

Nexyn Corporation
1287 Forgewood Ave.
Sunnyvale CA, 94089
Ph. (408) 962-0895
Fax. (408) 743-5354
www.nexyn.com

Sales Terms and Conditions

NEXYN CORPORATION, a USA corporation with its principal place of business at 1287 Forgewood Ave., Sunnyvale, CA 94089 (hereinafter referred to and designated below as "NEXYN"), accepts and will fill orders by the purchasing company, designated below as "Buyer", only upon the terms and conditions appearing below.

1. **AGREEMENT:** Any of the terms and provisions of Buyer's order which are inconsistent with the terms and provisions hereof shall not be binding on NEXYN and shall not be considered applicable to the sale of the products mentioned herein. Unless Buyer notifies NEXYN in writing to the contrary within ten(10) days after receipt of this form, these terms and conditions shall be deemed to be accepted and, the shipment by NEXYN of the products covered hereby shall be deemed to be subject to the terms and conditions hereof. No modification hereof shall be valid unless expressly accepted in writing by an authorized representative of NEXYN.
2. **PRICES:** Unless otherwise specified on the order, prices are for the specific quantity stated and do not include taxes, or charges for transportation, documentation, special packaging, marking or testing. The prices quoted herein are payable in U.S. Dollars unless otherwise stated.
3. **CANCELLATION:** If the buyer cancels the order in whole or in part, cancellation charges will apply.
4. **TAXES:** The prices quoted by NEXYN do not include sales, use, excise or other similar taxes. The Buyer shall pay, in addition to the prices quoted, the amount of any Federal, State, City or other tax, import or export duty, tariff or customs charge levied by any jurisdiction either inside or outside the United States which is applicable to the sale of goods or performance of services by NEXYN or in lieu thereof the Buyer shall supply NEXYN with an appropriate tax exemption certificate.
5. **TERMS:** Terms will be COD/CAD for all initial orders. All Non-Domestic orders shall be CAD (Cash Against Document) unless otherwise agreed upon by Nexyn. Nexyn's standard terms of payment are NET 10 or NET 30 days to those firms having open accounts with Nexyn. A deposit of 30% – 50% may be required for certain orders. Terms are granted upon order history and approved credit.

All late payments are subject to late charges of 1.5% per 30 days beyond the invoice due date. Customers granted terms that frequently pay late may have their terms set back to COD/CAD.

6. SHIPMENT: All shipments are F.O.B. the NEXYN factory. In the absence of Buyer shipping instructions, NEXYN will select the carrier. Title and risk of loss of material shall pass to the Buyer upon delivery thereof by NEXYN to the carrier or delivery service. Buyer is responsible for insuring shipment.

7. DELIVERY: NEXYN acknowledged shipping dates are good faith estimates. If conditions arise which prevent compliance with delivery schedules, NEXYN shall not be liable for any damage, general, consequential or otherwise, for delay in delivery, or for failure to give notice of delay, and such delay shall not constitute grounds for cancellation. NEXYN reserves the right to deliver partial shipments.

8. CHANGES: Change orders are valid only with NEXYN's written consent and acceptance by Buyer of NEXYN's changes, if applicable.

9. FORCE MAJEURE: NEXYN shall not be liable for any failure to deliver, or delay in the delivery of any goods or services due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, or inability to obtain materials, labor, components, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by the reason of such delay. In the event NEXYN's production is curtailed for any of the above reasons, NEXYN may allocate its production among its various customers in a commercially fair and reasonable manner.

10. PRODUCT ACCEPTANCE: Unless Buyer notifies NEXYN in writing within ten (10) days from shipment receipt that shipment is rejected or invalid, shipment will be deemed to have been accepted by Buyer and NEXYN will expect payment terms to be complied with.

11. PRODUCT WARRANTY:

A. NEXYN warrants that all Products delivered under this Agreement shall be free from defects in workmanship and materials for one (1) year from the date of shipment of each item. Products shall conform to the specifications, drawings, or other descriptions approved in writing by NEXYN. Further, Buyer's sole remedy shall be that, NEXYN shall, at NEXYN's option, repair, replace, or issue credit for any product deemed by NEXYN to be nonconforming. NEXYN shall promptly provide the Buyer with a Return Material Authorization (RMA) number. Upon such authorization, and in accordance with instructions by NEXYN, the product will be returned, shipping charges paid by NEXYN. Replacements made under this warranty will be shipped prepaid.

B. WARRANTY EXCLUSIONS-

(1) EXCEPT AS STATED IN THIS WARRANTY CLAUSE, NEXYN, ITS SUBSIDIARIES, AFFILIATES AND SUBCONTRACTORS MAKE NO

WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (2) THE WARRANTY DOES NOT EXTEND TO ANY PRODUCT SOLD BY NEXYN WHICH HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE, ACCIDENT, IMPROPER INSTALLATION OR USED IN VIOLATION OF INSTRUCTIONS FURNISHED FOR NEXYN'S PRODUCTS.**
- (3) THE WARRANTY DOES NOT EXTEND TO OR APPLY TO ANY UNIT WHICH HAS BEEN REPAIRED OR ALTERED AT ANY PLACE OTHER THAN AT NEXYN'S FACTORY BY PERSONS NOT EXPRESSLY APPROVED BY SELLER.**
- (4) THE WARRANTY DOES NOT EXTEND INTO ANY SYSTEM INTO WHICH THE MATERIAL IS INCORPORATED. THIS WARRANTY APPLIES ONLY TO THE BUYER AND MAY NOT BE ASSIGNED OR EXTENDED BY THE BUYER WITHOUT THE WRITTEN PERMISSION OF NEXYN.**

12. **PATENT INDEMNITY:** To the extent that items delivered hereunder are manufactured in accordance with design furnished by Buyer, Buyer agrees to indemnify and hold NEXYN harmless from all legal expenses which may be incurred as well as all damages and costs which may finally be assessed against NEXYN in any action for infringement and or misrepresentation of any intellectual property including patents, by such items delivered hereunder. NEXYN agrees promptly to inform the Buyer of any claim for liability made against NEXYN with respect to such items and NEXYN agrees to cooperate with the Buyer in every way reasonably available to facilitate the defense against any such claim at buyer's expense. **NEXYN DOES NOT WARRANT THAT THE BUYER SHALL BE FREE FROM ANY RIGHTFUL CLAIM OF THIRD PERSONS FOR ANY INTELLECTUAL PROPERTY CLAIMS, PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT OF NEXYN FURNISHED PRODUCT.**

13. **MODIFICATIONS:** NEXYN reserves the right to modify product specifications of products ordered by the Buyer herein providing that the modification will not materially affect form, fit or function.

14. **SELLER PROPERTY:** NEXYN shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment, any specifications, drawings, schematics or other types of information, data, software or any other item designed or created by Nexyn in performance of Buyer's order notwithstanding the fact that Buyer may have paid charges. No right, title or license in any such item or design is hereby granted to Buyer.

15. **GOVERNING LAWS:** The courts in the jurisdiction of NEXYN shall have exclusive jurisdiction for any dispute arising here from and shall be governed by and construed in accordance with the law of the jurisdiction of the plaintiff, excluding its conflict of laws provision and excluding the United Nations Convention on the Sale of Goods. The prevailing

party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees in connection therewith.

16. LIMITATION OF LIABILITY: NEXYN WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, COST OF REPAIR, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, SAVINGS, OR REVENUES OR FOR DE-INSTALLATION OR RE-INSTALLATION EXPENSES OF ANY KIND, WHETHER OR NOT BASED UPON EXPRESS WARRANTY OR IMPLIED WARRANTY (EXCEPT FOR THE OBLIGATIONS ASSUMED BY NEXYN UNDER THE PRODUCT WARRANTY CLAUSES), CONTRACT, NEGLIGENCE, OR STRICT LIABILITY ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF THE PRODUCTS. IN NO EVENT SHALL NEXYN BE LIABLE TO BUYER FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT WHICH PROVES TO BE DEFECTIVE.

17. SUPPLEMENTAL LICENSE AND PERMIT CLAUSES FOR EXPORT ORDER:

- (a) NEXYN will secure all export licenses and permits except in those cases where the Buyer already holds a valid export license. When NEXYN secures the license application, the Buyer will furnish reasonable cooperation in providing the required information. If such licenses and permits are not paid for by the Buyer, such fees will be added to the contract price.
- (b) Buyer will secure all licenses and permits required to import NEXYN products and NEXYN will furnish reasonable cooperation in acquiring such licenses and permits. The delivery schedule is contingent upon securing all necessary licenses and permits.
- (c) Delivery dates are contingent upon obtaining licenses or permits in a timely schedule.

18. COMPLIANCE WITH LAWS: The Buyer shall comply with all applicable laws, rules and regulations, including but not limited to those concerning export from the United States or re-export of any item purchased hereunder.

19. WAIVER: Any waiver by NEXYN is ineffective unless it is in writing and signed by NEXYN. NEXYN's failure to enforce any provision, or waiver of any breach of any provision, shall not constitute a continuing waiver or inability to enforce.

20. SEVERABILITY: If any provision hereof is invalid or unenforceable, all other provisions shall remain in full force and effect.