

TERMS AND CONDITIONS OF SALE

All quotations and sales by NexGen Digital, Inc., its subsidiaries or affiliates ("NexGen Digital") are subject to these terms and conditions and those on the front of this document.

Payment Terms

Except as otherwise set forth on the front of this document: Terms of payment are net 30 days from invoice date; prices are FOB NexGen Digital's facility; and prices do not include any taxes, freight, handling, duty or similar charges, payment of which will be the sole responsibility of customer. Freight charges may be billed on the basis of standard carrier tariffs and may not reflect actual transportation costs. NexGen Digital reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of customer's creditworthiness or should customer fail to fulfill any obligation when due.

Delivery

In the absence of prior agreements related to shipping, NexGen Digital may select a carrier. NexGen Digital's responsibility for any loss or damage ends, and title passes, when products are delivered to the carrier, to customer, or to customer's agent (including, without limitation, any test house or value added service provider), whichever occurs first. Customer agrees to pay for storage charges if products are held by NexGen Digital at customer's request pending instructions or restricted rescheduled delivery.

Limited Warranty

NexGen Digital warrants those products assembled or customized by it against defects caused solely by faulty assembly or customization for 1 (one) year after delivery. All other products, and the components and materials utilized in any assembled or customized products, are covered by and subject to, the terms, conditions, and limitations of the manufacturer's standard warranty, which warranty is expressly in lieu of any other warranty, express or implied, of or by NexGen Digital or the manufacturer. Customer's exclusive remedy, if any, under these warranties is limited, at NexGen Digital's election, to any one of (a) refund of customer's purchase price, (b) repair by NexGen Digital or the manufacturer of any products found to be defective, or (c) replacement of any such product. Customer acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY NEXGEN DIGITAL OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. NEXGEN DIGITAL ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO NEXGEN DIGITAL BY OR ON BEHALF OF CUSTOMER. Use of the customer's part number on this document or on any product is for convenience only and does not constitute any representation by NexGen Digital with respect to the performance, specifications, or fitness of any part for any purpose.

Legal Proceedings

NexGen Digital retains a purchase money security interest in all products sold by NexGen Digital to customer, and in the proceeds of any resale of such products, until the purchase price and any other charges due to NexGen Digital have been paid in full. Customer agrees to execute any financing statements NexGen Digital may request in order to protect NexGen Digital's security interest and hereby authorizes NexGen Digital to execute and irrevocably appoints NexGen Digital its attorney in fact for the execution of such financing statements. Upon any breach by customer of these conditions, NexGen Digital will have all rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies will be cumulative and not exclusive. Customer is responsible for all costs and expenses incurred by NexGen Digital in collecting any sums owing by customer (which may include, but are not limited to, collection agency and reasonable attorneys' fees). If NexGen Digital incurs costs collecting on any judgment arising out of customer's breach, customer will be responsible for them, and this provision will survive the entry of any such judgment.

Returns

Products are deemed inspected and accepted by customer unless customer notifies NexGen Digital in writing within 10 days of delivery of product shortages, damage or defect. No returns may be made for any reason without a Return Authorization Form issued by NexGen Digital. If customer refuses to accept tender or delivery of any products or returns any products without authorization from NexGen Digital, such products will be held by NexGen Digital awaiting customer's instruction for 20 days, after which NexGen Digital may deem the products abandoned and dispose of them as it sees fit, without crediting customer's account.

Force Majeure

NexGen Digital will not be liable for any failure or delay in its performance or in the delivery or shipment of products, or for any damages suffered by customer by reason of such failure or delay, when such failure or delay is caused by, or arises in connection with, any fire, flood, accident, riot, earthquake, severe weather, war, governmental interference or embargo, strike, shortage of labor, fuel, power, materials or supplies, delay in delivery by NexGen Digital's suppliers or any other cause or causes beyond NexGen Digital's reasonable control. NexGen Digital reserves the right to cancel without liability any order, the shipment of which is or may be delayed for more than 30 days by reason of any such cause. NexGen Digital reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any product, which is in short supply.

Governing Laws

The laws of the State of California hereunder govern this agreement and all transactions.

Acceptance

All quotations and sales are made only upon these terms and conditions and those on the front of this document. Customer, by accepting and/or ordering any products, making any payments or ordering any products having previously received these terms and conditions, will be deemed to have agreed to these terms and conditions, notwithstanding any terms contained in any prior or later communication from customer and whether or not NexGen Digital had specifically or expressly objected to any of the customer's terms. NexGen Digital's failure to object to any document, communication or act of customer will not be deemed a waiver of any of these terms and conditions. A duly authorized officer of NexGen Digital must specifically agree to any addition or change to these terms and conditions in writing before becoming binding on NexGen Digital.

Governmental Provisions

If customer's order is placed under a contract with the United States Government, NexGen Digital agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which customer has, at the time of order placement, placed NexGen Digital on notice. In no event will United States Government Cost Accounting Standards apply. All rights in technical data and software owned or licensed by NexGen Digital or the manufacturer are hereby reserved and deemed restricted or limited. No provision of customer's contract with the government will be binding on NexGen Digital or the manufacturer except as expressly set forth in this paragraph.

Product Use

Unless specifically otherwise agreed in writing by NexGen Digital, customer acknowledges that products sold by NexGen Digital are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify and hold NexGen Digital harmless from any loss, cost or damage resulting from customer's breach of the provisions of this paragraph.

Taxes

Any or all products may be subject to export or resale restriction or regulation, and customer acknowledges that it will comply with such regulations or restrictions. Any or all products may have been imported. Country of origin information is as provided to NexGen Digital by its suppliers and is, where applicable, located on the products themselves or the supplier's innermost packaging thereof.

General

NexGen Digital certifies that it complies with all requirements of Sections 6, 7 and 15 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.

Liability

1. Except for the warranty coverage referenced in paragraph 3, NEITHER NEXGEN DIGITAL NOR ITS SUPPLIERS WILL HAVE ANY LIABILITY OR OBLIGATION TO CUSTOMER OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY PRODUCTS FOR ANY PURPOSE, BY ANY DEFICIENCY OR DEFECT IN ANY PRODUCT (WHETHER OR NOT COVERED BY ANY WARRANTY), BY THE USE OR PERFORMANCE OF ANY PRODUCTS OR BY ANY FAILURE OR DELAY IN NEXGEN DIGITAL'S PERFORMANCE HEREUNDER, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR LOSS OF BUSINESS OR PROFIT, WHETHER OR NOT THE CUSTOMER HAD INFORMED NEXGEN DIGITAL OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES.
2. The performance of any value-added service may void the manufacturer's warranty and render products non-returnable. Orders incorporating such services are, accordingly, non-cancelable and the products are non-returnable. Any third party value-added service provider is deemed to be an agent of customer.
3. NexGen Digital makes no representation or warranty with respect to any software supplied by its manufacturer, which is included in its products and will have no liability in connection therewith. Customer agrees to comply with the manufacturer's or other requirements with regard to propriety and similar rights in and to such software (including any requirement to enter into a separate license agreement and prohibition against duplicating or disclosing the same), even if the seal on any "shrink wrapped" software has been broken by NexGen Digital, and will indemnify NexGen Digital against and hold it harmless from any and all liability, cost or expense arising from a breach or purported breach of such requirements.

Refund Policy

In no event shall customer be entitled to a cash refund. Return of products pursuant to a written return authorization from NexGen Digital shall entitle customer to a credit equal to its purchase price excluding taxes, freight, handling, duty or similar charges. In order to defray the cost of customer account administration, any credit balance or other sum owed to customer that remains unclaimed by customer for a period of 180 days will become the property of NexGen Digital.

Cancellation

No order may be cancelled, rescheduled or reconfigured without NexGen Digital's prior written authorization and, in such event, customer will be liable to NexGen Digital for any additional costs and expenses incurred by NexGen Digital.

NexGen Digital's Right to Increase Prices

Prices are subject to change by NexGen Digital upon customer rescheduling or reconfiguration of orders. Prices are also subject to change in response to supplier price increases; whereupon, customer may cancel the undelivered portion of any affected order by delivering written notice to NexGen Digital prior to the shipment thereof and within 10 days of its notice of the price increase.

NexGen Digital:

Customer:

By: _____

By: _____