall prevail.
- 1.2. Any deviating or additional business terms and conditions by Buyer shall be excluded - even if we have not expressly rejected these upon receipt – unless expressly accepted in writing by Supplier. The Buyer acknowledges the present GTCDP and waives the assertion of his own general business terms or purchasing terms.

### **2. Conclusion of Contract**

- 2.1. Supplier's offers are subject to change. We reserve the right for changes in technical design or materials used within the bound of what is reasonable.
- 2.2. By placing an order, the Buyer submits a binding contract offer to which he is then bound for four weeks beginning with the date the written order was placed. The contract shall be deemed concluded upon written confirmation by Supplier of an order received or upon dispatch of a delivery.
- 2.3. We are entitled to reject Buyer's order without indicating a reason, especially after conducting a credit check or if the article is not on stock or a timely delivery can not be guaranteed. We will notify the Buyer immediately if an order is not accepted.
- 2.4. The Conclusion of contract shall be subject to the correct and punctual supply to ourselves. If the contractual scope of supplies and services is not or only partially available, we will notify the Buyer immediately. Any advance payments will be refunded accordingly.
- 2.5. Subsequent amendments or additions to the contract shall be subject to written confirmation. Any verbal subsidiary agreements and subsequent changes of contract shall only be valid if confirmed in writing.

### **3. Prices and Payment**

- 3.1. Prices shall be quoted ex works or ex Supplier's warehouse, without packing and packaging, loading, disassembly and customs clearance. Buyer shall be liable for any and all charges, taxes or other duties levied in respect of delivery. All prices are net exclusive of VAT. The relevant statutory VAT will be added. Prices are valid until further notice. We reserve the right to charge the prices applicable on the delivery day, if delivery is effected more than four months after the conclusion of the contract.
- 3.2. Supplier reserves the right to amend prices if the order placed by Buyer is not in accordance with the offer submitted.
- 3.3. In case that the installation of the purchased items is agreed upon, the cost of installation shall be indicated separately on time and material basis.
- 3.4. In carrying out repair orders, Supplier shall provide all services deemed expedient and shall charge Buyer for the same on the basis of the work input and/or expenditures required. The same holds for any services or additional services the expediency of which becomes apparent only as the repair order is executed. We reserve the right to invoice any expenses for repair estimates, expert opinions or the like.
- 3.5. Invoices are to be paid within 30 days of the invoice date without any deduction, unless otherwise agreed in writing. In case of part settlements the individual part payments shall fall due upon receipt of the respective invoice. Payment is considered on time if the payment amount is received within the target period. Checks are considered as payment only after they have been cashed. In case of default by the Buyer, we are entitled to charge interest on the amount owed at 8 percent over the base interest rate (§ 247 Abs. 1 BGB, § 288 BGB and § 1333 ABGB, § 352 UGB), in accordance with EU directive 2011/7/EU to reduce late payments in commercial transactions. The right to claim higher interest rates and other damages in the event of default remains unaffected.
- 3.6. Discounts or rebates are subject to complete payment in due time.
- 3.7. If Buyer fails to meet the terms of payment or any other obligation arising from this or other transactions, Supplier reserves the right to invoice all expenses arising, especially reminder charges and lawyer's fee.
- 3.8. Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims, unless such claims are undisputed or have become legally effective.
- 3.9. The Supplier is entitled to perform or provide any outstanding deliveries or services only against advance payment or security deposit, if circumstances after conclusion of the contract occur, that qualify towards reducing the creditworthiness of the Buyer significantly and by which the outstanding payment towards the Supplier is at risk.

### **4. Reservation of Title**

- 4.1. In order to secure all current and future claims of the Supplier towards the Buyer from the business relationship, including any refinancing or reverse exchange,

the Supplier shall retain the title to the delivery items. The reservation of title also covers the exchange of such delivered items. The item as well as the item recorded for reservation of title in its lieu as per this clause are hereinafter referred to as items subject to reservation of title.

- 4.2. The Buyer is obliged to handle our delivered items with care for the duration of the reservation of title. If maintenance or inspection on those items is necessary, the Buyer is obliged to execute those regularly at his cost.
- 4.3. The Buyer is entitled to process and sell the items subject to reservation of title in the ordinary course of business until the occurrence of the recovery case (4.7.) Pledges and security transfers are prohibited. If the items are processed by the Buyer, it shall be agreed that the processing takes place on behalf of and on account of the seller as manufacturer and the seller directly acquires the ownership, or – if the processing is carried out from materials with several owners or the value of the processed item is higher than the value of the items subject to reservation of title – the co-ownership (fractional ownership) of the newly created item. In the event that no such acquisition of property shall occur in the name of the seller, the buyer shall transfer his future ownership, or in case of co-ownership of the newly created item, then the co-ownership in the above proportion – as security to the Supplier now. If the items subject to reservation of title were to be connected with other items into a unified item or are inseparably mixed, and one of the other items is regarded as a main item, the buyer shall transfer its proportional co-ownership in the unified item in the proportion specified above to the seller, to the extent that the main item belongs to the seller.
- 4.4. In case of resale of the item subject to reservation of title, the acquirer shall assign the claim against the buyer arising from this to the seller as collateral, in the event of co-ownership, proportionally according to the co-ownership share already now. The same shall apply to any other claims that take the place of the item subject to reservation of title or that otherwise arise regarding the item subject to reservation of title, e.g. insurance claims or claims from tort in case of loss or destruction. The Supplier irrevocably authorizes the Buyer to collect the claims assigned to the Supplier in the name and for the account of the Supplier. The Supplier shall only be permitted to revoke the direct debit mandate in case of recovery.
- 4.5. If third parties should access the items subject to reservation of title, particularly through an attachment, the Buyer shall immediately notify them about the ownership of the Supplier and shall notify the Supplier thereof in order to enable the seller to assert the rights to reservation of title of the Supplier. To the extent that the third party is not able to compensate the Supplier for court costs in this context, the buyer shall be held liable for this.
- 4.6. The seller shall release the items subject to reservation of title and the items or claims replacing them at the discretion of the Supplier, upon request, to the extent that their value exceeds the amount of the secured claims by more than 50%.
- 4.7. If the seller withdraws from the contract due to conduct contrary to the contract by the buyer – particularly due to payment default – (recovery case), the seller is entitled to demand that the items subject to reservation of title be surrendered.

### **5. Withdrawal from Contract**

- 5.1. Buyer has the right to withdraw from the contract only in the event of a substantial delay of delivery on the part of the Supplier and only after a reasonable period of grace has elapsed.
- 5.2. Without prejudice to Supplier's claim for damages including expenses arising prior to a lawsuit, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by Supplier. Supplier reserves the right to withhold items or services until full payment has been received.
- 5.3. Supplier is entitled to unilaterally withdraw from the contract if the Buyer fails to make contractually agreed part payments or does not make them in full or on time. Withdrawal from contract shall also be possible in respect to any outstanding part of the delivery or service contracted for.
- 5.4. Regardless of the assertion of other claims, Supplier shall be entitled to unilaterally withdraw from the contract
  - a) If the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the responsibility of the Buyer and if the delay is extended beyond a reasonable period of grace;
  - b) If doubts have arisen as to Buyer's creditworthiness and if Buyer fails – on Supplier's request – to make and advance payment or to provide other adequate security prior to delivery;
  - c) If the period allowed for delivery is extended by more than half of the period originally agreed on or by at least six months;

- d) If bankruptcy proceedings are instituted against the Buyer or an application for bankruptcy proceedings against Buyer is not granted for insufficiency of assets.
- 5.5. Withdrawal from contract shall have no consequences other than those stipulated above. Any other consequences from the withdrawal of contract, especially any other additional claims or consequential damages are excluded.
- 6. Return Policy for spare parts**
- 6.1. In case of spare parts ordered incorrectly, we reserve the right to either reject the return or deduct up to 30% of the value of the parts as a restocking fee. Packaging and shipping costs are non-refundable.
- 7. Cancellation Policy / Cancellation Fees**
- 7.1. If an order is cancelled by the Buyer after we have submitted the order confirmation, we reserve the right to invoice a percentage value of the order value. The amount of the cancellation fee depends on the order status (5% of the order value if the order is in construction and 15% of the order value if the order is in production. An order is non-cancellable as soon as it's in the Testing Department).
- 8. Delivery and Service Provision**
- 8.1. Delivery date and scope of delivery are specified in our written order confirmation. They are always to be considered approximate unless a fixed date was set in writing. If shipping is agreed on, the delivery dates refer to the date of handover to the Shipping or Freight Company or other third party commissioned with transportation.
- 8.2. The delivery period shall be deemed to be complied with if the delivery items have left the plant by the time of its expiration or notification has been given that they are ready for delivery.
- 8.3. Supplier is entitled to extend the delivery and service period for the period in which the Buyer is in arrears with his payments or other contractual obligations. Further claims shall remain unaffected.
- 8.4. Buyer shall be responsible to obtain whatever licenses or approvals may be required by authorities or third parties for the export of equipment. If granting of such licenses or approvals is delayed for any reason the delivery period shall be extended accordingly.
- 8.5. The seller is entitled to carry out - and charge Buyer for - part or advance deliveries as long as disadvantages do not result from this for utilization. The Buyer may not refuse to accept or pay such part or advance deliveries.
- 8.6. If delivery on call has been agreed upon, the scope of delivery will be deemed to have been called one year after the order date, at the latest.
- 8.7. In case of unforeseeable circumstances or circumstances beyond the Parties' control, such as all cases of force majeure, which impede compliance with the agreed period of delivery, the latter shall be extended in any case for duration for such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labor disputes, and default on performance by a major component supplier who is difficult to replace. The aforesaid circumstances shall be deemed to prevail irrespective of whether they affect Supplier of his subcontractor(s).
- 8.8. Supplier reserves the right to make construction or design changes that are due to improvements in technology or required by law during the delivery period, provided the scope of delivery is not significantly changed and the changes are reasonable for the Buyer.
- 8.9. The mode of dispatch and packaging are subject to the dutiful discretion of the Supplier.
- 8.10. If Supplier should be in default with a delivery or service or if a delivery or service should become impossible to deliver for whatever reason, Supplier's liability is limited in accordance with § 11 of these GTCDP.
- 9. Transfer of Risk / Place of Fulfillment**
- 9.1. Utilization and risk is transferred to the Buyer at the time of departure of the goods ex works or ex warehouse, regardless of the terms of quotation (such as carriage paid, C.I.F. etc.) agreed upon. This provision also includes the case of shipment being effected, organized and supervised by Buyer and also the event that delivery is being made in connection with assembly work to be undertaken by Supplier. Complaints regarding any obvious damage or loss during shipping must be made immediately after delivery of the goods and include a damage report from the Freight Company.
- 9.2. The transported goods will be insured against theft, breakage, transport, fire and water damage and other risks only at the explicit request and the expense of the Buyer.
- 9.3. If separate written confirmation of acceptance is not made, our services, goods and works are considered accepted by the Buyer as soon as he uses them.
- 9.4. Storage costs for the period after the risk has passed to the Buyer shall be borne by the Buyer. If stored by the Supplier, the storage cost shall amount to 0,25 % of the invoiced amount of the delivery items to be stored for every week of storage. The charge for and the proof of further or lower storage costs remain reserved.
- 9.5. If acceptance is required, the scope of delivery shall be deemed to be accepted
- a) If the delivery and – provided that the Supplier owes the installation – the installation are completed;
- b) If the Supplier has informed the Buyer thereof with reference to the deemed acceptance as per this section 9.5. and has requested Buyer's acceptance;
- c) If 12 working days have passed since the delivery or installation or the Buyer has started using the purchased item (e.g. buyer is operating the delivered system) and in this case six working days have passed since delivery or installation, and
- d) If the Buyer has refrained from providing acceptance within this period for any reason other than because of a defect, of which he has informed the Supplier and which makes it impossible for the Buyer to use the purchased item or significantly impairs its use.
- 10. Warranty and Guarantee**
- 10.1. In the event of defects to the delivered items (manufacturing defects, material defects and installation defects) the Supplier shall be obliged and entitled to rectification or replacement delivery at the option of the Supplier. In case of failure, e.g. infeasibility or inadequate delay of the rectification or replacement delivery, the Buyer may – unless it is a minor defect - request withdrawal from the contract or appropriate reduction of the purchase price.
- 10.2. The warranty period is 24 months, unless separate warranty periods were agreed on for individual goods. The warranty period shall commence with the transfer of risk. The initial warranty period does not start afresh in case of repair or supplementation to the items delivered or in case of reworking assembly.
- 10.3. The Buyer is obliged to give notice of defects. The Buyer's warranty and guarantee claim is contingent on the fact that he notifies us in writing of any obvious defects or of any defects that become obvious only after a prompt and thorough inspection within an appropriate period (14 days) after delivery or acceptance (of an assembled system). Any other defects must also be reported in writing within 14 days of detection. If no written notification to the Supplier is submitted within this time frame, the goods and services are considered accepted and pressing any warranty claims is excluded. For the period preservation the punctual sending of notification suffices. The Buyer has the burden of proving all conditions for compensation, in particular for the defect itself, for the time the defect was detected, and for the timely notification of the defect.
- 10.4. If an item is manufactured by Supplier on the basis of design data, design drawings, models or other specifications supplied by Buyer, Supplier's warranty shall be restricted to non-compliance with Buyer's specification.
- 10.5. The Supplier grants a guarantee period of 24 months for his delivered items. The guarantee period shall commence with the transfer of risk. All costs and guarantee extend to reworking or replacement only. All other costs (e.g. transport costs, packaging costs) are to be absorbed by the Buyer. In case of a guarantee claim, the Supplier reserves the right to improve the delivered items three times in total for the same defect. Only after the failure of such rectification measures, the buyer is entitled to a replacement of the delivered goods. Excluded from guarantee are parts subject to regular wear and tear. Place of fulfillment for all guarantee and warranty claims is the Supplier's delivery plant. Manufacturer warranties are not affected.
- 10.6. Warranty only extends to the Buyer identified in the order confirmation and is linked to the proper execution of a notice of defect as per this section 10.3.
- 10.7. If the Buyer tampers with or modifies the goods without the Supplier's permission, any warranty claims are void. If parts are integrated which are not ABITRON original spare parts (but third party parts), the warranty claim expires. This applies especially for the use of batteries that are not original ABITRON products. Defects that arise from setup and assembly not carried out or permitted by Supplier, improper equipment, failure to observe the installation requirements and conditions of use, overuse of the parts contrary to the description, negligent or improper handling – including water damage - or the use of unsuitable operation materials are also excluded from the warranty. All of the above also apply to defects that are attributed to material provided by the Buyer. Furthermore, Supplier shall not be liable for damage caused by the actions of third parties, for atmospheric discharge, voltage surges and chemical influences.
- 10.8. Buyer shall be obliged to inspect all goods delivered for suitability regarding the respective conditions of use and any measure needed for accident prevention
- 10.9. No warranty of any kind shall be furnished when the delivery of used items has been agreed on.
- 10.10. In case of defects of components from other manufacturers, which Supplier cannot repair due to licensing or factual reasons, the Supplier shall, at Supplier's option, assert the warranty claims against the manufacturer on account of the Buyer, or assign them to the Buyer. Warranty claims against the

Supplier shall apply in such defects under the other prerequisites and in accordance with the terms of delivery only if the legal enforcement of the aforementioned claims against the manufacturer has been unsuccessful or is futile, e.g. due to bankruptcy. The statute of limitation of the concerned warranty claims of the Buyer against the Supplier is restricted for the duration of the legal dispute.

#### **11. Limitation of Liability**

- 11.1. Outside the scope of the Product Liability Act, Supplier shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. Supplier shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, loss of profits, loss of savings or interest or damage resulting from third-party claim against Buyer. The Buyer shall bear the burden of proof for case of intent or acts of gross negligence.
- 11.2. Supplier is not liable in case of simple negligence on the part of his bodies, legal representatives, employees or other agents, or in the event of gross negligence of his non-executive employees or other agents.
- 11.3. Supplier is only liable for the violation of essential contractual obligations. Essential contractual obligations include the obligation to deliver and install in a timely fashion goods that are free of essential defects, advisory, protective, custodial and duty of care obligations that enable the client to use the item delivered in the contractually prescribed manner or whose purpose is to protect the lives and health of the Buyer's personnel or customers. Indirect damage and consequential damage due to defaults in the delivered items are only liable for compensation if such damage can be typically expected when the item delivered is used for its intended purpose.
- 11.4. In the event of liability for ordinary negligence (even for violation of essential contract duties), our compensation for damages and injuries is limited to € 1.000,00 per case if this limitation is legally permissible in the country where the damage occurred.
- 11.5. All exclusions and limitations of liability apply to the same extent for our bodies, legal representatives, employees and other agents.
- 11.6. If the Supplier provides technical information or offers support to the Buyer and this information is not within the scope of the contractually agreed services, it is provided free of charge and we are therefore free of any liability with respect to it.
- 11.7. The limitations listed under section 11.1 to 11.5 do not apply to our liability for deliberate actions, for guaranteed characteristics, for impairment of the Buyer's life, limb and health, or according to the Product Liability Act.
- 11.8. Supplier refuses all liability claims for property damage, personal injury or death, which arise from the use of non-approved spare parts and/or unauthorized service.
- 11.9. Supplier refuses all liability for damage according to the Product Liability Act, which arise from unauthorized modifications or alterations of the delivered goods by the Buyer or third parties.
- 11.10. The Buyer has been informed that radio remote control systems may be operated only with special permission of the national communication authorities and only using the allocated operating frequency. As authorization modalities vary, the Buyer declares to obtain the necessary approvals himself and at his cost and that he will operate the system only under the conditions laid down in the approval. In case of a resale to a third party, this responsibility has to be passed on accordingly. Liability of the Supplier ends with said resale, including but not limited to liability according to the Product Liability Act.
- 11.11. If contractual penalties are agreed upon, claims over and above the same arising from the corresponding titles are excluded.
- 11.12. Supplier refuses all liability for non-compliance with any existing conditions for assembly, operation, and use (particularly as described in operating and instruction manuals) or for violation of conditions for official approval.
- 11.13. If no separate agreement has been made in individual cases or if legal provisions stipulate shorter periods, all Buyers' claims must be presented in court within three years of the transfer of risk, otherwise they will expire. This also applies if other legal systems specify longer limitation periods.
- 11.14. Liability from the title of damage compensation expires within 1 year after Buyer has gained knowledge of the damage and the liable party, but not later than ten years after delivery.

#### **12. Industrial Property and Copyrights**

- 12.1. Buyer shall indemnify Supplier and hold him harmless against any claims for any infringement of industrial property rights raised against him if Supplier manufactures an item pursuant to any design data, design drawings, models or other specifications made available to him by Buyer.
- 12.2. Any and all design documents such as plans, drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like

shall remain the intellectual property of the Supplier, are subject to the relevant statutory provisions governing reproduction, imitation, competition etc. and may be reclaimed by Supplier at any time. Said documents must not be passed on to third parties or duplicated or otherwise put in circulation without explicit written consent of the Supplier. Buyer shall be held liable for any violations of this restriction, even if the violation has been conducted by his employees, agents or other third parties.

#### **13. Final Provisions**

- 13.1. Mutually agreed place of jurisdiction for all disputes arising from the business relationship between Supplier and Buyer shall be the registered domicile of the Supplier.
- 13.2. The present GTCDP as well as any other legal relations between Supplier and Buyer shall be subject to the existing law at the domicile of the Supplier. The validity of the UN Convention on the International Sale of Goods shall be excluded.
- 13.3. Should any individual provisions or any part of any provision be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. In such an event the Parties shall undertake to replace the void and/or illegal and/or unenforceable provision or provisions coming as close as possible to the sense and spirit and purpose hereof.