

# Terms of Sale (Consumer) (United States)

Last Modified: November 8, 2022

These Terms of Sale (Consumer) (these "Terms") apply to the purchase and sale of products by Western Digital Technologies, Inc. and/or its affiliates (referred to as "WDT", "us", "we", or "our" as the context may require) and other select products chosen by WDT that are manufactured or developed by entities other than WDT ("Devices") and services offered by WDT and other select services chosen by WDT that are provided by entities other than WDT ("Services") through any of the websites offered by WDT (collectively, the "Site") or any other means through which we engage in the sale of Devices and Services, including orders by phone. These Terms are subject to change by WDT without prior written notice at any time, in our sole discretion. The latest version of these Terms will be posted on this Site, and you should review these Terms before purchasing any Device or Services that are available through this Site.

**IMPORTANT NOTICE: WDT IS WILLING TO SELL DEVICES AND SERVICES TO YOU THROUGH THIS SITE ONLY IF YOU ACCEPT THESE TERMS. BY CLICKING ON THE "SUBMIT ORDER" BUTTON, YOU AGREE TO BE BOUND BY ALL OF THESE TERMS.**

**ARBITRATION NOTICE. PLEASE READ THE BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 11. IT AFFECTS HOW DISPUTES ARE RESOLVED. SECTION 11 CONTAINS A BINDING ARBITRATION PROVISION THAT REQUIRES THE PROMPT RESOLUTION OF DISPUTES ON AN INDIVIDUAL BASIS, LIMITS YOUR ABILITY TO SEEK RELIEF IN A COURT OF LAW AND YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING, LIMITS THE TIME PERIOD WITHIN WHICH YOU MAY BRING A CLAIM AGAINST WDT, AND WAIVES YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS OR CLASS ARBITRATIONS FOR CERTAIN DISPUTES.**

**ALL ACCEPTED ORDERS ARE FINAL, NON-CANCELABLE AND NON-REFUNDABLE, EXCEPT AS SPECIFIED HEREIN OR IN THE RETURNS POLICY APPLICABLE TO YOUR PURCHASE.**

**PLEASE READ THESE TERMS CAREFULLY. THESE TERMS ARE LEGALLY BINDING AND CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, INCLUDING LIMITATIONS OF LIABILITY AND YOUR OBLIGATION TO INDEMNIFY WDT AND OTHERS AFFILIATED WITH WDT FOR YOUR BREACHES OF THESE TERMS.**

**YOU MAY NOT ORDER OR OBTAIN DEVICES OR SERVICES FROM THIS SITE (AS DEFINED BELOW) IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH WDT, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS SITE OR ANY OF THIS SITE'S CONTENTS, DEVICES OR SERVICES BY APPLICABLE LAW. THESE TERMS APPLY ONLY TO PURCHASES MADE BY CONSUMERS LOCATED IN THE UNITED STATES OF AMERICA. IF YOU ARE NOT LOCATED IN THE UNITED STATES OF AMERICA AND WDT'S DEVICES AND SERVICES ARE AVAILABLE IN YOUR COUNTRY OR JURISDICTION, DIFFERENT TERMS AND CONDITIONS OF PURCHASE WILL APPLY.**

## 1. Terms And Conditions

These Terms are an integral part of the [Terms of Use](#) that apply generally to the use of our Site. You should also carefully review our [Privacy Statement](#) before placing an order for Devices or Services through this Site. Your purchase of Devices and Services through this Site is subject to our Privacy Statement.

## 2. Ordering And Acceptance; Cancellation Policy.

- a) You agree that your order is an offer to buy, under these Terms, all Devices and Services listed in your order. All orders must be accepted by us or we will not be obligated to sell the Devices or Services to you. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the items you have ordered. Any order confirmation email received by you prior to our acceptance shall constitute an acknowledgement of our receipt of your offer only, and not an acceptance of your offer.
- b) You need an email address to place an order, and you may need to set your browser to accept both (functional) cookies and pop-ups in order to be able to use all the functionalities of the Site, which includes adding items to your shopping cart and submitting your order. You acknowledge and agree that if you are placing an order through the Site, by clicking or activating the button or hyperlink to submit your order, you are placing a legally binding offer. You consent to: (i) the use of electronic communications in order to enter into contracts and place orders with us; and (ii) the electronic delivery of notices, policies and records of transactions initiated or completed by you online.
- c) WDT sells Devices and Services through this Site to individual consumers solely for their personal use. WDT does not appoint you or anyone acting on your behalf as a reseller, distributor or other agent or representative of WDT, and therefore purchase of Devices for resale is strictly prohibited. Purchase for resale means the purchase of a Device by someone who resells, or intends to resell, the Device to others (consumers, businesses or any third party). If WDT believes you are involved in purchase for resale, WDT reserves the right to restrict sales to you, to cancel your orders, and/or to suspend or close your account, in addition to taking legal action.
- d) Please review your order carefully before you place it. You have a limited period of time to cancel your order before it is shipped. For additional information about cancelling your order, please review the Returns and Cancellations Policy. You can also call [Customer Support](#) at (800) 275-4932.
- e) While we make every effort to ensure that items appearing on the Site are available, we cannot guarantee that all items are in stock or immediately available when you submit your order. Furthermore, Devices and Services may vary depending on your region or hardware components. In addition, there may be limits on where we can ship Devices or provide Services. We may reject your order (without liability) if we are unable to process it, fulfill it or provide it. If we reject an order for any reason, we will refund any prior payment that you have made for that item, without undue delay. We may place a limit on the quantities that may be purchased per order, per account, per credit card, per person, or per household. If Devices or Services that you ordered are unavailable, we may contact you to offer you an alternative Device or Service. If you do not choose to purchase the alternative Device or Service, we will cancel your order and,

without undue delay, we will refund any prior payment that you have made for the cancelled Device or Service.

- f) Our acceptance of your order and the formation of the contract of sale between WDT and you only occurs at such time that we have both (i) dispatched your Device order and/or provided you with access to the Services, and (ii) received payment of the purchase price of your order through settlement of funds via your provided credit card or other payment method ("acceptance"). We may cancel your order at any time and for any lawful reason prior to acceptance.
- g) By submitting your order, you represent and warrant that (i) you are an individual consumer located in the United States of America who is purchasing the Device or Service for your own personal use in compliance with these terms and the Terms of Service, (ii) all information supplied by you in placing your order is accurate and complete, (iii) you are not impersonating another person and (iv) you are not utilizing any program or routine to accelerate purchases or to make multiple purchases through different accounts to conceal your identity. Without limiting any other right or remedy we may have under these terms or applicable law, we may cancel, terminate, modify, or suspend all or any part of any order or orders (including orders that we have accepted) if WDT has reason to believe, in its sole discretion, that such order or orders may have been placed in breach of these Terms or the [Terms of Use](#), may impose a risk or burden on the Site or other users of the Site or may corrupt or impair the proper performance of the Site.
- h) WDT is not responsible technical failures that limit your ability to complete a purchase on the Site, including any failures caused in whole or in part by any computer system, phone line, hardware, software, lost, interrupted or unavailable network connections, delayed computer transmissions or any technical or human error that may occur in the processing of your orders. Pictures shown may vary from the Devices you order. Device specifications are subject to change without notice.

### 3. Prices And Payment Terms.

- a) All prices posted on this Site are subject to change without notice. The price charged for a Device or Service will be the price in effect at the time the order is placed and will be set out in your order confirmation email. Price increases will only apply to orders placed after such changes. Posted prices do not include taxes or charges for shipping. All such taxes and charges will be added to your merchandise total and will be itemized in your shopping cart and in your order confirmation email. For avoidance of doubt, the Site does not have a price match guarantee, and we will not match the advertised price other retailers offer for the same items.
- b) Terms of payment are within our sole discretion and payment must be received by us before our acceptance of an order. Payment must be made by the payment method selected during your order completion process through the Site. We will charge your credit or debit card on dispatch of the Device or upon purchase of Services, or within 14 days of order submission (if earlier), unless stated otherwise. We reserve the right to verify and/or authorize credit or debit card payments prior to dispatch of the Devices or Services. To assist with payment processing on this Site, we use Worldpay. Worldpay is a Data Controller in respect of your personal information. Worldpay's privacy policy can be found at [www.worldpay.com](http://www.worldpay.com).
- c) You represent and warrant that (i) the credit card information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, (iv) you will pay charges incurred

by you at the posted prices, including all applicable taxes, if any, and (v) you authorize WDT to charge you for any Devices or Services purchased using your payment method.

- d) If you elect to use the services of a third-party payment or billing provider in connection with your purchase from us, your use of such services will be subject to the third-party provider's own terms and conditions. You may be required to create an account with such third-party provider and/or provide that third-party provider with your bank account or credit/debit card details. We are not responsible for, and you agree to hold us harmless from and against any liability resulting from, the acts or omissions of any third-party payment or billing provider.
- e) We do not warrant that the prices, quotations, anticipated delivery dates, and descriptions made or referred to on Site are accurate, free of typographical errors, complete, reliable, current, or error-free. We reserve the right to cancel any orders arising from such errors. Promotional prices may be offered for select Devices and are subject to additional terms related to such promotion. The prices, quotations and descriptions made on the Site are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order (as described above).

#### **4. Shipments; Delivery; Title And Risk Of Loss.**

- a) We will arrange for shipment of the Devices to you. Where any Device supplied is or includes software ("Software"), for Software delivered electronically, we will deliver such Software by electronic transmission or via download. Please check the individual Device page for specific delivery options. You are required to pay all shipping charges specified during the ordering process.
- b) The places that we deliver to are listed on the Site ("Territory"). Delivery shall be to a valid address within the Territory submitted by you and subject to our acceptance ("Delivery Address"). You must check the Delivery Address on any order acknowledgement or acceptance we provide. If you have provided us with an incorrect Delivery Address, you must notify us immediately. We reserve the right to charge you for any extra costs arising from changes you make to the Delivery Address after you submit an order.
- c) Where possible, we try to deliver all items which you have ordered at the same time. Delivery times vary according to your selected Delivery Address, availability of your items and the time of day you place your order. A signature may be required for delivery. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.
- d) Title for Devices (other than Software) purchased pass to you upon our delivery to the carrier. Risk of loss for Devices purchased pass to you upon delivery to the Delivery Address. For additional information about returns and cancellations, please review our Return Policy.
- e) If you refuse or fail to take delivery of Devices, any risk of loss or damage to the Devices shall nonetheless pass to you, and without prejudice to any other rights or remedies we have, we will remain entitled to payment in full for the Devices or Services delivered.

#### **5. Software Use And License Rights**

**For Software, you acknowledge and agree that:**

- a) All uses on this Site of the terms "sell," "sale," "resell," "resale," "purchase," "price" and the like when used in reference to Software mean the purchase of a limited license to use the Software

in accordance with the license terms made available for such Software. Each Software product and service made available on this Site is licensed, not sold

- b) Notwithstanding any contrary term in Section 4(d), for Software, your license rights and risk of loss passes to you upon the provision to you of a download link for Software, or your receipt of a license key, via email or other electronic delivery method. Software orders are not eligible for return upon the provision of such download link, license key, email or other electronic delivery method.
- c) You will comply with all terms and conditions of the specific license agreement for any Software you obtain through this Site, including all confidentiality obligations and restrictions on the resale, use, reverse engineering, copying, making, modifying, improving, sublicensing and transfer of such licensed Software
- d) You will not cause, induce or permit others' noncompliance with the terms and conditions of any of these Software license agreements.

## 6. Returns And Refunds.

We will accept a return of the Devices (except Software that has already been provisioned to you via download link, license key, email or other electronic delivery method as set forth in Section 5(b)) for a refund of your purchase price, less the original shipping costs, provided such return is made within thirty (30) days of shipment and provided such Devices are returned in their original condition. Furthermore, you are entitled to return Devices delivered to you in the event that they are defective or otherwise not in conformity with your order when you received them. For practical information on how to return, visit our [Return Policy](#) page, call (800) 275-4932 or email our Returns Department [at this link](#). Please obtain a Return Merchandise Authorization ("RMA") number before shipping your Device. No returns of any type will be accepted without an RMA number.

Unless otherwise stated in our Return Policy, to the maximum extent permitted under applicable law, you are responsible for all shipping charges on returned items. You bear the risk of loss during shipment. We therefore strongly recommend that you fully insure your return shipment against loss or damage and that you use a carrier that can provide you with proof of delivery for your protection.

Refunds are processed within approximately 7-10 business days of our receipt of your merchandise. Your refund will be credited back to the same payment method used to make the original purchase on the Site.

IMPORTANT NOTE: SOME DEVICES ON THE SITE ARE DESIGNATED AS NON-RETURNABLE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WE OFFER NO REFUNDS ON ANY DEVICES DESIGNATED ON THIS SITE AS NON-RETURNABLE.

## 7. Warranty; Disclaimers

Please refer to documentation accompanying any Software to determine if any warranty is provided with such Software, and, if so, the terms of such warranty. Excluding Software, the warranty for a Device purchased through this Site varies depending on Device model. You may find the applicable warranty for your Device via the Device detail webpage, in your Device documentation or by contacting our [Support Team](#).

To obtain warranty service for a Device or Service, you must call (800) 275-4932 or email our Customer Service Department [at this link](#) during the applicable warranty period to obtain an RMA number. No warranty service will be provided without an RMA number.

TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED IN OUR LIMITED WARRANTIES, THE DEVICES AND SERVICES THAT YOU PURCHASE FROM US ARE PROVIDED TO YOU "AS IS," AND YOUR USE IS AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WDT DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR ERROR OR THAT THE SOFTWARE WILL BE FREE OF BUGS, VIRUSES, TROJAN HORSES, DESTRUCTIVE COMPUTER CODES, OR THE LIKE. ADDITIONAL DISCLAIMERS AND LIMITATIONS RELATING TO SOFTWARE YOU PURCHASE MAY BE INCLUDED IN THE LICENSE AGREEMENT GOVERNING THE USE OF THE SOFTWARE, AND YOU AGREE TO BE BOUND BY SUCH TERMS.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES ARE PERSONAL TO YOU AND ARE NON-TRANSFERABLE AND NON-ASSIGNABLE, AND ANY WARRANTIES PROVIDED FOR OUR DEVICES OR SERVICES ONLY EXTEND TO YOU ON THE UNDERSTANDING THAT YOU ARE A USER AND NOT A RESELLER OF THOSE DEVICES OR SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

## **8. Limitations Of Liability; Indemnification.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WDT, ITS AFFILIATES AND EACH OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, VENDORS, LICENSORS AND SUPPLIERS (COLLECTIVELY, "THE WDT PARTIES") SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED AS A RESULT OF USING, MODIFYING, CONTRIBUTING, COPYING, DISTRIBUTING, OR DOWNLOADING THE DEVICES OR SERVICES ON THIS SITE OR BEING UNABLE TO DO ANY OF THE FOREGOING. IN NO EVENT SHALL THE WDT PARTIES BE LIABLE FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE), HOWEVER ARISING, WHETHER FOR BREACH OR IN TORT, EVEN IF THE WDT PARTIES HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT YOU HAVE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF DATA AND/OR EQUIPMENT USED IN CONNECTION WITH THE DEVICES OR SERVICES ON THIS SITE AND WILL NOT MAKE A CLAIM OF ANY NATURE AGAINST THE WDT PARTIES FOR LOST DATA, INACCURATE OUTPUT, WORK DELAYS, OR LOST PROFITS RESULTING FROM THE USE OF, OR INABILITY TO USE, THE DEVICES OR SERVICES.

IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES (INCLUDING BREACH OF THESE TERMS) FROM ANY WDT PARTIES IN CONNECTION WITH THE DEVICES, SERVICES OR THESE TERMS, YOU AGREE THAT YOUR EXCLUSIVE REMEDIES ARE THE COMMERCIALY REASONABLE EFFORTS OF WDT TO

REPAIR OR CORRECT THE DEVICE OR SERVICE, TO ACCEPT A REASONABLE SUBSTITUTE FOR THE DEVICE OR SERVICE OR TO RECOVER FROM THE WDT PARTIES DAMAGES UP TO AN AMOUNT EQUAL TO THE COST OF YOUR DEVICE OR THE SERVICES FEE FOR THE MONTH DURING WHICH THE BREACH OCCURRED (OR UP TO \$100.00 IF THE CLAIMS RELATE TO ANY DEVICES OR SERVICES THAT ARE FREE).

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

To the maximum extent permitted by law, you agree to defend, indemnify, and hold harmless the WDT Parties from and against any and all third party claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, fines, and expenses (including reasonable attorney's fees) incurred by any WDT Parties that arise out of any breach of these Terms by you.

## 9. Export Restrictions.

The Devices or Services provided under these Terms are for your internal use and not for further commercialization. You acknowledge that some or all of the Devices or Services, including the materials contained thereon, may be controlled or restricted under the United States Export Administration Laws and Regulations, the United States Treasury Department, the Office of Foreign Assets Control ("OFAC"), or other applicable laws and regulations relating to the export of products and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of Devices or Services by you, directly or indirectly, in contravention of any export control laws, economic sanctions or other laws or regulations applicable to you, the Devices or Services ("Export Control Laws") is prohibited, and you shall comply with such laws and regulations, including the Export Control Laws of other countries, and you are responsible for obtaining any required export authorizations, government approvals and licenses required by any Export Control Laws. The Devices and Services will not be sold for use in, or to parties that are suspected to be involved in, the development, production, use or stockpiling of weapons of mass destruction; to entities or individuals on any applicable lists of parties denied export privileges (including, without limitation, <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>), or to parties in any embargoed countries. By accessing the Site, and/or purchasing or using the Devices or Services, you represent and warrant that you are not a citizen or resident of, and are not customarily resident in, any country or region that is subject to an embargo by the United States government or the European Union, that you are not listed as a sanctioned party on the list of specially designated nationals and blocked persons maintained by the United States (including OFAC) or similar sanction lists maintained by the European Union and other applicable governments and that you are purchasing and will use the Devices and Services in compliance with all laws governing export control.

## 10. Governing Law And Jurisdiction

Except as set out below, any claim arising from or relating to these Terms are governed by the laws of the State of California without regard to conflicts of laws principles. Except where prohibited and only in the event that you elect to opt-out (exclude yourself) from the final, binding individual

arbitration procedure and waiver of class and representative proceedings or Section 11 is found to be unenforceable, you agree to submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, for the resolution of any and all disputes arising from or relating to these Terms.

## **11. Disputes, Binding Individual Arbitration, And Waiver Of Class Actions And Class Arbitrations If You Live In (Or Your Principal Place Of Business Is In) The United States.**

- a) Disputes. The terms of this Section 11 shall apply to all Disputes between you and WDT. For the purposes of this Section 11 and subject to the exceptions set forth in this Section 11(a), "Dispute" means any dispute, claim, controversy, or action between you and WDT arising out of or relating to the Software, Devices, this Agreement, or your relationship with WDT, under any legal theory, including contract, warranty, misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis, and shall be interpreted to be given the broadest meaning allowable under law. YOU AND WDT AGREE THAT "DISPUTE" AS DEFINED IN THIS AGREEMENT SHALL NOT INCLUDE ANY CLAIM OR CAUSE OF ACTION BY YOU OR WDT RELATING TO THE ENFORCEMENT, INFRINGEMENT, OR VALIDITY OF (i) TRADE SECRETS, (ii) PATENTS, (iii) COPYRIGHTS, OR (iv) TRADEMARKS. NOTWITHSTANDING SECTION 11(G), YOU AGREE THAT A COURT, NOT THE ARBITRATOR, MAY DECIDE IF A CLAIM FALLS WITHIN ONE OF THESE FOUR EXCEPTIONS.
- b) Dispute Notice; Informal Resolution. In the event of a Dispute, you or WDT must first send to the other party a notice of the Dispute that shall include a written statement that sets forth the name, address, and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested (the "Dispute Notice"). You and WDT agree to try for sixty days after the Dispute Notice is received to resolve any Disputes informally. The Dispute Notice to WDT must be addressed to: Western Digital Technologies, Inc., ATTN: Legal Department, 5601 Great Oaks Parkway, San Jose, CA 95119, U.S.A. (the "WDT Notice Address"). The Dispute Notice to you will be sent by certified mail to the most recent address WDT has on file or otherwise in our records for you.
- c) Binding Arbitration. You and WDT agree that, failing informal resolution, any Disputes shall be resolved by binding individual arbitration pursuant to the terms set forth in this Agreement. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED. The arbitrator may award you the same damages as a court sitting in proper jurisdiction could, and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. In some instances, the costs of arbitration may exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. The decision of the arbitrator shall be final and binding and may be entered as a judgment enforceable by any court with jurisdiction over the parties. You and WDT agree that this Section 11 shall survive termination of this Agreement.
- d) Small Claims Court. Notwithstanding the foregoing, either party may bring an individual action in small claims court if the action is within that court's jurisdiction and is pending only in that court.
- e) TIME LIMITATION. TO HELP RESOLVE ANY ISSUES BETWEEN THE PARTIES PROMPTLY AND DIRECTLY, YOU AND WDT AGREE THAT ANY ARBITRATION OR SMALL CLAIMS COURT



PROCEEDING REGARDING A DISPUTE UNDER THIS AGREEMENT MUST BE INITIATED WITHIN ONE YEAR AFTER THE DISPUTE FIRST AROSE; OTHERWISE THE DISPUTE IS PERMANENTLY BARRED.

- f) WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS. YOU AND WDT AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER PARTY ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, INCLUDING FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. ACCORDINGLY, UNDER THE ARBITRATION PROCEDURES OUTLINED IN THIS SECTION, AN ARBITRATOR SHALL NOT COMBINE OR CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES TO AN ARBITRATION PROCEEDING.
- g) Arbitration Procedure. You and WDT agree that this Agreement memorializes a transaction involving interstate commerce and the interpretation and enforcement of this Section 12 shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.). If a party elects to commence arbitration, the arbitration shall be governed by the rules of JAMS that are in effect at the time the arbitration is initiated (the "JAMS Rules"), available at <https://www.jamsadr.com> or by calling 1-800-352-5267, and the terms set forth in this Agreement. If there is a conflict between the JAMS Rules and the terms set forth in this Agreement, the terms set forth in this Agreement shall govern. All Disputes shall be resolved by a single neutral arbitrator, and both parties shall have a reasonable opportunity to participate in the selection of the arbitrator. The arbitrator is bound by the terms of this Agreement. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all Disputes arising out of or relating to the interpretation, applicability, scope, enforceability, or formation of this Agreement, including any claim that all or any part of this Agreement is void or voidable, except as provided for in Section 11(a). You may choose to engage in arbitration hearings by telephone. Arbitration hearings not conducted by telephone shall take place in a location reasonably accessible from your primary residence, or in Santa Clara County, California, U.S.A., at your option.
- h) Initiation of Arbitration Proceeding. Instructions for how to initiate an arbitration are available from JAMS at <https://www.jamsadr.com>. To initiate an arbitration, you or WDT must: (i) Write a Demand for Arbitration that includes a description of the Dispute and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at <https://www.jamsadr.com> ("Demand for Arbitration"); (ii) Send two copies of the Demand for Arbitration, plus the appropriate filing fee, to your local JAMS office or to JAMS, 160 W. Santa Clara Street, Suite 1600, San Jose, CA 95113, U.S.A.; and (iii) Send one copy of the Demand for Arbitration to the other party at the same address as the Dispute Notice, or as otherwise agreed to by the parties.
- i) Hearing Format. In all hearing formats, the arbitrator shall issue a written decision that explains the essential findings and conclusions on which an award, if any, is based. During the arbitration, the amount of any settlement offer made by WDT or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or WDT is entitled. The discovery or exchange of non-privileged information relevant to the Dispute may be allowed during the arbitration. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

- j) **Arbitration Fees.** WDT shall pay, or (if applicable) reimburse you for, all JAMS filing, administration, and arbitrator fees for any arbitration commenced (by you or WDT) pursuant to the terms of this Agreement.
- k) **Award in Your Favor.** For Disputes in which you or WDT seeks \$75,000 USD or less in damages exclusive of attorney's fees and costs, if the arbitrator's decision results in an award to you of an amount greater than WDT's last written offer to settle the Dispute, if any, WDT will: (i) pay you \$1,000 USD or the amount of the award, whichever is greater; (ii) pay you twice the amount of your reasonable attorney's fees, if any; and (iii) reimburse you for any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing the Dispute in arbitration. Except as agreed upon by you and WDT in writing, the arbitrator shall determine the amount of fees, costs, and expenses to be paid by WDT pursuant to this Section 11(k).
- l) **Attorney's Fees.** WDT will not seek its attorney's fees and expenses for any arbitration commenced involving a Dispute under this Agreement. Your right to attorney's fees and expenses under Section 11(k) above does not limit your rights to attorney's fees and expenses under applicable law; notwithstanding the foregoing, you agree not to seek and the arbitrator may not award duplicative awards of attorney's fees and expenses.
- m) **Opt-out.** You may elect to opt-out (exclude yourself) from the final, binding individual arbitration procedure and waiver of class and representative proceedings specified in this Agreement by sending a written letter to the WDT Notice Address within thirty days of your acceptance of this Agreement that specifies: (i) your name, (ii) your mailing address, and (iii) your request to be excluded from the final, binding individual arbitration procedure and waiver of class and representative proceedings specified in this Section 11. If you opt-out consistent with the procedure set forth above, all other terms shall continue to apply, including the requirement to provide a Dispute Notice prior to litigation.
- n) **Severability.** If any provision in this Section 11 is found to be unenforceable, that provision shall be severed with the other terms of this Agreement remaining in full force and effect. The foregoing shall not apply to the prohibition against class or representative actions as provided in Section 11(f); if Section 11(f) is found to be unenforceable, the entire Section 11 (but only Section 11) shall be null and void.

## **12.Special Notice To Residents Of California.**

California users of the Services are entitled to receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

## **13.Assignment.**

You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Agreement is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

## 14.No Waivers.

The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of WDT.

## 15.No Third-Party Beneficiaries.

These Terms do not and are not intended to confer any rights or remedies upon any person other than you.

## 16.Notices.

- a) To You. We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide or (ii) by posting to the Site. Notices sent by email will be effective when we send the email and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current.:
- b) To Us. To give us notice under these Terms, you must contact us as follows: (i) by facsimile transmission to (949) 672-6604; or (ii) by personal delivery, overnight courier or registered or certified mail to: Western Digital, ATTN: E-commerce Team, 5601 Great Oaks Parkway, San Jose, CA 95119. We may update the facsimile number or address for notices to us by posting a notice on the Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

## 17.Force Majeure

We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

## 18.Severability.

If any provision of these Terms shall be deemed invalid, void, or for any reason unenforceable, that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provision of these Terms.

## 19. Survival.

All terms that by their sense are expected to survive the purchase of each Device and Service by you shall survive, including, without limitation, the terms of the initial paragraphs and sections 7 through 21.

## 20. Notice To Government Purchasers.

For Sales of Devices in The United States: The Devices are Commercial Items as that term is defined by 48 C.F.R. 2.101. You acknowledge that WDT sells and offers for sale the Devices to the general public. The Software is Commercial Computer Software, and was developed solely at private expense. Governmental Purchasers shall have only the rights specified in the license under which the Commercial Computer Software or Commercial Computer Software Documentation was obtained. If the Governmental Purchaser has a need for rights not conveyed under the license customarily provided to the public, the Governmental Purchaser must negotiate with WDT to determine if there are acceptable terms for transferring such rights. To the extent any U.S. State or subdivision thereof purchases Devices under the Terms, such party agrees, to the fullest extent permitted by applicable law, to accept the terms and conditions of purchase and use as set forth in these Terms.

## 21. Entire Agreement.

Our order confirmation, these Terms, each license agreement relating to any Software you obtain on or through this Site, the [Terms of Use](#) and our [Privacy Statement](#) on the Site will be deemed the final and integrated agreement between you and us on the matters contained in these Terms.