

# Unigen Corporation Terms and Conditions of Sale:

## 1. TERMS.

---

The prices quoted or provided via invoice represent the cost of the goods at the quantity specified. The entity purchasing the goods ("Buyer") may be charged additional fees for transportation, taxes, licenses, special packaging and markings, or insurance, unless otherwise agreed upon by Unigen Corporation ("Seller"). All goods are shipped F.O.B. origin. Buyer acquires risk of loss when goods are deposited with the common carrier, or when Buyer first takes possession of goods, whichever is earlier.

## 2. PAYMENT.

---

(a) All California customers purchasing goods for resale must submit a Resale Certificate to Seller to avoid the application of sales tax. (b) All sales are subject to Seller's approval of amount and terms of credit. Payments are due within thirty (30) calendar days of invoice date. Seller reserves the right to require advanced payment or C.O.D. Accounts past due may be charged a 1.5% late fee (or the maximum rate allowable by law, if lower) each month. Seller is entitled to recover fees incurred during the collection of accounts in arrears, including the cost of collections and reasonable attorney fees.

## 3. RETURN POLICY.

---

Defective Products. Buyer has seven (7) days following the receipt of goods to (i) report in writing the defective, or otherwise unsatisfactory component and (ii) obtain a valid Return Merchandise Authorization ("RMA") number, to be eligible for repair, refund, return for credit, or exchange, at Seller's discretion. If Seller determines that the returned goods are defective, then Seller will bear the cost of freight in return shipping to Buyer. If Seller determines the goods to be substantially free of defect, then Seller will return the Product to Buyer, and Buyer will be liable for all shipping costs. (c) Return Shipment. Buyer must return all components and accessories to Seller secured in proper packaging to avoid damage during transit. Buyer is responsible for the costs associated with returning to Seller any Defective or Non-Defective goods. Seller will not accept returns that do not have the RMA number clearly affixed to the returned-product packaging. Products returned to Seller without a valid RMA number will be returned to sender at sender's expense. (e) Seller shall make the final determination as to whether products are defective. The choice to repair, refund, return for credit, or exchange Defective Products remains exclusively with Seller. Seller will not accept for return any goods sold "AS IS" or custom Products configured specifically for Buyer. (f) For this section [4], "receipt of goods" means the first day the Buyer, or Buyers agent has access, control or opportunity to access or control the goods, including delivery of goods to Buyers place of business, shipment address or designated delivery location. Notwithstanding this sub-section, Buyer is deemed to be in receipt of risk of loss when goods are deposited with the common carrier, or alternately when Buyer takes possession of the goods, whichever is earlier.

## 4. CANCELLATION.

---

Buyer may not cancel or reschedule a shipment unless otherwise agreed to by Seller.

## 5. LIMITED WARRANTY.

---

OEM PRODUCTS. Seller warrants that its OEM and custom products, when properly used and installed, are free from substantial defects in material and workmanship, and substantially conform to Seller's specifications for the warranty period indicated below. Subject to the conditions and limitations set forth below, Seller will, at its option, either repair, replace or refund any part of its products that prove defective by reason of improper workmanship or materials.

This warranty covers defects arising under normal use and does not include (1) failures occurring after the end of the Products lifetime; (2) defects, malfunctions or failures resulting from improper installation, improper testing, accident, abuse, misuse, neglect, alterations, natural disaster, insufficient or excessive electrical supply, abnormal mechanical or environmental conditions, or any unauthorized disassembly, repair, or modification; (3) products on which the original identification information has been altered, obliterated or removed, has not been handled or packaged correctly, has been sold as second-hand or has been resold contrary to the US export regulations; and (4) any loss of data or any costs associated with determining the source of system problems or removing, servicing or installing Unigen products to another device.

Manufacturing Services. Seller warrants that all workmanship with respect to performance of the Services shall be in a professional and workmanlike manner and shall otherwise be free of material defect for one (1) year from the delivery date of the finished product. For purposes of this limited warranty, "material defect" means a condition or circumstance which proximately causes the finished product to either (i) fail to substantially function or perform in accordance with the product specifications, or (ii) directly results in substantially erroneous or defective performance, to the extent that such condition or circumstance is not attributable to any failure of a component, the product specifications or any third party's intentional or negligent misuse or abuse of the finished product or which results in damage to such finished product. For purposes of the foregoing, Seller's warranty against a material defect shall apply to the extent that such defect is attributable to the performance of the Services as described herein; provided, however, that

Seller shall: (i) exercise all warranty rights provided by the suppliers with respect to any defective components, (ii) to the extent possible, pass through to Customer the full benefit of the supplier warranties applicable to any components; and (iii) assist Customer as necessary in making any warranty claims or returns in accordance with such third party agreements.

<b>Products / Services</b>	<b>Limited Warranty</b>	<b>Warranty Period (from date of invoice)</b>
<b>Solid State Drive (SSD)</b>	Materials and Workmanship	2 years
<b>Secure Digital (SD)</b>	Materials and Workmanship	2 years
<b>CompactFlash (CF)</b>	Materials and Workmanship	2 years
<b>Memory Products</b>	Materials and Workmanship	2 years
<b>Manufacturing Services</b>	Workmanship only	1 year
<b>Programming Services</b>	Workmanship only	1 year

Buyer will follow the Return Policy for Defective Products to return products that (i) have a defect covered by the Limited Warranty included in this Agreement, and (ii) are returned to seller within the specified limited warranty period. Defective products not returned to Seller within the applicable limited warranty period will not be covered by warranty irrespective of when the defect occurred. The limited warranty commences on the date printed on the products Date Code, except in the case of Programmable Parts, where the limited warranty will commence on the bag seal date. The limited warranty extends to products that are repaired or replaced for the balance of the applicable period of the original warranty, or thirty (30) days from the date of return shipment from Unigen of a repaired or replacement product, whichever period is longer.

## **6. EXCUSABLE DELAY.**

Seller shall not be liable for delay or failure to perform if such delay or failure is due to causes or events beyond Seller's control, even if foreseeable by either party, including without limitation suppliers' delay, force majeure, act of God, labor disturbance or strike, war, fire, explosion, earthquake, accident, adverse weather, inability to secure transportation, governmental act or regulation, Seller's inability to obtain materials, shortage of materials or any other causes or events beyond Seller's control. Consequently, the Ship Date shall be extended for a period equal to the delay. Without liability to Buyer, Seller reserves the right to (i) allocate among customers or potential customers, or (ii) defer or delay the shipment of, goods that are in short supply.

## **7. LIMITATION OF LIABILITY.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. BUYER EXPRESSLY WAIVES ANY WARRANTY'S OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COURSE OF DEALINGS, USAGE OF TRADE, AND EVERY OTHER WARRANTY NOT STATED HEREIN, INCLUDING ANY WARRANTY THAT MIGHT EXIST UNDER NATIONAL, STATE, OR LOCAL LAW, TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW. SELLER SHALL NOT BE LIABLE TO BUYER FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR RELIANCE DAMAGES HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. SELLERS TOTAL LIABILITY AND BUYERS SOLE REMEDY UNDER THIS AGREEMENT ARE LIMITED TO REPAIR, REFUND, RETURN FOR CREDIT, OR EXCHANGE OF PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. SELLER'S PRODUCTS ARE NOT AUTHORIZED TO BE USED, AND SHOULD NOT BE USED AS COMPONENTS IN LIFE SUPPORT EQUIPMENT, OR IN SITUATIONS WHERE A FAILURE OF SELLERS PRODUCT WOULD CREATE DANGEROUS OR UNSAFE CONDITIONS. BUYER USES OR SELLS GOODS FOR USE IN CRITICAL ENVIRONMENTS AT ITS **OWN RISK**, AND AGREES TO INDEMNIFY SELLER FOR ANY LOSSES INCURRED BECAUSE OF SUCH USE.

## **8. GENERAL PROVISIONS.**

(a) Integration. This agreement constitutes the entire understanding between Buyer and Seller, and supersedes any prior agreements, understanding, representations or communications made by Seller. If a valid pre-existing, written contract governing the sale of goods between Buyer and Seller exists, it shall be read with this Agreement, and in the event they cannot be reconciled, this Agreement shall supersede. This Agreement may not be modified, supplemented or interpreted by any previous course of dealings not established herein. (b) Choice of Law. This Agreement shall be interpreted under the laws and jurisdiction of the State of California. Each party agrees to submit to the jurisdiction of the Superior Court of California for the County of Alameda, or the U.S. District Court for the Northern District of California. (c) Severability. If any terms of this Agreement are found to be illegal, or unenforceable, those terms shall be removed, and the Agreement shall be read and interpreted to give the best effect to the party's intentions at the time of entering into the Agreement. (e) Buyer will not remove, replace, replicate or alter a products serial number or barcode in an attempt to mislead Sellers assessment of the product for warranty or return purposes. Any attempt to do so is a breach of warranty, breach of contract and fraud, and may be litigated to recover damages.