

General Terms and Conditions (T&C) of Cinterion Wireless Modules GmbH (CINTERION)

1 Scope

- 1.1 The following T&C shall apply exclusively. Deviating or additional terms of the contractual partner shall not form part of the contract, unless CINTERION has expressly approved their applicability in writing; this shall also apply if CINTERION unconditionally fulfils its obligations despite having knowledge of deviating or additional terms. The T&C shall, as amended, also apply to all future agreements with the contractual party.
- 1.2 These T&C shall exclusively apply towards merchants, legal persons under public law and separate funds under public law within the meaning of s. 310 ss. 1 BGB (German Civil Code).

2 Conclusion of contract, subject of contractual obligations, written form

- 2.1 Orders placed by the contractual party shall be deemed as offers unless a contract was clearly immediately agreed by both parties in the individual case, i.e. by mutual signing of a respective agreement. CINTERION may accept such an offer within 10 days.
- 2.2 The contractual partner must place separate orders for the purchase of M2M Data Modules/Telematics Modules, PC Card Modems/External Wireless Modems and Laptop Computer Embedded Modules (as defined in clause 10.1 below) in order to enable CINTERION to process the order.
- 2.3 The subject of the contractual obligations is determined exclusively in CINTERION's written order confirmation or, in case of immediate conclusion of contract (clause 2.1) in the respective agreement.
- 2.4 Any agreements as well as any subsequent additional or deviating agreements shall be made in writing in order to be effective. This shall also apply to an amendment of the written form requirement. For compliance with the written form requirement, text form (e-mail, facsimile) shall be sufficient.

3 Prices, payment conditions, default in payment, set-off and retention right

- 3.1 Prices stated by CINTERION do not include costs for transport, delivery and packaging and applicable statutory VAT. Any payments are due immediately and payable without any deduction, at the latest, however, within 30 days from the invoice date.
- 3.2 In case of default in payment, CINTERION is entitled to default interest at a rate of 8%-points above the respective base rate per annum.. The assertion of a further damage shall not be excluded.
- 3.3 CINTERION is entitled to refuse the performance of its obligations or to request advance payment as long as the contractual partner is in default with any payment obligations under the business relationship. The contractual partner is only entitled to set-off or withhold payment if its counterclaim is undisputed or bindingly determined in court.

4 Delivery, dates, reservation of self-delivery

- 4.1 Delivery shall be made ex works, i.e. at the contractual partner's expense and risk; this shall also apply if the delivery is made by CINTERION. If agreed, CINTERION shall take out a transport insurance at the contractual partner's expense.
- 4.2 The estimated date of delivery is set out in CINTERION's order confirmation or, in case of immediate conclusion of contract (clause 2.1), in the respective agreement. Unless a binding delivery date was explicitly agreed, the delivery date shall be deemed as preliminary. The final dates shall be announced by CINTERION with reasonable notice.
- 4.3 CINTERION is entitled to partial deliveries and performance. Any claims of the contractual partner for default as well as the right to object to a partial delivery without undue delay as far as such partial delivery is not acceptable under extraordinary circumstances, shall remain unaffected.
- 4.4 Any performance obligation of CINTERION shall be subject to the condition that CINTERION itself received a timely and correct delivery. In case of late or incorrect delivery to CINTERION or other obstacles beyond CINTERION's control, CINTERION is entitled to postpone the performance – without being in default – by the duration of the relevant delay or obstacle.

5 Reservation of title

- 5.1 CINTERION reserves title to the goods sold (conditional goods) until complete payment of all claims of CINTERION resulting out of the business relationship was effected by the contractual partner.
 - 5.2 As long as there is a reservation of title, the contractual partner is not entitled to dispose of the conditional goods, including but not limited to pawning them or pledging them as security. The contractual partner is, however, entitled to resell the conditional goods in the ordinary course of business, to connect them with other goods or to process them as long as it is not in default with its payment obligations.
 - 5.3 If the contractual partner processes the conditional goods the processing shall be effected on behalf and on the account of CINTERION and CINTERION shall directly acquire the title or – if the processing is effected with goods of several owners or the value of the processed goods is higher than the value of the conditional goods – joint title (co-ownership) in the newly created goods in the proportion of the value of the conditional goods to the value of the newly created goods. In case Criterion hereafter does not acquire title to the goods, the contractual partner herewith assigns its future title or joint title – in the said relation – in the newly created goods, respectively, to CINTERION as security. If the conditional goods are connected with other goods to a single object and if one of the other goods can be seen as the main part, the contractual partner assigns – as far as the main part belongs to the contractual partner – the joint title in the single object to CINTERION in the relation stated in sentence 1.
 - 5.4 In case of a resale of the conditional goods, the contractual partner herewith assigns to CINTERION any claims arising from such resale towards third parties in the amount of the invoice amount due. This also applies with regard to any other claims the contractual partner acquires with respect to the conditional goods (e.g. in case of loss). The contractual partner is revocable entitled to redeem the claims in its own name but on the account of CINTERION. In case the contractual partner does not duly meet its payment obligations it shall upon request of CINTERION without undue delay inform CINTERION of the assigned claims and the respective debtor, provide any information necessary for the redemption of the claims, provide the necessary documents and inform the debtor of the assignment.
 - 5.5 The contractual partner may demand a release of the securities as far as the realisable value of the securities exceeds the open claims by more than 20%; CINTERION is entitled to determine the securities to be released.
 - 5.6 The contractual partner is obliged to treat the conditional goods with due care. The contractual partner shall without undue delay inform CINTERION in writing of defects, seizure or other interferences in or of the conditional goods. In case of a seizure of the conditional goods, the contractual partner shall bear any and all recovery costs including legal expenses, as far as such costs can not be recovered from the third party.
- ### 6 Claims for defects, rescission
- 6.1 In order to preserve claims for defects, apparent defects shall be notified to CINTERION in writing within 3 working days as of delivery, latent defects occurring within the period of limitation shall be notified in writing within 3 working days as of discovery.
 - 6.2 The limitation period for defects in newly created goods shall be 1 year as of delivery. For used goods, claims for defects shall be excluded.
 - 6.3 If a defect appears within the limitation period, CINTERION may chose to either deliver a substitute or correct the defect. If the delivery of the substitute or the correction of the defect fails within a reasonable period of time or is unacceptable, the contractual partner shall – in accordance with the statutory provisions – be entitled to lessen the purchase price or to rescind from the contract. CINTERION's warranty guidelines and the service policy are applicable.
 - 6.4 Claims for defects shall be excluded as far as a defect is caused by improper handling and/or storage, reprocessing or repairs, merging with goods not expressly approved by CINTERION or other impacts not caused by CINTERION.
 - 6.5 The rescission right of the contractual partner is excluded if not based on a defect or if the circumstances entitling to rescission are beyond CINTERION's control.

7 Claims for Damages

- 7.1 CINTERION, its legal representatives and vicarious agents shall – irrespective of the legal ground – only be liable for damages if the damage
- 7.1.1 was caused through culpable breach of a major contractual obligation (cardinal duty), i.e. a duty the fulfilment of which allows the proper execution of the contract in the first place or the breach of which puts the achievement of the purpose of the contract at stake, respectively, and on the fulfilment of which the contractual partner therefore may rely on or
- 7.1.2 was caused by gross negligence or intentionally.
- Any further liability for damages shall – irrespective of the legal ground – be excluded.
- 7.2 In the event that, pursuant to clause 7.1.1, CINTERION is liable for the violation of a major contractual obligation in the absence of gross negligence or wilful conduct, such liability for damage shall be limited to an extent which, at the time when the respective agreement is concluded, CINTERION should normally expect to arise due to circumstances that the parties had knowledge of at such point in time.
- 7.3 CINTERION shall in no event be liable for indirect and consequential damages or loss of profit.
- 7.4 CINTERION shall in no event be liable for an amount exceeding € 20,000.00 per event of damage. Within the business relationship the overall liability shall be limited to a total of € 100,000.00.
- 7.5 Claims for damages shall become time-barred after one year as of the beginning of the statutory limitation period. Irrespective of the contractual partner's knowledge or gross negligent lack of knowledge of the circumstances giving rise for a liability any claims shall become time-barred after five years as of the liability arose.
- 7.6 The aforementioned limitation or exclusion of liability shall not apply in the case of culpable injury to life, body or health, in case of intentional acts, under the liability provisions of the German Product Liability Act (Produkthaftungsgesetz) or in case of a contractually agreed obligation to assume liability irrespective of any fault (guarantee).

8 Software

- 8.1 Subject to the terms and conditions in this T&C, the contractual partner, its customers and end-customers of the products shall have a non-exclusive and non-transferable right to use the software obtained from CINTERION in the products. The contractual partner shall not and shall contractually bind its customers and the end-customers not to copy, modify, translate, reverse engineer, create derivative works, disassemble or decompile the software or otherwise use the software except as specifically authorized under an agreement or by mandatory law. CINTERION shall be a third party beneficiary in the agreements with customers and end-customers regarding the software.
- 8.2 Any right, title and interest in and to the software, other than those expressly granted to the contractual partner under this T&C, shall remain vested in CINTERION or its third party licensors.
- 8.3 CINTERION is not obliged to make the source code of the software available to the contractual partner. For the avoidance of doubt, Open License Terms, as defined in clause 8.4 may require that covered software components be made available in source code form.
- 8.4 The software may contain freeware, shareware or Open Source Software (as hereinafter defined in clause 8.5 below) the use of which is governed by the appropriate license conditions (the Open License Terms). The Open License Terms are included in the product documentation as required. In the event of a conflict between the conditions of this T&C and the Open License Terms, the Open License Terms shall prevail. No license fee is charged to the contractual partner by CINTERION for the use of any such freeware, shareware or Open Source Software. If required by the Open License Terms, CINTERION will provide a copy of the source code (or an offer to provide such source code) of the Open Source Software (as hereinafter defined in clause 8.5 below). Notwithstanding anything else to the contrary in this T&C, the contractual partner, acknowledges and agrees that CINTERION provides no warranties and shall have no liability whatsoever in respect of the contractual partner's use of the freeware, shareware or Open Source Software.
- 8.5 "Open Source Software" shall mean any software that is licensed royalty-free (i.e. fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by the licensor are generally permitted) under any license terms or other contract terms which require, as a condition for modification and/or distribution of such software and/

or any other software incorporated into, derived from or distributed with such software ("Derivative Software"), either (a) that the source code of such software and/or any Derivative Software be made available to third parties; and/or (b) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties.

- 8.6 The Software may be transferred only together with the product or the designated hardware.

9 Intellectual Property Rights

- 9.1 Except as set forth below in this clause 9, and subject to the conditions and limitations stated below, CINTERION shall be liable for any claim, suit, action or proceeding brought against the contractual partner by a third party to the extent such claim, suit, action or proceeding are alleging a direct infringement of technical IP-rights which are essential for the GSM- and/or UMTS-FDD Standard in the latest adopted and published version at the date of delivery (hereinafter referred to as GSM Essential Patents or UMTS-FDD Essential Patents) by the products purchased by the contractual partner directly from CINTERION (hereinafter referred to as Claim). Said standards do not comprise specifications merely referenced in the publications of ETSI.
- 9.2 If a third party raises a justified Claim against the contractual partner and if CINTERION has caused the infringement alleged by the Claim wilfully or negligently, CINTERION shall at CINTERION's costs procure for the contractual partner the right to use the product. Should this not be possible at economically reasonable conditions (whereby any payment to be made by CINTERION shall in no event exceed the Amount as hereinafter defined), CINTERION shall indemnify the contractual partner against any direct damages and reasonable legal costs directly resulting from the products' direct infringement of GSM Essential Patents or UMTS-FDD Essential Patents up to the amount of a fair, reasonable and non-discriminatory license fee which the owner of the GSM Essential Patents or UMTS-FDD Essential Patents could claim directly from CINTERION for the infringing action undertaken by CINTERION with regard to the product (hereinafter referred to as "Amount").
- 9.3 The contractual partner will take all reasonable steps to cooperate with CINTERION in CINTERION's efforts to mitigate any potential damages, costs and expenses incurred by CINTERION under this clause 9.
- 9.4 CINTERION shall only be liable according to the preceding clauses 9.1 - 9.3 if the contractual partner gives CINTERION prompt written notice of any alleged or threatened Claim, allows CINTERION on its request to control the defence and/or settlement of such claim, does not consent to any judgment or decree, does not undertake any other act in compromise of any Claim without first obtaining CINTERION's written consent and provides to CINTERION all reasonable cooperation and information as may be requested by CINTERION.
- 9.5 CINTERION shall not be liable and shall not have to indemnify the contractual partner with respect to any Claims arising out of or relating to either (i) the use or incorporation in any product of any design, technique, modification or specification originating with, furnished or requested by the contractual partner, or (ii) the combination of the product or elements thereof with or incorporation into the product or elements thereof of any other product, software, or subassembly if the infringement would not have occurred without such combination or incorporation, or (iii) the infringement of any method or process in which any product may be used but not covering the products when used alone, or (iv) the modification of the product by the contractual partner or any person or entity other than CINTERION, if the infringement would not have occurred without such modification, or (v) the use of the product other than as permitted in the related documentation and clauses 10.2 - 10.4
- 9.6 The foregoing clauses 9.1 - 9.5 state the entire liability of CINTERION and the exclusive remedy of the contractual partner with respect to the Claims defined in clause 9.1. With respect to the infringement of any other intellectual and industrial property rights clause 7 shall be applicable.

10 Definitions, Restricted Use of Products, Compliance with Design Guidelines

- 10.1 For the purpose of this T&C,

"W-CDMA Technology"

means any wireless air interface standard that implements W-CDMA which is adopted as an industry standard by the Telecommunications Industry Association ("TIA"), the European Telecommunication Standards Institute ("ETSI"), Japan's Association of Radio Industries and Businesses ("ARIB") or other recognized international standards bodies and is approved on products.

“M2M Field”

means one or more of the following types of product categories: meter reading, vending machines, security & surveillance systems, traffic control, navigation devices, fleet management systems, telematics, router, standalone industrial PDAs, point of sale equipment, facsimile machines, photocopy machines, industrial and home security systems, health care monitoring devices and similar M2M product categories, point of sale terminal, data entry terminal.

“M2M Module”

means a Wireless Module for use on a machine to machine basis (commonly referred to as M2M), and for use only in the M2M Field - and which requires physical integration or connection into one of the products in the M2M Field.

“M2M Module 3G”

means a M2M Module incorporating W-CDMA Technology for use solely when permanently attached to or incorporated into any of the devices as defined in the M2M Field, provided that such devices

a) are not capable of being used to support any two-way voice communications (“Preferred Devices”), except that a health care monitoring device may be capable of transmitting and/or receiving data (including text messages), and/or receiving pre-recorded voice messages, to and/or from a maximum of ten (10) preprogrammed destination phone numbers (e.g., physician’s office); or

b) with subject to telematics, are not capable of initiating or receiving wireless telecommunications transmissions in accordance with the W-CDMA Technology air interface unless it is physically and electrically connected to automobiles (commercial or personal), trucks or buses (“Preferred Vehicles”), except that a complete telematics control unit (“TCU”) incorporating a M2M Module 3G for telematics may initiate and/or receive calls only to and/or from not more than five (5) emergency assistance numbers when not physically and electrically connected to a Preferred Vehicle solely to the extent required by the European Commission’s eCall public safety initiative, and cannot be detached from the Preferred Vehicle by the end user, except that a complete TCU incorporating a M2M Module 3G for telematics may be removed from a Preferred Vehicle solely for anti-theft purposes, but shall not be capable of initiating or receiving wireless telecommunications transmissions in accordance with the WCDMA air interface in such detached state except as otherwise provided above. For the avoidance of doubt, a mobile, end-user telephone is not a TCU. “

“UMTS-FDD (also known as W-CDMA) Essential Patents”

shall mean all Patents having claims the infringement of which can on technical (but not commercial) grounds not be avoided when complying with the UMTS-FDD Standard.

“GSM Essential Patents”

shall mean all Patents having claims the infringement of which can on technical (but not commercial) grounds not be avoided when complying with the GSM/GPRS Standard.

“GSM/GPRS Standard”

shall mean the technical specifications adopted and officially published by ETSI prior to the date of delivery specifying mandatory technical features relating to GSM/GPRS end user mobile communication devices, but excluding specifications merely referenced in a standard published by ETSI.

“Patent”

shall mean any patents, utility models (but not including design patents or design registrations), including without limitation any such rights granted upon any reissue, extension, division, continuation and continuation-in-part in all countries of the world. The term “Patent” shall also include any application for any patent and utility model as aforesaid.

“UMTS-FDD Standard”

shall mean the technical specifications adopted and officially published by ETSI and 3GPP prior to the date of delivery specifying mandatory technical features relating to UMTS-FDD user mobile communication devices, but excluding specifications merely referenced in a standard published by ETSI and 3GPP.

“Product”

shall mean the CINTERION wireless modules.

“ETSI”

shall mean the non-profit association European Telecommunications Standards Institute, 650 Route des Lucioles, F-06921 Sophia Antipolis Cedex, France.

“3GPP”

shall mean the 3rd generation partnership project bringing together a number of telecommunications standards bodies known as organizational partners (such as but not limited to ETSI, ATIS, TTA, and TTC) and working according to the 3rd generation partnership project agreement signed in December 1998 in order to produce globally applicable technical specifications for a 3rd generation mobile system.

“Embedded Application”

means the use of a CDMA modem card embedded within another product in such a way that the CDMA modem card is not attachable to or detachable from such other device by an end user consumer without the use of tools.

“External Wireless Modem”

shall mean a CDMA modem card that (i) is designed and packaged solely for external use and coupling to a Communications Device by an end-user consumer, wherein such coupling is accomplished via a cable attachable to and detachable from such Communications Device by an end-user consumer without the use of a tool (e.g. is not designed or sold for use in an Embedded Application), and (ii) has at least one physical dimension of greater than 85.6 millimetres.

“ExpressCard Standard”

means the ExpressCard Standard (Release 1.0), and updates thereto (provided that such updates do not reduce the minimum physical dimensions for a compliant ExpressCard below the dimensions that existed in Release 1.0 as of September 1, 2006) adopted by the Personal Computer Memory Card International Association (“PCMCIA”).

“PC Card Modem”

means a CDMA modem card that (a) complies with the physical specifications for Type I, Type II and/or Type III cards as defined in the PC Card Standard or ExpressCard/54 or Express Card/34 cards as defined in the ExpressCard Standard, or (b) integrates a Series A or a Series B USB connector for use in attaching such CDMA modem card to a Communications Device via a USB port, provided that such CDMA modem card has at least one physical dimension of greater than 50 millimetres and includes an integrated antennae.

“PC Card Standard”

means the PC Card Standard (including Releases 1.0, 2.0, 2.1, 5.0, and 8.0), and updates thereto (provided that such updates do not reduce the minimum physical dimensions for a compliant PC card below the dimensions that existed in Releases 1.0, 2.0, 2.1, 5.0, or 8.0 as of September 1, 2006), adopted by the PCMCIA.

“LGA Module”

means any module named as such in CINTERION’s product specifications.

10.2 The product is sold only for use in machine to machine applications (commonly referred to as M2M field) and any other use is prohibited. The product is not provided for, and shall not be used in, any handset (except standalone industrial PDAs) or computer. CINTERION is subject to certain licenses to third party patents that are limited to the products as sold by CINTERION solely for the above field of use. No rights or licenses are provided for any device or combination other than the product as sold by CINTERION or for any products used outside of M2M applications, all of which are expressly disclaimed. The contractual partner should contact CINTERION with any questions it may have regarding the permitted use of the product. All implied rights and licenses are expressly disclaimed.

If the product is a M2M Module 3G, the contractual partner furthermore acknowledges and agrees that (i) the M2M Modules 3G purchased by the contractual partner hereunder shall be used by the contractual partner solely for incorporation into or as an attachment to a Preferred Device, or installation into a Preferred Vehicle, as the case may be, and such M2M Modules 3G shall not be used for any other purpose or resold by the contractual partner to any third party as a standalone product, and (ii) upon CINTERION’s reasonable request, the contractual partner agrees to provide CINTERION with access to its books, records and customer contracts solely to enable CINTERION to confirm that the contractual partner have complied with the preceding sentence.

10.3 The Sale of PC Card Modems and/or External Wireless Modems to the contractual partner does not convey to the contractual partner any intellectual property rights of QUALCOMM to use such PC Card Modems and/or External Wireless Modems in Embedded Applications, including but not limited to any rights under any patent, trademark, copyright, or trade secret. The contractual partner may not use any PC Card Modem and/or External Wireless Modem in an Embedded Application, alone or

in combination with other components or devices, without a separate license from QUALCOMM under all applicable patents. The contractual partner's use of such PC Card Modem and/or External Wireless Modem in an Embedded Application shall be solely in accordance with the terms and conditions of such license.

- 10.4 The contractual partner, its customers and end-customers shall implement any LGA Modules purchased from CINTERION into their products strictly in accordance with the CINTERION's design specifications. The contractual partner is aware that due to the permanent mechanical connection between LGA Module and contractual partner's product the diagnosis and repair of possible defects of such module requires that the module can be addressed using certain test connections considered in the design specifications. In case of variations from said specifications possible defects of the LGA Module may under certain circumstances not be diagnosed and repaired after such module has been implemented into the contractual partner's product.

11 Secrecy, Export provisions

- 11.1 The contractual partner undertakes for an unlimited period of time to observe secrecy regarding any information and data provided to them before and in the context of the contractual relationship and classified as confidential or otherwise recognisable as confidential, in particular as trade or company secret and – as far as not necessary for the achievement of the purpose of the contract – to neither record nor forward to third parties nor use in any way. Employees and third parties involved shall be bound to observe the above provisions.
- 11.2 In case the goods are exported, the contractual partner shall be liable for compliance with any applicable provisions, including but not limited to the foreign trade law and any applicable EU- and US provisions on export control, and responsible for obtaining any required licenses and approvals.

12 Applicable law, place of jurisdiction, severability clause

- 12.1 The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 12.2 For all disputes arising from the contractual relationship the district court of Munich (Landgericht München I) shall be the exclusive venue.
- 12.3 If one of the above provisions is or becomes ineffective or if an omission becomes apparent, the validity of remaining provisions shall not be affected thereby. The parties undertake to replace any ineffective provision by an effective provision which reflects as closely as possible the purpose of the ineffective provision. In case of an omission the parties shall agree on a provision they would have agreed upon had they considered the issue at the time of conclusion of the contract.