

Motorola Solutions UK Limited Conditions of Sale

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Conditions of Sale – Motorola Solutions UK Limited

1 General Conditions of Sale:

These conditions of sale are the standard conditions for the supply of the goods and services by Motorola. Any variations from these Conditions of Sale must be in writing and signed by both parties.

2 Definitions:

“Motorola” shall mean Motorola Solutions UK Limited, its successors and assigns. “Buyers” shall mean the entity that is purchasing Motorola’s Product(s) and/or Services(s). “Product(s)” shall collectively mean the goods, equipment and accessories, including software, identified by Model/Park Number on the face of this document. “Services” shall mean any supplementary Services to be supplied to Buyer in relation to the Products and identified on the face of this document. “Delivery” or “Conditions” terms such as EXW, FCA, FOB, CIF, CIP shall be interpreted in accordance with Incoterms 2000 as amended from time to time.

3 Agreement/Acceptance:

The acceptance by Motorola of the Buyer’s purchase order shall be subject to the application of these Conditions of Sale which shall constitute the complete and exclusive statement of the conditions of contract between Motorola and Buyer for Products or Services to be supplied by Motorola. Any terms proposed in any document submitted by the Buyer, which add to, vary from, or conflict with these Conditions of Sale are hereby excluded and any such terms proposed by the Buyer shall not apply. Where products are supplied to Motorola’s Authorised Distributors these Conditions of Sale shall apply in conjunction with Motorola’s Letter of Appointment of Distributor and the current Distribution Manual. Each order so accepted, shall not be cancelled by the Buyer and will constitute an individually legally binding contract for the purchase of Products and/or Services. Buyer’s acceptance of total or partial delivery of Products and/or any other conduct by Buyer (including full or partial payment of the purchase price) which recognises the existence of an agreement for the supply and purchase of Products and/or Services shall constitute unconditional acceptance by Buyer of the order upon these Conditions of Sale. These conditions of Sale are between Motorola and Buyer only. The parties do not intend to make any of the terms herein enforceable by any third party.

4 Products and Specifications

- 4.1** Motorola is entitled to supply Products incorporating modifications or to supply Products of a similar specification as a replacement. Buyer will not alter, obscure, remove or otherwise interfere with any markings or other indication of use source or origin on any Product or their labelling and/.or packing. When properly marked in the product packaging, newly manufactured products may contain in warranty electronic subassemblies from take-back schemes, which have been inspected to new equipment standards. Motorola does not make any additional representations with respect to Products or Services to satisfy any statues, regulations and provisions applicable to government purchases.
- 4.2** Buyer is solely responsible for obtaining all necessary permits, approvals and licenses related to the purchase, marketing and sale of the Products by Buyer.

5 Delivery

- 5.1** Motorola with endeavour to deliver the Products and/or perform the Services by the Date(s) confirmed by Motorola. Delivery dates are estimated only. Time of delivery will not be of the essence unless specifically agreed, otherwise in advance and in writing for each order. Motorola shall have no liability for any delay in delivery for whatever reason.
- 5.2** Motorola reserves the right to make deliveries in instalments which shall not relieve the Buyer from its obligation to pay for remaining deliveries. Buyer with check all delivery documentation upon delivery or collection and will inspect all Products. Risk in the Products transfers to the Buyer upon delivery or collection.
- 5.3** Defects or any damages to the Products must be notified in writing to Motorola within five (5) days after delivery or collection. Thereafter, any claims will be handled within the scope of the Warranty. Disposal of shipment packing is the Buyer's sole responsibility. Buyer will indemnity and hold Motorola harmless for any related claim arising from mishandling and/or inappropriate storage of Products by the Buyer and/or its agents.
- 5.4** Subject to Condition 5.3 the Buyer shall be deemed to have accepted the Products upon their delivery or collection. Delivery terms will be Ex-Works from Motorola's distribution centre or as otherwise specified on the face of this document. Buyer commits to take delivery of Products from the delivery point.

6 Prices and Terms of Payment

- 6.1** The price for Products and/or Services shall be Motorola's current list price for such Products and/or Services at the time of Motorola's acceptance of order. Motorola is entitled to modify its prices from time to time and any new price will become effective upon notification to the Buyer. Prices are exclusive of VAT and all other applicable duties and other similar charges, which shall be payable by the Buyer.
- 6.2** All prices quoted for Products are Ex-Works Motorola's distribution centres or any other authorised locations, in the currency specified on this document. Prices do not include transport and insurance costs unless stated otherwise on Motorola's quotation or order receipt forms, shipping documents or invoice and any such transportation arrangements will be made at the risk and liability of the Buyer.
- 6.3** Payment terms for the price of Products and/or Services and any other ancillary or delivery charges, where applicable, as 30 days from date of invoice unless otherwise stated on the invoice or expressly agreed by the Buyer and Motorola in writing. Interest may be charged on overdue payments at the rate of [4%] over Barclays Bank plc base rate from time to time, calculated on a daily basis on the amount then due from the due date to the day Motorola receives cleared funds in full settlement. Time for payment shall be of the essence.
- 6.4** In addition to and without prejudice to any other claims or rights. Motorola shall be entitled to suspend deliveries or place Buyer on a 'cash with order' basis, without liability if the Buyer for any reason fails to pay any sum due to Motorola.
- 6.5** The Buyer may not for any reason deduct any sums from amounts due to Motorola without prior written agreement of Motorola, nor stay payment due to Motorola for any reason whatsoever.
- 6.6** Ownership of all Products supplied by Motorola shall remain with Motorola until Motorola has received full payment. Until then, Products shall not be pledged or given as security and may only be resold by the Buyer in the normal course of business against payment by its customers. The Buyer will clearly identify and store separately all Products for which Motorola has not received full payment. The Buyer hereby grants Motorola a right at any time to enter the Buyer's business premises to take possession of any such Products.

7 Buyer and End User Warranties

- 7.1** Motorola warrants to the Buyer that the Motorola Products comply with the specifications and are free of material defects in materials and workmanship for a period of 12 months from the date of delivery or collection. Warranty for batteries is for a period of 6 months. These Warranty periods will not be extended for repairs or replacements.
- 7.2** If the Buyer notifies Motorola of a defect during the Warranty period and Motorola agrees that there is a defect, then Motorola at its option, may repair or replace the defective Product(s), or failing this will reimburse the price of the Product subject to a deduction taking into account the use of the Product since it was delivered. Motorola reserves the right to subcontract the performance of warranty service to third parties.
- 7.3** The Buyer shall be responsible for the costs of returning any Products to Motorola.
- 7.4** Motorola's warranties to the Buyer shall expire if the Product is (i) used in a manner other than normal use, or (ii) attempted to be repaired or a replacement part is fitted to the Product by anyone other than Motorola or its authorised service subcontracts, or (iii) connected, attached, used or operated with any ancillary item other than items purchased from Motorola for use with such Product or (iv) if the markings or labelling in the Product have been altered, obscured, removed or otherwise interfered with.
- 7.5** Warranty claims shall be made in writing within the Warranty period to the customer server department of Motorola.
- 7.6** These Conditions of Sale state the Buyer's sole and exclusive remedies for defective Product(s) and/or breach of Warranty. Motorola makes no representation or warranty of any other kind express or implied and expressly disclaims any implied warranties of quality or fitness for a particular purpose, to the extent permitted by law.
- 7.7** Motorola's Warranty to an end-user will be according to the Motorola Warranty enclosed with the Products. Buyer shall not provide warranty service to the Product, which is inconsistent with the Motorola representations and conditions. Buyer will not be entitled to compensation in respect of warranty claims made by end-users directly with Motorola. If any warranty claims are made in respect of the same Product by both Buyer and an end-user Motorola's Warranty to the end-user shall prevail and Motorola shall have no liability to the Buyer.

8 Remedies

- 8.1** These Conditions of Sale define the limits of Motorola's liability to the Buyer whether in contract or tort, including negligence, and the Buyer's sole remedies in respect of any act or default by Motorola.
- 8.2** Motorola will accept liability for death and/or personal injury to the extent resulting directly from the negligence of Motorola and its employees.
- 8.3** Motorola will accept liability for physical damage to the tangible property of the Buyer to the extent that it is caused by the direct negligence of Motorola, its employees, agents and/or sub-contractors, subject to exclusions set out in Condition 8.4 below and up to a maximum of £1 million pounds sterling in the aggregate.
- 8.4** Except as provided in conditions 8.1, 8.2 and 8.3 above, Motorola's total liability shall not exceed the total purchase price of the Products in respect of which Motorola is in default. If a number of defaults give rise to only one claim. Motorola will be afforded a reasonable opportunity to remedy any such defaults.
- 8.5** Motorola shall no under any circumstances be liable for any loss of profits, business, revenue, goodwill, anticipated saving, lost business opportunities, financial or economic loss, special indirect or consequential loss even if foreseeable by or in the contemplation of the Buyer and/or Motorola or for any claim made again the Buyers by any third party.

9 Proprietary Rights

- 9.1** The Buyer shall not engage in or encourage any practice that may be detrimental to the goodwill or band name of Motorola.
- 9.2** Motorola shall indemnify Buyer against claims that any Product provided under this contract directly infringes a third party patent, design right, copyright or trademark in the Buyer's country provided that (i) Motorola is notified promptly in writing of any claim (ii) Motorola is given conduct and control of the claim and all requested assistance, (iii) the Buyer makes no admission of liability and takes no other action on account of such claim without Motorola's prior approval, and (iv) the claim does not arise out of used of the Products in combination with any other item not supplied or manufactured by Motorola for use with such Products. This Condition 9 states Motorola entire liability for any intellectual property rights infringement.

9.3 Motorola has certain rights in software, firmware, and computer programs or data residing in the Products (“Software”), including without limitation the right to prepare derivative works and distribute copies, title to which at all times remains with Motorola or a third party licensor as the case may be. Products are sold subject to any applicable third party’s rights. The Buyer shall not prepare works derived from, reproduce in copies or distribute copies of any Motorola Software. When Motorola Software Licence Agreement is provided to Buyer to Buyer it is hereby incorporated by way of reference as an integral part of these Conditions of Sale.

10 General

10.1 The Parties agree that they shall attempt to settle any claim or controversy arising out of these Conditions of Sale through consultation and negotiation in the spirit of mutual friendship and co-operation. Any dispute which the parties cannot so resolve between themselves in good faith within two (2) months of the date of the initial demand by either party shall be finally determined as set out below. This procedure shall not be construed (under such doctrines as laches, waiver or stoppel) to have affected adversely to pursue its legal remedies, and nothing shall prevent either Party from resorting to judicial proceedings if (a) good faith efforts to resolve the dispute have been unsuccessful and/or (b) if interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others. No action shall be brought more than two years after the accrual of such cause of action.

10.2 The construction, validity and performance of these Conditions of Sale shall be governed by the Laws of England and the Buyer irrevocably submits to the jurisdiction of the courts of London. Any application of the UN Convention on Contracts of the International Sales of Goods is hereby excluded.

10.3 Buyer may not assign any right or obligation under these Conditions of Sale without the prior written consent of Motorola. Motorola may delegate any of its obligations under this contract performed to third parties and may assign its rights and duties to third parties and, in part Motorola, Inc’s and any Motorola, Inc’s direct and indirect majority owned subsidiaries without the Buyer’s approval.

10.4 Both parties will refrain from activities which are illegal, unethical or which might bring either party or the Products into disrepute or which might constitute or represent a serious conflict of interest or which might give the appearance of impropriety. Both parties will co-operate fully in any investigation or evaluation of such matters. The Buyer shall comply with all the export control rules of the country in which it operates as well as US export control laws and regulations. Breach of these Conditions of Sale by either party will entitle the non-breaching party to terminate this contract upon written notice to the other.

- 10.5** Any notice required to be made in accordance with these Conditions of Sale must be made in writing and shall be sent to the parties at the address indicated on the face of this document. Notices shall be sent by fax or post.
- 10.6** If the Buyer (i) makes any voluntary arrangement with its creditors, becomes subject to an administration order, winding up, a charge holder takes possession, or (ii) a receiver is appointed over any property or assets of Buyer, or (iii) the Buyer ceases or threatens to cease to carry on business, or (iv) Motorola has grounds to suspect that any such event may occur, or (v) non-payment by the Buyer of any outstanding invoices due to Motorola whether or not related to this contract, then, without prejudice to any other right or remedy available to Motorola, the full price of the Products that have been delivered or collected but not paid for shall immediately become due and payable or at Motorola's discretion any Products delivered or collected should be returned to Motorola by the Buyer upon receipt of Motorola's written request and Motorola may suspend and further deliveries or collections of Products as well as cancel any offer made by the Buyer to purchase Products.
- 10.7** Neither party shall be under any liability, other than payment of Products purchased from Motorola, for full or partial non-performance of these Conditions of Sale if such non-performance results from force majeure circumstances which have arisen as the result of events that the party could neither predict nor prevent by any reasonable measures. To the extent that execution by Motorola of any order is prevented, hindered or delayed by force majeure, including without limitation any cause affecting the performance of any order arising from or attributable to acts, events or circumstances beyond the reasonable control of Motorola, difficulties or increased expense in obtaining raw materials or components, it shall not be liable for failure in performance to the extent of such prevention, hindrance or delay and at Motorola's discretion be excused from further performance of the contract.
- 10.8** If any term to any extent be held to be invalid, void or unenforceable, then that term or provision shall be inoperative and void to the extent necessary to comply with law, but the remaining terms and provisions shall nevertheless continue in full force and effect and the rights and obligations of the parties shall be construed and enforced as if this contract did not contain the particular term or provision held to be invalid, void or unenforceable.
- 10.9** Any waiver by Motorola of any of its rights under these Conditions of Sale will be in writing and only apply to the transaction or series of transactions referred to.