

## Terms & Conditions

All purchases by an End User of a Motorola Solutions Inc. (or any of its direct and indirect subsidiaries, as relevant) service offering identified as a Motorola Service Certificate and described herein (the "Services") shall (as between Motorola and the End User) be governed by these Terms of Service, the associated Services Descriptions in the Appendices, and the online Activation Form. The term "Motorola" refers to the Motorola entity from which the End User is purchasing the Services. The term "End User" refers to either (a) an end user customer who purchases the Motorola Service Certificate directly from Motorola or any of its direct or indirect subsidiaries, or from an authorised Motorola reseller, distributor or partner; or (b) an authorised representative who purchases the Motorola Service Certificate in order to obtain support for Motorola products at its own or its customer's site. These documents form the agreement between the parties (the "Agreement"). By activating at <http://www.motorola.com/services/activation> the End User acknowledges acceptance of the Agreement and Motorola's provision of the Services is hereby made expressly conditional on the End User's assent to the terms contained herein ("Activation").

Any of the End User's terms or conditions that are different from or in addition to those contained within the Agreement are hereby objected to and have no effect.

- 1.0 TERM.** Subject to End User's compliance with this Agreement, the Services are purchased by and supplied to the End User for the term specified and chosen from the Appendices. The provision of the Services commences upon acknowledgement by Motorola of a completed Activation by the End User, or the End User's authorised reseller.
- 2.0 SUPPORTED PRODUCTS.** Motorola will provide the Services with reasonable skill and care. Motorola's obligation to deliver the Service is subject to Activation. Motorola may require from the End User or the End User's authorised reseller, proof of purchase of the product and the Services before Activation can be acknowledged. The Services cover the Motorola products described in the Activation Form by Motorola Service Certificate Activation Code and associated hardware serial numbers. During provision of the Services replacement parts or products will be new or refurbished parts or products equivalent to new in performance.
- 3.0 ACTIVATION.** To activate the Services, the End User or the End User's authorised reseller must complete Motorola's Activation procedure and instructions. End User will be deemed to have accepted all terms and conditions of this Agreement upon the earliest Activation with Motorola, or automatically within 60 days from date of purchase of the Services. The effective date for commencement of the services ("Services start date") will be as follows: (a) Service ordered with new products (e.g. Service from the Start): The Services start date will be the Activation date or within 60 days of the date Motorola receives the purchase order, whichever is sooner. (b) Service from the Start renewals: The Services start date will be one calendar day after the expiry date of the original Service from the Start agreement or any subsequent renewal (as applicable). (c) Service ordered more than 90 days after product purchase: The Services start date will be the date nominated by the End User's authorised reseller (if any) or Activation date, whichever is the later. If no date is nominated by the End User's authorised reseller and/or the agreement has not been activated within 60 days after receipt of the purchase order, the Services Start date will be 61 days after receipt of the purchase order by Motorola.
- 4.0 OUTSIDE OF THE SERVICES.** The Services Descriptions in the Appendices clearly state what is outside scope of the Services and therefore such repairs shall incur additional costs to End User. Where services are requested that are outside the scope of the Services, such services will require payment by the End User of additional costs in accordance with Motorola's standard time and materials rates, as published from time to time by Motorola. Prior to carrying out such services, Motorola shall issue a quote to the End User for approval. After provision of the services, Motorola shall issue an invoice to the End User for payment within 30 days of the date of the invoice.
- 5.0 END USER RESPONSIBILITIES.** End User is responsible for: a) activation of the products to be supported immediately after purchase of the Services (either by the End User itself or its authorised reseller); b) Notification of Motorola immediately if there is any change regarding all information provided as part of this Agreement; c) making all reasonable efforts to cooperate with Motorola in resolving problems remotely, executing self tests or diagnostic programs, etc.; d) discharging all telecommunications charges associated with provision of telephone and remote Services; e) compatibility of non-supported products, accessories and devices with the product(s); f) security of its own proprietary and confidential information and for maintaining a procedure for reconstruction of lost, or altered files or data programs.
- 6.0 CHANGES AND NOTICES.** At Motorola's option, Motorola may change the serial number of product(s) covered by the Services when the original product is destroyed or beyond repair and a replacement product is provided by Motorola.
- 7.0 TERMINATION.** The Services may be terminated by Motorola in the event of a failure by the End User to perform its material obligations under this Agreement and/or pay for all or any part of the Services.
- 8.0 FORCE MAJEURE.** Motorola shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labour disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those herein specified) which are beyond Motorola's reasonable control.
- 9.0 LIMITATION OF LIABILITIES.**
  - 9.1** Nothing in this Agreement shall affect any liability that can not be excluded or limited by law. Motorola accepts unlimited liability for death or personal injury resulting from its negligence. Clauses 9.2 do not apply to such liability.
  - 9.2** Motorola is not liable to the End User, either in contract, tort (including negligence) or otherwise for any direct or indirect loss of profits, business or anticipated savings, nor for any indirect, special or consequential loss or damage or for any destruction of data.
  - 9.3** Subject to clauses 9.1 and 9.2, Motorola's liability to the End User in agreement, tort (including negligence) or otherwise in relation to this Agreement is limited to performance of the Services or the fair market value thereof, except for instances of damage to tangible property where Motorola's liability shall be limited to the sum of \$500,000 (five hundred thousand dollars), or such higher amount imposed by imperative law.
  - 9.4** Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts will continue to apply.
  - 9.5** Where pursuant to the *Trade Practices Act 1974* Motorola is not permitted to exclude liability for breach of any condition or warranty imposed by that Act, subject to the defences available to Motorola, Motorola's liability in respect of any such breach shall be limited to any one or more of the following, at Motorola's option:
    - i) The repair of the Product;
    - ii) The payment of the cost of having the Product repaired.
- 10.0 HOLIDAYS.** Motorola will observe all local public holidays and no Service shall be provided on these days.
- 11.0 DISPUTES.** If any legal proceedings are commenced to resolve any dispute or difference which may arise in connection with the Agreement or the performance of the Services, the prevailing party shall be entitled, in addition to any other award that may be made, to recover costs, legal fees and expert witness fees, including any costs or legal fees incurred in connection with any appeals.
- 12.0 ENTIRE AGREEMENT.** No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorised representative of each party. This Agreement document constitutes the entire understanding between Motorola and the End User with respect to the subject matter, and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter.
- 13.0 GOVERNING LAW AND VENUE.** For Services that are provided in APAC (Asia Pacific) this Agreement shall be governed by the laws of Victoria, Australia without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. End User hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the Victorian courts and to the respective appellate courts thereof in connection with any appeal there from.
- 14.0 EXPORT CONTROL.** Provision of the Services to the End User may be subject to export control law and regulations. Motorola does not represent that any necessary approvals and licenses will be granted. The End User will provide reasonable assistance to Motorola to obtain any necessary consents. If, through no fault of Motorola, any necessary consents are not granted, the parties can terminate this Agreement without any liability to the other.