



WD Elements™

Technical Support Services
http://support.wd.com
www.wd.com

North America	800.ASK.4WDC (800.275.4932)	Asia Pacific	+86.21.2603.7560 or http://support.wd.com/contact
Spanish	800.832.4778	Japan	0800.805.7293
Europe (toll free where available)	00800.27549338	Australia & New Zealand	+800.2275.4932
Europe/Middle East/Africa	+31.880062100	Russia	8.10.8002.3355011

USB 3.0

→ http://support.wd.com → Knowledge Base ID# 3865

BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AGREEMENT

IMPORTANT – READ CAREFULLY. YOUR PURCHASE IS SUBJECT TO THE TERMS OF THIS BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AGREEMENT (THIS “AGREEMENT”), AND OTHER TERMS AS APPLICABLE TO PARTICULAR PRODUCTS OR SERVICES. THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT REQUIRES THE RESOLUTION OF DISPUTES ON AN INDIVIDUAL BASIS, LIMITS YOUR ABILITY TO SEEK RELIEF IN A COURT OF LAW, AND WAIVES YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS, CLASS ARBITRATIONS, OR A JURY TRIAL FOR CERTAIN DISPUTES.

1. Disputes. The terms of this Agreement shall apply to all Disputes between you and Western Digital Technologies, Inc. and its affiliates (collectively, “WDT”). For the purposes of this Agreement and subject to the exceptions set forth in this Section 1, “Dispute” shall mean any dispute, claim, or action between you and WDT arising out of or relating to all WDT products and services, including without limitation hardware and software products, this Agreement, or other transaction involving you and WDT, whether 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 FOR (A) TRADE SECRET MISAPPROPRIATION, (B) PATENT INFRINGEMENT, (C) COPYRIGHT INFRINGEMENT OR MISUSE, AND (D) TRADEMARK INFRINGEMENT OR DILUTION. MOREOVER, NOTWITHSTANDING SECTION 6, YOU AGREE THAT A COURT, NOT THE ARBITRATOR, MAY DECIDE IF A CLAIM FALLS WITHIN ONE OF THESE FOUR EXCEPTIONS.**

2. Binding Arbitration. You and WDT further agree: (a) to arbitrate all Disputes between the parties pursuant to the provisions in this agreement; (b) this Agreement memorializes a transaction in interstate commerce; and (c) the Federal Arbitration Act (9 U.S.C. §1, et seq.) governs the interpretation and enforcement of 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 addition, some instances, the costs of arbitration could 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 enforceable by any court with jurisdiction over both parties.

3. Small Claims Court. Notwithstanding the foregoing, you may bring an individual action in the small claims court of your state or municipality if the action is within that court’s jurisdiction and is pending only in that court.

4. Dispute Notice. In the event 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”). The Dispute Notice to WDT must be addressed to: Western Digital Technologies, Inc., ATTN: Legal Department, 3355 Michelson Drive, Suite 100, Irvine, CA 92612, U.S.A. (the “WDT Notice Address”). The Dispute Notice to you will be sent by certified mail to the most recent address WDT on file or otherwise in our records for you. If WDT and you do not reach an agreement to resolve the Dispute within sixty (60) days after the Dispute Notice is received, you or WDT may commence an arbitration proceeding pursuant to this Agreement.

pursuant to this Agreement. Following submission and receipt of the Dispute Notice, each of the parties agrees to act in good faith to seek to resolve the Dispute before commencing arbitration.

5. 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 WITHOUT LIMITATION FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. ACCORDINGLY, UNDER THE ARBITRATION PROCEDURES OUTLINED IN THIS AGREEMENT, 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.

6. Arbitration Procedure. 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 <http://www.jamsadr.com> or by calling 1-800-352-5267, and under the rules set forth in this Agreement. If there is a conflict between the JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement shall govern. You may, in arbitration, seek any and all remedies otherwise available to you pursuant to federal, state, or local laws. 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, enforceability or formation of this Agreement, including, but not limited to, any claim that all or any part of this Agreement is void or voidable. Notwithstanding this broad delegation of authority to the arbitrator, a court may determine the limited question of whether a claim or cause of action is for trade secret misappropriation, patent infringement, copyright infringement or misuse, trademark infringement or dilution, all of which are excluded from the definition of “Disputes” in Section 1. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator’s award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. You may choose to engage in arbitration hearings by telephone. Arbitration hearings not conducted by telephone shall take place in a reasonably accessible location near your primary residence, or in Orange County, California, at your option.

- Initiation of Arbitration Proceeding. If either you or WDT decides to arbitrate a Dispute, both parties agree to the following procedure:
 - Write a Demand for Arbitration. The demand must include a description of the Dispute and the amount of damages sought to be recovered. You can find a copy of the Demand for Arbitration at <http://www.jamsadr.com> (“Demand for Arbitration”).
 - If you send three copies of the Demand for Arbitration, plus the appropriate filing fee, to:
JAMS
500 North State College Blvd., Suite 600
Orange, CA 92668, U.S.A.
 - (If) Send one copy of the Demand for Arbitration to the other party at the same address as the Dispute Notice, as the parties agreed to by the parties.
- 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.
- Arbitration Fees. WDT shall pay (if applicable) reimburse you for, all JAMS filing, administration, and arbitrator fees for any arbitration commenced by you or WDT) pursuant to provisions of this Agreement.
- Award in Your Favor. For Disputes in which you or WDT seeks \$75,000 or less in damages, exclusive of attorney’s fees and costs, if the arbitrator’s decision results in an

award to you in an amount greater than WDT’s last written offer, if any, to settle the Dispute, WDT will: (i) pay you \$1,000 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 6(d).

e. 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 6(d) above does not limit your rights to attorney’s fees and expenses under applicable law; notwithstanding the foregoing, the arbitrator may not award duplicative awards of attorney’s fees and expenses.

f. 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 (30) days of your assent to this Agreement (including the purchase, download, installation or other use of WDT products and services) 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 Agreement. In the event you opt-out consistent with the procedure set forth above, all other terms shall continue to apply, including the requirement to provide notice prior to arbitration.

7. Severability. If any provision in this Agreement is found to be unenforceable, that provision shall be severed with the remainder 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 5, if Section 5 (but only Section 5) is found to be unenforceable, this entire Agreement shall be null and void.

Regulatory Compliance

FCC Class B Information

Operation of this device is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received.

This device has been tested and found to comply with the limits of a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This unit generates, uses, and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to other electronic equipment. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, you are encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and the receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/television technician for help.

Any changes or modifications not expressly approved by the manufacturer could void the user’s authority to operate this equipment.

CAN ICES-3 (B) / NMB-3 (B) Statement

Cet appareil numérique de la classe B est conforme à la norme NMB-3 (B) du Canada. This device complies with Canadian ICES-3 (B).

Safety Compliance

Approved for US and Canada. CAN/CSA-C22.2 No. 60950-1, UL 60950-1: Safety of Information Technology Equipment. For use only with a UL Listed PC.

Approuvé pour les États-Unis et le Canada. CAN/CSA-C22.2 No. 60950-1, UL 60950-1: Sécurité d’équipement de technologie de l’information.

and all obligations and liabilities of WD for damages including, but not limited to accidental, consequential, or special damages, or any financial loss, lost profits or lost data arising out of or in connection with the use of the Product, even if you performance of the Product, even if WD has been advised of the possibility of such damages. In the United States, some states do not allow exclusion or limitations of incidental or consequential damages, so the limitations above may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

Garantieinformationen

Alle Regionen außer Australien/Neuseeland

Inanspruchnahme des Service

WD schätzt Sie als Kunden und ist immer bemüht, Ihnen den bestmöglichen Service zu bieten. Wenn dieses Produkt gewartet werden muss, wenden Sie sich entweder an den Händler, bei dem Sie das Produkt ursprünglich erworben haben, oder besuchen Sie unsere Website für Produktsupport unter <http://support.wd.com>. Hier finden Sie Anweisungen zur Inanspruchnahme des Service und wie eine RMA erstellt wird. Für die Rückerstattungsberechtigung angefordert werden kann. Wird festgestellt, dass das Produkt defekt ist, erhalten Sie eine RMA-Nummer sowie Anweisungen zur Rücksendung des Produkts. Eine nicht autorisierte Rücksendung, d.h. eine Sendung, für die keine RMA-Nummer erstellt wurde, wird zu Ihren Lasten an Sie zurückgeschickt. Autorisierte Rücksendungen sind im Voraus zu bezahlen, entsprechend zu versichern und in einer zulässigen Verpackung an die auf Ihren Rücksendeunterlagen angegebene Adresse zu richten. Der Originalkarton und das entsprechende Verpackung

