

The terms and conditions herein become the exclusive and binding agreement between Unigen Corporation (“Seller”) and the Buyer (“Buyer”) covering the purchase of the Products and/or Services ordered herein when these terms and conditions are accepted by acknowledgment and/or commencement of performance by Seller. Additional or different terms proposed by Buyer including those in buyer’s purchase order, other correspondence or any other order will not apply unless accepted in writing by Seller’s authorized representative. No change, modification or revision of these terms and conditions will be effective unless an authorized representative of Buyer signs Seller’s written changes. Seller’s failure to specifically object to any communication from Buyer that contains additional terms and conditions shall not be deemed a waiver of these terms and conditions.

1. PRICING AND DELIVERY

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 delivered Ex Works Unigen Factory unless otherwise agreed upon in writing by Unigen. Buyer bears 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) California Customers. All California customers purchasing goods for resale must submit a Resale Certificate to Seller to avoid the application of sales tax. (b) All Customers. All sales are subject to Seller’s approval of amount and terms of credit. Subject to approval by Seller, payments are due within thirty (30) calendar days of invoice date. Seller reserves the right to require advanced payment or C.O.D. Past due, unpaid amounts may be charged a one and a half percent (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

(a) 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. (b) 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. (c) Final Determination. 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. (d) Receipt of Goods. For this section [3], "receipt of goods" means the first day the Buyer, or Buyer's 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, risk of loss assigns to Buyer when goods are deposited with the common carrier, or alternately when Buyer takes possession of the goods, whichever is earlier. (e) Fraud. Buyer will not remove, replace, replicate or alter a Product's 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.

4. CANCELLATION

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

5. LIMITED WARRANTY

(a) OEM PRODUCTS. Unigen may manufacture OEM and custom Products in its manufacturing facilities located in the United States or Vietnam (or another site qualified by Unigen). 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, credit 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 (i) failures occurring after the end of the Products lifetime; (ii) 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; (iii) 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, resold, or used contrary to the U.S. export regulations; (iv) 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; and (v) any unauthorized modifications.

(b) 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.

Products/Services	Limited Warranty Period
Storage Products	2 years
Memory Products	2 years
NVDIMM, PowerGEM® Products	1 year
Edge AI Servers, Compact Servers	1 year
Add-In-Cards (Including Interposers)	1 year
Manufacturing Services	1 year
Programming Services	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 Product's 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 WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, 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. SELLER'S TOTAL LIABILITY AND BUYER'S 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 SELLER'S PRODUCT WOULD CREATE DANGEROUS OR UNSAFE CONDITIONS. SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE, SALE, RESALE, OR ANY OTHER TYPE OF DISTRIBUTION CONTRARY TO US EXPORT REGULATIONS, AND SELLER WILL NOT BE LIABLE FOR ANY SUCH UNAUTHORIZED DISTRIBUTIONS OR USES. 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. INTELLECTUAL PROPERTY

Seller, at its expense and option, will have sole control of the defense of suit or proceeding made or brought against Buyer by a third party alleging that Seller's product infringes such third party's intellectual property (each, a "Claim"). Seller shall pay damages and costs therein in a final award against Buyer made by a court of competent jurisdiction, but will not be responsible for any compromise or settlement made without Seller's written consent. Seller's obligation under this section shall be subject to Buyer providing Seller with prompt written notice of any Claim, full and complete cooperation and assistance with Seller in the defense and settlement of the Claim, and granting Seller sole control over the defense or settlement of the Claim.

In the event a court of competent jurisdiction makes a determination that any of Seller's product infringes, or if Seller determines that its product likely infringes, Seller, at its option and expense, will: (i) modify the infringing portion of the product so as to make it non-infringing; (ii) replace the infringing product with a non-infringing product having substantially similar functionality; (iii) obtain the right to continue using the infringing product; or (iv) refund to Buyer the purchase price of the product prorated over a five-year period from the delivery date.

Seller's obligations under this Section will not apply to the extent of any Claim or infringement resulting from: (i) Buyer's continued use of the infringing product after receipt of notice from Seller of a claim or after receipt of the remedy required of Seller under this Section; (ii) modifications to the product by any party other than Seller; (iii) modifications to a product made pursuant to Buyer's express instructions; (iv) combination of the product with other products, processes or materials not provided by Seller; or (v) Buyer's use of the product other than in accordance with these terms and conditions.

THIS SECTION STATES SELLER'S TOTAL RESPONSIBILITY AND LIABILITY AND BUYER'S SOLE REMEDY, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT BY ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER, OR ANY PART THEREOF. THIS SECTION IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

Buyer will, at its own expense, indemnify and hold Seller harmless from and against any liabilities, costs, damages, or losses resulting from any alleged infringement of any patent, trademark, copyrights, or other intellectual property right arising as a result of Seller's compliance with any of Buyer's designs, specifications, or instructions and will defend at its own expense, including attorneys' fees, any claim or suit brought against Seller alleging any such infringement, including infringement arising out of the use of such products as part of or in combination with another device or from Seller's compliance with instructions from Buyer provided that Seller: (i) gives Buyer notice of any such allegation or suit and permits Buyer, through counsel of its choice, to defend such allegation or suit; and (ii) gives Buyer all reasonably needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such allegation or suit, and further provided that Seller has the right to participate in any such suit, at its own expense, using counsel of its choice and that Buyer may not enter into any settlement that would impose any obligation on Seller without first obtaining Seller's written consent.

9. GENERAL PROVISIONS

(a) 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. (b) 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.

10. SOFTWARE LICENSE

Certain Products shipped with software will have a separate Software License Agreement and/or End User License Agreement. By purchasing Unigen Product, Buyer will hereby agree to those terms.