

## **1 Application**

These General Terms and Conditions apply to delivery of Products and performance of related Services by Motorola. Deviations from these General Terms and Conditions shall be made in writing. Deviating terms and conditions stated in an individual offer or contract shall take precedence over these General Terms and Conditions. Buyer's General Terms and Conditions do not apply.

## **2 Definitions**

"Motorola" is Motorola Solutions Germany GmbH, Telco Kreisel 1, 65510 Idstein, Germany, registered at the district court of Wiesbaden under the number HRB 16024. In the event the respective offer or invoice is being issued by another affiliate of Motorola Solutions, Inc. or the contract referencing to these General Terms and Conditions is being concluded with such affiliate, "Motorola" is the respective affiliate of Motorola Solutions, Inc. "Buyer" is the legal entity which, or natural person who, purchases or obtains Products or Services from Motorola. "Products" are goods and accessories purchased by Buyer including software, which have been indicated in the offer or in any other correspondence between the parties. "Services" are all corresponding services, which Motorola provides in connection with Products or which are stated in the offer or in any correspondence between the parties.

## **3 Conclusion and Content of the Agreement**

By submission of a purchase order or acceptance of Motorola's offer Buyer agrees to these General Terms and Conditions. In this case, the parties enter into a purchase agreement (*Kaufvertrag*) for the delivery of agreed Products and a service agreement (*Dienstvertrag*) for the provision of offered Services within the meaning of, respectively, § 433 and § 611 of the German Civil Code (BGB) and under the application of these General Terms and Conditions. In addition, a license agreement, as stated herein, applies to deliveries of software. Any responsibilities of Buyer as stated in the offer (e.g. responsibility matrix), constitute Buyer's obligation (*Obliegenheit*).

## **4 Product Amendments / Specifications**

Instead of ordered Products, Motorola is entitled to deliver Products with a similar specification as a substitute, provided that Products feature the agreed or a better technical condition and they still comply with the agreed or implied scope of use. Buyer shall not remove or alter markings or labels on any Product. If Motorola uses electronic components from re-exchanged systems, these electronic components shall be as good as new and inspected by Motorola. An appropriate indication therefore shall be on the package.

## **5 Delivery**

5.1 The dates of delivery communicated by Motorola are estimated and constitute no contractual commitments.

5.2 Motorola reserves its right to partial delivery. Delivery terms are Ex-Works (Ex Works, Incoterms 2010) from one of Motorola's locations. Upon delivery Buyer shall examine all documentation and inspect all Products for completeness and freedom from defects immediately. Buyer has to notify Motorola in writing or by fax about missing numbers of pieces and visible damages to Products specifying them within eight (8) calendar days after delivery or collection of Products (*Obliegenheit*).

5.3 In the event Buyer fails to notify Motorola, delivered Products are deemed to be accepted by Buyer without any reservation of rights. (§ 377 of the German Commercial Code (HGB)).

5.4 The disposal of packaging is incumbent upon Buyer, if the packaging does not contain any instructions that the disposal can occur to a common collection system.

## **6 Prices and Terms of Payment**

6.1 The offered prices are exclusive of VAT and other applicable taxes, customs, duties and other similar charges, which, as far as legally incurred, shall be paid by Buyer and separately listed on the invoice.

6.2 Payment terms are 30 days from date of invoice. The invoice shall be sent with the delivery of Products or, in case of service performance, with the beginning of Services.

6.3 As long as Buyer has not fulfilled all Motorola's payment claims (including all net balance claims on current accounts), to which Motorola is entitled for any legal reason at present or in the future, Buyer shall provide securities as set out in the following paragraphs. Motorola shall release these securities upon Buyer's request and at Motorola's choice if the value of the aforesaid securities consistently exceeds the value of all payment claims by more than 20 percent.

6.4 Motorola remains the owner of any Products delivered hereunder until full payment has been received. If Motorola's ownership terminates as a result of processing or conversion of Products or combinations with, or integration in other movables, it is hereby agreed that Buyer's ownership of the new or, respectively, unified movable resulting from the foregoing actions shall be transferred to Motorola on a pro rata value basis (invoice value). Buyer shall store Motorola's property free of charge. Products to which Motorola has a (ownership) title are hereinafter referred to as "reserved goods".

6.5 Buyer is entitled to process or sell reserved goods in the ordinary course of business if Buyer is not in payment default. Buyer is not entitled to pledge or assign the reserved goods or any other related rights as a security. Preventively, Buyer hereby absolutely assigns to Motorola any (payment) claim (including all current account balance claims), to which Buyer is

entitled as result of the resale of reserved goods or of any other legal requirement in connection with the reserved goods (i.e. insurance, tortious acts). Motorola grants to Buyer the revocable right to collect the (payment) claims assigned to Motorola in Motorola's interest and in Buyer's name. Motorola may revoke the aforesaid collection right only if Buyer fails to comply with its payment obligations. Upon Motorola's request, Buyer shall disclose the assignment and give the required information.

6.6 In the event of seizure of the reserved goods by third parties, Buyer shall notice the third parties of Motorola's ownership and inform Motorola about all actions of the third party.

## **7 Warranty**

7.1 Motorola warrants to Buyer that Products comply with the agreed specifications and are free of substantial defects in material and workmanship. Warranty rights lapse after a period of twelve (12) months from the date of delivery (*Nacherfüllung*, *Rücktritt*, *Minderung*). Except those warranty rights which occur due to willful intent or gross negligence to life, body or health. In this case the lapse of time complies with the law. Non-functionality of ancillary functions or short breakdowns of the software constitute no software defect. If during the warranty period a software defect occurs, Motorola shall at its own choice correct the defect/debug through remote control or send correction software programs (i.e. patches, bug-fixes), which Buyer shall install. If Buyer fails to install such software programs, Buyer loses his warranty rights with regard to such software defect(s).

7.2 Buyer is initially only entitled to demand an appropriate rectification of the defects by Motorola. As a rectification of the defects, Motorola shall at its option carry out post-rectification (*Nacherfüllung*) or delivery of defect-free Products. If the rectification by Motorola is abortive, the relevant legal regulations apply.

7.3 In the event of a repair Buyer shall in advance remove all components and accessories that have not been made by or purchased from Motorola or its technological partners and that have been attached to or installed on Products and reverse respective modifications. Otherwise, Motorola will set the original state at the Buyer's expense for the purpose of repair. Motorola reserves its right to send the repaired Product to Buyer with the standard factory configuration.

7.4 If Buyer is not a consumer, Buyer shall be responsible for shipment of defective Product to Motorola; return shipment to Buyer shall be at Motorola's expense. Nevertheless, Buyer shall be responsible for return shipment charges for Products in the event there was no defective in the Product.

7.5 Motorola's warranty to Buyer expires  
(a) if Products have been used in an inappropriate manner,  
(b) in case of attempts by Buyer or unauthorized third parties to repair Products or to replace parts of Products,

(c) if Products have been connected with, attached to, used or operated with, any ancillary item or software, other than items or software purchased from Motorola, or

(d) if markings or labelings of Products have been removed or altered.

## **8 Limitation of Liability**

8.1 Motorola's liability is limited to the total price of the respective agreement. Motorola is not liable for indirect/consequential damages (damages, which occur not at sold Product, but to other objects or rights of Buyer; e.g. lost profit, claims of third parties against Buyer, data damage or image damages).

8.2 The liability limitation and exclusions, stated in article 8.1, shall not apply to damages to body, life and health, in the event of willful intent or gross negligence and in the event of breach of material contractual obligations, which are obligations resulting from the nature of the contract, whereupon the fulfillment of the contract's scope is, in case of breach of those obligations, endangered (cardinal obligations). Liability based on product liability remains unaffected.

## **9 Software / Intellectual Property Rights**

9.1 Motorola grants to Buyer the following license to use the software with the purchased Products:

### **9.1.1 Product Software**

Motorola grants to Buyer a non-exclusive, only with Product transferable, timely non-restricted license to use the software embedded in the Products, including updates. This license applies only to the use of this embedded software with the purchased Products.

### **9.1.2 Service Software**

Motorola grants to Buyer a non-exclusive, only in conjunction with the storage media (on which the software is saved) transferable, timely non-restricted license to use the offered service software, including updates. This license applies only to the use of this service software for Products manufactured by Motorola.

### **9.1.3 Buyer's software-related obligations**

Buyer may make copies of the software only for reasons of data backups and only as long as he holds the corresponding license and shall not provide the software to third parties except under conditions as stipulated in this article 9.1.3, and shall not otherwise disassemble, decompile or change the software (subject to § 69e of the German Copyright Act (UrhG)). Buyer may lease the software to third parties only with prior explicit written approval of Motorola. Buyer is entitled to pass on or sell the software to third parties (a) only in conjunction with transfer of the license to the third party and (b) only by contractually obligating the third party to be bound by the conditions stipulated in this article 9.1.3. With executed license transfer Buyer will lose all rights regarding the software, including possession, usage and distribution, and has to delete all remaining copies of the software. Buyer shall be responsible for the payment of all fees for the software

and the use licenses, which may result from the respective agreement. If Buyer does not fulfill his obligations under this article, Motorola is, in addition to further rights, entitled to terminate the respective license agreement without notice and to recall the software.

9.2 In case of an infringement of intellectual property rights by Products delivered by Motorola, the following shall apply:

**9.2.1 Defense / Indemnification**

Motorola shall at its expense defend any suit brought against Buyer to the extent that such suit is based on a claim of a third party that “Motorola” or “Motorola Solutions” – branded Products sold by Motorola to Buyer constitute an infringement of intellectual property rights within the European Union or in the country of Buyer’s corporate (legal) seat. Motorola shall indemnify Buyer against any claim awarded by final judgment (from which no appeal may be taken) against Buyer or any settlement effectively reached, the indemnification will be carried out through paying the awarded amount to the third party; however, Motorola will indemnify Buyer only on condition that

- (a) Buyer promptly notifies Motorola of such infringement claim in writing,
- (b) Buyer gives Motorola authority, information and assistance necessary to defend or settle such suit or proceeding in such a manner as Motorola shall determine,
- (c) Buyer gives Motorola the sole control of the defense, and
- (d) Buyer does not recognize such infringement claim and not compromise it in a settlement without Motorola’s consent.

**9.2.2 Remedy for infringement**

If such infringement claim occurs, Motorola shall at its option and expense (i) procure for Buyer the right to continue using Products or (ii) replace or modify such Products so that such Products become non-infringing while providing functionally equivalent performance. In the event that Motorola will not be able to provide the aforementioned options, at Buyer’s request Motorola will be obliged to grant to Buyer a credit for Products as depreciated and accept their return. In this case the Buyer will be obliged to return Products. The depreciation amount shall be calculated based upon generally accepted accounting standards for such Products.

**9.2.3 Exclusions**

Motorola shall have no duty to defend Buyer according to article 9.2.1 and 9.2.2 against any infringement claim in case of:

- (a) the combination or the use of Products with any software, apparatus, device or equipment not delivered by Motorola,
- (b) the use of Products in a manner objectively not expected,
- (c) modification to Products,
- (d) Products designed according to Buyer’s specifications,
- (e) Products conforming a technical industry standard,

(f) Buyer’s failure to install an enhancement release to the software that is intended to correct the claimed infringement,

(g) infringement of intellectual property rights occurs after Buyer was respectively notified by Motorola not to use or sell Products, or

(h) claiming for royalties payable on a per use basis or on the Buyer’s revenues. Motorola’s liability related to royalties is restricted to the payment of a reasonable royalty based upon the revenue received by Motorola from Buyer for sales or license of infringing Products.

**9.2.4 Exclusive Character / Legal defect**

The foregoing Articles 9.2.1 to 9.2.3 state Motorola’s entire contractual liability with respect to infringements of intellectual property rights by Products delivered by Motorola. Article 8 is applicable to the entire liability of Motorola with respect to infringements of intellectual property rights, however, the contractual obligations stipulated in Articles 9.2.1 and 9.2.2 remain unaffected by the limitation of liability stipulated in Article 8.1 Sentence 2. In particular, any potential statutory rights for the Buyer based on a legal defect resulting from an infringement of intellectual property rights of a third party by Products delivered by Motorola remain unaffected by the Article 9.2.4 Sentence 1.

**10 Assignment**

10.1 Except as otherwise provided below, neither party may assign any agreement between the parties (hereinafter referred to as “Agreement”) or any of its rights or obligations hereunder without the prior written consent of the other party. Subject to § 354a of the German Commercial Code (HGB), any attempted assignment, delegation, or transfer without the necessary consent shall be void. Motorola is entitled to transfer rights or obligations resulting from the agreement to an affiliate in the sense of § 15 of the German Stock Corporate Act (AktG).

10.2 Notwithstanding the foregoing, in the event Motorola separates one or more of its businesses (each a “Separated Business”), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Motorola may, without the prior written consent of the other party and at no additional cost to Motorola, assign the respective agreement such that it will continue to benefit the Separated Business and its affiliates following the Separation Event.

10.3 Notwithstanding the foregoing, as the respective agreement may be for the benefit of multiple businesses of Motorola, in the event Motorola separates one or more of its businesses (each a “Separated Business”), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Motorola may, without the prior written consent of the other party and at no additional cost to Motorola, split this agreement by assigning certain of its rights or obligations such that it will continue to benefit both, Motorola and the

Separated Business and their respective affiliates following the Separation Event.

## **11 Compliance with Law and Ethics**

11.1 The parties agree to refrain from any actions which are illegal, unethical or against the Motorola code of business conduct. This code is available at the address stipulated at the end of this section.

<http://responsibility.motorolasolutions.com/index.php/ourapproach/busconduct/>

11.2 Each party shall fully comply with all laws applying to the sale and distribution of Products purchased under the respective agreement, applicable anti-corruption laws and laws prohibiting the payment of commercial or private bribes and the principles of the U.S. Foreign Corrupt Practices Act.

11.3 Buyer is obliged to cooperate in any investigation of Buyer's activities by any legal and regulatory body, unless such obligation to cooperate violates Buyer's statutory or constitutional rights.

## **12 Export**

12.1 The delivery of Products may be subject to German, EU and US-American export control or anti-terrorism laws and regulations. Buyer shall provide such respective licences, which Buyer is obliged to provide according to the stipulated delivery terms and conditions and in particular to the stipulated Incoterms.

12.2 As far as the Products are subject to German, EU or US-American export control laws or regulations Buyer guarantees to comply with these laws and regulations. In the event of the requirement of a respective license Buyer guarantees that he will neither directly nor indirectly export or re-export Products or technical information obtained from Motorola nor transfer know-how/technology obtained from Motorola before the responsible state authority grants Buyer the respective export licence. The breach of this obligation entitles Motorola to withdrawal (*Rücktritt*) from, or termination (*Kündigung*) of, the agreement without notice.

12.3 In regard to US-American export control legislation Buyer shall support Motorola with any essential information, e.g. Product classification, or in any licence application to be brought in the USA. Buyer shall, furthermore, constructively assist in licence application procedures and in particular provide all required documents. The incidental costs and charges shall be borne by Motorola.

12.4 In case an export licence is required for the contractual fulfilment in accordance with German or EU foreign trade legislation, US-American export control regulations or other national regulations, the contractual prime obligations shall become subject to the suspensive condition that the aforementioned export licence will be granted within the period of 6 months. On non-fulfilment of the suspensive condition, the individual suspended or affected agreement shall become of no force and effect.

12.5 In case the requirement of an export licence according to German or EU foreign trade legislation or

US-American export control regulations occurs after the signing of an agreement or of an individual purchase order agreed in the course of agreement performance, this agreement or the affected purchase order shall become subject to the resolutive condition that the respective licence will not be granted within the period of 6 month after the occurrence of the export licence requirement. On occurrence of the resolutive condition, the respective agreement or the affected purchase order shall become of no force and effect.

12.6 In case an export licence is required for the contractual fulfilment in accordance with German or EU foreign trade legislation, US-American export control regulations or other national regulations and it has been granted by the respective authority, the contractual prime obligations shall become subject to the resolutive condition of the non-compliance with the aforementioned export licence or its collateral clauses. On occurrence of the resolutive condition, the affected agreement shall become of no force and effect.

12.7 In the event an agreement or an individual purchase order becomes of no force and effect as a result of non-fulfilment of the suspensive or occurrence of the resolutive condition, Buyer has no right to claim any compensation for damages against Motorola.

## **13 General**

13.1 Buyer may set-off only against claims which were acknowledged by Motorola in writing or were decided by a court with final jurisdiction.

13.2 Subject to § 305b of the German Civil Code (BGB), legal declarations and notifications as well as contract changes require the written form. Any implicit or explicit exclusion of this provision requires the written form as well.

13.3 If a reason for Buyer's insolvency occurs, the total price for all delivered, but not paid, Products shall become due.

13.4 Confidential information is protected only under the condition that it has been marked as such. Verbally transmitted confidential information is protected as confidential only in case the confidentiality has been confirmed by the disclosing party within 30 days after its submission in writing and the essential contents have been summarized by the disclosing party.

13.5 These General Terms and Conditions are construed and governed by the laws of Germany. Any application of the UN Convention on Contracts of the International Sales of Goods shall be hereby excluded. Place of jurisdiction is Berlin.

13.6 The invalidity of a provision of these General Terms and Conditions does not affect the effectiveness of the remaining provision(s). In the event of ineffectiveness of a provision, the parties shall agree on a provision which meets the parties' intention as sufficient as possible.