

Terms and Conditions of Sale

1. SCOPE

The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Scigen. These Terms apply to all sales made by Scigen except to the extent the Terms conflict with a Sales Agreement signed by Scigen and Buyer. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Scigen's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of Scigen before becoming binding on either party.

2. PRICE, TAXES AND QUOTATIONS

Prices are subject to change. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by Scigen are those current at the date of quotation and shall be subject to variation by Scigen.

3. SHIPMENTS

All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier. There are no returns.

4. PAYMENT TERMS

Unless otherwise agreed in writing, Payment terms shall be net thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance at a Daily Periodic Rate of 0.03628% on the day the balance becomes due. Unless otherwise agreed in writing, all payments are to be in United States dollars. For contracts in Europe, Scigen may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Scigen. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Scigen is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys fees and costs of suit.

5. DELIVERY

Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

WARRANTY: THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESSED OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

6. INSPECTION AND ACCEPTANCE

Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives or cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

6. ORDER CANCELLATION

(a) Buyers may not cancel orders.

(b) Scigen's Cancellation: Scigen shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business. Any order that can be cancelled or rescheduled may be cancelled or rescheduled by Scigen if notice is given to Buyer.

7. LIMITED WARRANTY

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Scigen's published specifications or other specifications accepted in writing by Scigen for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification or which have been soldered or altered such that they are not capable of being tested under normal test conditions. Scigen shall make the final determination as to whether its products are defective. Scigen's sole obligation for products failing to comply with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) Scigen has received written notice of any nonconformity; (ii) after Scigen's written authorization, Buyer has returned the nonconforming product to Scigen; and (iii) Scigen has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SCIGEN DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party purchaser of Scigen products.

8. INDEMNIFICATION

The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. The Seller's products are not for use in or with any nuclear facility unless specifically so stated by Seller in writing.

Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

9. INTELLECTUAL PROPERTY

Scigen Retains its Intellectual Property: The sale of any products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the products with other equipment data or programs. The company retains the copyright in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Buyer shall obtain no interest in any mask or other tooling used in the production of any Scigen product.

10. FORCE MAJEURE

Scigen shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Scigen. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

11. EXPORT REGULATIONS

Buyer agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, Buyer agrees to comply with the Export Administration Regulations of the United States in so far as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

12. ASSIGNMENT AND SUBCONTRACTING

Scigen shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

13. NOTICES

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to Scigen shall be to 333 East Gardena Blvd, Gardena CA 90248

14. GOVERNING LAW

This Agreement shall be governed by, enforced under and construed and interpreted in accordance with the laws of the State of California without reference to conflict of laws principles. Each Party agrees and consents to venue and personal jurisdiction in Los Angeles County, State of California.