

Simply NUC Commercial Reseller Program Terms and Conditions

Simply NUC offers Reseller the opportunity to participate in the reseller program only on the condition that Reseller agrees to be bound by the terms and conditions found in these Reseller Program Terms & Conditions between Simply NUC and Reseller. Once Reseller begins to resell Simply NUC products, Reseller has consented and agreed to the terms and conditions found herein and agrees to be bound by such.

1. DEFINITIONS.

- a. "End User" means the ultimate user of the Products.
- b. "Hardware" means Simply NUC proprietary computer hardware.
- c. "License" means a non-exclusive, non-transferable license to use the Products in accordance with a Distribution Agreement or Reseller Agreement between Simply NUC and a third party Reseller.
- d. "Order" means a purchase commitment mutually agreed upon between (1) Simply NUC and Reseller, or (2) an Simply NUC authorized distributor and Reseller.
- e. "Products" means Simply NUC Computer hardware, computer peripherals and any other item labeled with the Simply NUC logo.
- f. "Quote" – The written quote provided by Simply NUC to Reseller relating to the sale of products to which these Terms and Conditions are attached.
- g. "Reseller" means the individual or company that Simply NUC acknowledges has a non-exclusive right to market, sell and distribute Simply NUC Products directly to End Users, under either a Reseller Agreement between Reseller and an authorized Simply NUC Distributor, or under a Distribution Agreement between Distributor and Simply NUC, within the United States.
- h. "Right" means a non-exclusive, non-transferable right to use the Products in accordance with a Distribution Agreement or Reseller Agreement between Simply NUC and a third party Reseller.
- i. "Supplier" means Simply NUC Inc, a Nevada corporation with its principal place of business at 299 South Main Street #1300, Salt Lake City, Utah 84111, USA.
- j. "Territory" means the United States, unless otherwise agreed between the parties.
- k. "Simply NUC" means Simply NUC Inc, a Nevada corporation with its principal place of business at 299 South Main Street #1300, Salt Lake City, Utah 84111, USA.

2. RESELLER OBLIGATIONS.

Reseller shall use reasonable commercial efforts to promote the sale of the Products within Reseller's Territory. Reseller shall submit any Product pricing terms or variation of SIMPLY NUC pricing terms to Supplier for approval prior to marketing those pricing terms to prospective clients. Reseller is also required to submit monthly sales reports to Distributor and Supplier as outlined under a separate Resale Agreement. Reseller will also conduct business in a manner that reflects favorably on Simply NUC, and will also avoid deceptive, misleading or unethical practices and further may not resell the Products to End Users who conduct Internet monitoring, phishing, spamming or screening activities without permission from the affected consumers. Reseller agrees that they will not sublicense the Products to any third party End Users without an independent agreement between Reseller and Supplier.

3. ORDERING.

(a) Orders. Reseller may place orders for Products under the Quote with a written Order. Acceptance of any Orders placed by Reseller, either by written acknowledgement or by shipment of product or performance of services, does not constitute acceptance by Simply NUC of any of the terms and conditions of such Orders, except as to identification and quantity of Products. Simply NUC's acceptance of any Orders and the sale of Products are limited to the Quote and these Terms and Conditions. Any other material terms or conditions from the Reseller that differ from the Quote or these Terms and Conditions are expressly rejected. Each accepted order will be viewed as a single agreement, independent of any other orders. Simply NUC is not responsible for pricing, typographical or other errors in any offer by Simply NUC and reserves the right to cancel or adjust any orders arising from such error. Simply NUC reserves the right to refuse any Order and may cancel any Order or refuse to delay shipment if Reseller fails to agree to proposed payment terms, fails to make a payment to cover the costs of shipping, or is in material breach of any ancillary agreement between Simply NUC and Reseller. Simply NUC will have no liability to Reseller for any such suspension, termination or refusal of additional orders when Reseller is in arrears on previous orders. For products purchased by Reseller through an authorized Simply NUC distributor, the payment

and shipping terms of any Order submitted therein will be determined by that particular distributor. For products purchased directly from Simply NUC, Reseller shall make payment in full at the time of the Order or to an escrow agent under the terms of a separate Reseller Agreement between the parties.

(b) Shipping, Title and Risk of Loss. Title to Product (except title to software which remains with the applicable licensors) passes from Simply NUC to Reseller once the product physically reaches the shipper (FOB Shipper, Freight Collect). Reseller shall own and be responsible for all risk of loss associated with the Product(s) once the Product(s) has been physically placed in the care of the shipper. Loss or damage to the Product during shipment is solely born by the Reseller. Reseller must notify Simply NUC within ten (10) days of receipt of shipment for missing items, or if the Order is wrong or defective in any way. Simply NUC reserves the right to cure defective product shipment within twenty (20) days of receipt of notice. Notice of any defect or missing items must be in writing and mailed to: Simply NUC Operations, 299 South Main Street, Suite 1300, Salt Lake City, Utah 84111.

(c) Security Interest in Goods Delivered to Shipper. In the event shipment of Product before payment in full occurs as a result of Simply NUC error, Reseller hereby grants Simply NUC, and Simply NUC hereby retains a first priority security interest and lien on any and all of Reseller's rights, title and interest in the Product, wherever located, and all replacement and proceeds of the Product, until the invoice for the applicable Product is paid in full, including any late payments and costs of collection.

4. TERMS OF PAYMENT AND INVOICES.

Pricing will be stated in all Sales Quotes. Pricing quoted will be for the total quantity and release dates provided in the Quote. Any changes in quantity or release dates may result in a change in pricing. Pricing does not include applicable federal, state, and local taxes. Pricing is for standard packaging and labeling only for ordinary ground transportation unless specified otherwise in the Quote. Additional charges may apply for air shipments or special packaging. Before Simply NUC issues a quote, Simply NUC may request information about the end user and Reseller agrees to provide that information to Simply NUC. Simply NUC reserves the right to modify pricing and quotes due to shortage of materials or products, increase in costs, pricing or erroneous quote, or in any event beyond Simply NUC's control.

(a) Payment. Terms of payment are due on sale from date of Simply NUC invoice, unless otherwise agreed by the parties under separate agreement. Payment must be made by credit card, automated clearing house, wire transfer, electronic funds transfer or some other prearranged payment method.

(b) Invoices. Simply NUC will issue an invoice to Reseller at the time of shipment. Simply NUC may invoice parts of an order separately in its discretion. Simply NUC reserves the right to change the method of delivery of all documentation for any reason. Simply NUC will deem the invoice to be accurate unless the Reseller notifies Simply NUC within ten (10) days of receipt of invoice of any error. All notification of invoice error must be in writing and can be in the form of a letter, email or any other written medium showing a date and time stamp that the notice was given to Simply NUC. In the event that Reseller notifies Simply NUC of a material error in the original invoice, payment of any amounts corrected will be due and Reseller shall pay the corrected amount if any is still due and owing, within thirty (30) days of re-issue of the new invoice. In the event that a credit is due from Simply NUC to Reseller as a result of the review, Simply NUC will refund the given amount to Reseller within thirty (30) days of receipt of Notice of error. In the event that Reseller withholds payment of any invoice amounts on the presumption that the invoiced amounts are not accurate, and Simply NUC subsequently concludes that the invoiced amounts are accurate, then Reseller shall pay a late fee for such invoiced amounts, unless otherwise agreed upon by the parties. In no event will the Reseller be entitled to offset, defer or deduct any invoiced amounts that Simply NUC determines to be accurate following the process described herein.

5. SUPPORT AND RETURNED GOODS POLICY.

Absent a controlling third party servicing agreement between Simply NUC and Reseller stating otherwise, Simply NUC shall provide all service and support under any warranty applicable to Product sold by Reseller, as long as the Product is sold in compliance with these Terms and Conditions. Returns are subject to Simply NUC's then current Return Policy found on Simply NUC's website at www.SimplyNUC.com. In all instances, authorization must be received from your Simply NUC customer service representative and a

Return Merchandise Authorization (RMA) number must be issued to you before any returns will be accepted. With respect to all Products returned to Simply NUC in accordance with these Terms and Conditions: (i) Reseller agrees to comply with Simply NUC's reasonable policies concerning return authorization procedures, including, if necessary, obtaining a return merchandise authorization (RMA) number from Simply NUC's technical support department at support@simplynuc.com prior to returning the Product; and (ii) Simply NUC agrees to use commercially reasonable efforts to promptly approve and effectuate any such Product returns and, in each case, to take no more than 30 days to effectuate same.

6. SOFTWARE. All software, if any, provided in conjunction with the sale of any Product(s) is subject to the separate software license agreement accompanying or made available to Reseller in connection with the software. A portion of the software may contain or consist of open source software, which Reseller may use under the terms and conditions of the specific license under which the open source software is distributed. Reseller agrees that Reseller will be bound by any and all such license agreements. Title to the software remains with the applicable licensor(s).

7. UPGRADES; DISCONTINUED PRODUCTS; DEFECTIVE PRODUCTS.

Simply NUC will notify Reseller within a reasonable time period prior to the first commercial shipment of any new product or upgrade or update of an existing Product (an "Upgrade"). Upon commercial availability of such new product or Upgrade, shall be deemed a Product for all purposes of these Terms and Conditions. Simply NUC shall use commercially reasonable efforts to provide Reseller with sufficient information and training to enable Reseller to sell such Upgrade to Government Customer immediately upon its commercial availability. Simply NUC shall notify Reseller not less than 30 days prior to the discontinuation of any existing Product. For purposes of these Terms and Conditions, a discontinuation of a Product version shall take place at such time as Simply NUC's management makes the decision that an existing Product will no longer be sold or licensed and that there will not be an upgrade for such Product. Reseller may return to Simply NUC and Simply NUC shall accept any defective or damaged Product units returned by Government Customers within the terms of Simply NUC's warranty, subject to Section 8 above.

8. LIMITED WARRANTY.

(a) End User Applicability. Any Simply NUC end user warranty, as it is specifically published on the Simply NUC website at www.SimplyNUC.com, will apply to any product purchased by an End User from a commercial Reseller provided that the products being sold to the End User by the Reseller remain new and unused in commerce.

(b) Warranties to Reseller from Simply NUC. Simply NUC warrants that the products conform to their published documentation, are new and unused in commerce, that no pending legal action is taking place against Simply NUC that would diminish or invalidate the ability of Reseller to sell Simply NUC product to commercial End Users, that Reseller is able to pass through any Simply NUC warranty in effect under this paragraph to the End User.

(c) Warranties from Reseller to Simply NUC. Reseller warrants that it is a company duly organized and in good standing with the state in which it is registered and that there are no liens, lawsuits or other encumbrances, which would prohibit Reseller's ability to sell or otherwise distribute Simply NUC products.

(d) Warranty Disclaimer. THE PRODUCT(S) IS PROVIDED TO YOU ON AN "AS IS" BASIS, WITHOUT IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, PERFORMANCE, AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING, CUSTOM, USAGE OR TRADE (EXCEPT AS EXPRESSLY SET FORTH HEREIN). Simply NUC AND ITS AFFILIATES, EMPLOYEES, AND AGENTS ARE NOT LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. If the Simply NUC product is proved to be defective, THE EXCLUSIVE REMEDY, AT Simply NUC'S OPTION, SHALL BE TO REFUND THE PURCHASE PRICE PAID BY Reseller OR TO REPAIR OR REPLACE THE DEFECTIVE Simply NUC PRODUCT. Because there are a variety of factors that can affect the use and

performance of an Simply NUC product, some of which are solely within an End User's knowledge and control, it is the responsibility of the Reseller to evaluate the Simply NUC product in conjunction with what they know about the End User to determine whether it is fit for a particular purpose and suitable for the End User's needs. Simply NUC specifically excludes any and all warranties for any non -Simply NUC related component or products that are included with any Simply NUC computer Product(s) (including all software included with the Product(s) or subsequently utilized therewith). Simply NUC makes no warranties whatsoever for service, software, maintenance or support of any non-Simply NUC branded product. Such product, service, software, maintenance or service is provided by Simply NUC "as is" and Simply NUC will defer to any third party manufacturer warranties pertaining thereto. Simply NUC specifically excludes any and all warranties for any component or product that is included with the Product, except those that are Simply NUC products.

9. LIMITATION OF LIABILITY AND INDEMNIFICATION.

Except where prohibited by law, Simply NUC SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO Reseller FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE, SAVINGS OR BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, CORRUPTED DATA, LOST DATA, OR GOODWILL) RESULTING FROM OR IN ANY WAY RELATED TO Simply NUC'S PRODUCTS OR SERVICES. This limitation of liability applies regardless of the legal or equitable theory under which such losses or damages are sought including breach of contract, breach of warranty, negligence, strict liability, or any other legal or equitable theory. This limitation of liability does not apply to claims for personal injury by a third party through the use of any Simply NUC product or direct damages due to breach of a material obligation of any Quote provided by Simply NUC.

Simply NUC shall, at its sole expense, indemnify, defend and hold harmless Reseller and its affiliates, shareholders, directors, officers, employees, contractors, agents and customers from any and all damages, losses, costs and claims based upon (i) an allegation that any Product or portion thereof infringes or constitutes wrongful use of any U.S. patent, copyright, trademark, trade secret or other proprietary right of any third party; and/or (ii) an allegation that any Product is in any way defective or does not conform to Simply NUC's published specifications, warranty, documentation, advertisements or trade representations, provided that (i) Reseller shall provide Simply NUC notice of any such claim which is brought to the Reseller's attention within ten (10) business days of receipt of the notice by Reseller; (ii) Simply NUC shall have control over the defense and settlement of such claim; and (iii) Reseller shall provide reasonable assistance to Simply NUC, at Simply NUC's request and expense. Simply NUC shall allow Reseller reasonable participation in the claims, at Reseller's cost.

Reseller shall in turn indemnify Simply NUC against any third party claim or action resulting from Reseller's failure to obtain or maintain appropriate licenses or other rights or permissions associated with Simply NUC Products, or if Reseller misuses or modifies any Simply NUC Product and a lawsuit results due to such modification, or any combination of use of an Simply NUC Product with any other third party product where such combination infringes or misappropriates any intellectual property right or trade secret of a third party, or any instance where Reseller is involved in fraud, misrepresentation, gross negligence, willful misconduct or breach of any provision of these Terms & Conditions or any other Agreement between the parties. Simply NUC will have no obligation under this section to indemnify Reseller against any claim where (1) damages result from the combination and operation of Simply NUC Product with any third party product; or (2) modification of the Product has occurred.

10. CONFIDENTIAL INFORMATION.

Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information, which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, prices and costs, markets, software, databases, developments, inventions, processes, formulas, technology, employee information,

designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as “Confidential,” “Proprietary” or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties. Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

11. INTELLECTUAL PROPERTY / PROPRIETARY RIGHTS.

The Products and all related intellectual property rights are the exclusive property of Simply NUC. All right, title and interest in and to the Products, any modifications, even if unauthorized, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the Products remain exclusively with Simply NUC. The Products are valuable, proprietary, and unique, and Reseller agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law both domestically and internationally. Reseller may not remove any proprietary notice of Simply NUC or any third party. No intellectual ownership of the Products passes to Reseller. Simply NUC may make changes to the Products at any time without notice. Except as otherwise expressly provided, Simply NUC grants no express or implied right under their patents, copyrights, trademarks, or other intellectual property rights to Reseller. Reseller may use the Simply NUC logo and name for the singular purpose of identifying the Simply NUC products that Reseller sells. Reseller may not use the Simply NUC logo and name for any other reason. Reseller agrees to change or correct, at Reseller’s expense, any materials or activity that Simply NUC decides is inaccurate, objectionable or misleading about the way Reseller sells and markets Simply NUC Products. Reseller is not allowed to hold itself out as “Simply NUC” or as an authorized agent of Simply NUC, or to create the impression that Simply NUC is affiliated with Reseller in any way other than as expressly permitted under the terms of a certain Reseller Agreement between Reseller and Simply NUC. Reseller may not claim or imply that Reseller and Simply NUC are legal partners or that Simply NUC has sponsored, authorized, approved or endorsed Reseller’s business or any offer or marketing, advertisement or promotion in any manner. Reseller may not register or use any domain name or business name that contains names, logos or business marks similar to Simply NUC. Reseller acknowledges and agrees that the Products contain open source programs and other software that is proprietary to Simply NUC and/or its licensors, and that Reseller’s appointment hereunder only grants Reseller a limited right and license to sublicense such software as part of the Products and does not transfer any right, title or interest in or to any software, or any intellectual property rights therein, to Reseller, Commercial Customers or any other third party. Simply NUC owns all right, title and interest in all software that is included in the Products, excluding the open source programs and the software of its licensors. Any rights in software not granted under these Terms & Conditions are hereby expressly reserved by Simply NUC. Except for the open source programs included in the Products, Reseller acknowledges that the Products, including the structure, organization and design of hardware, firmware and software included as part of the Products constitute proprietary and valuable trade secrets (and other moral rights and intellectual property rights) of Simply NUC or its licensors. Reseller will not attempt, and will use best efforts to prevent Commercial Customers, employees and contractors from attempting to: (i) modify, translate, reverse engineer (except to the limited extent permitted by law), decompile, disassemble, create, derivative works based on, sublicense, or distribute the software, hardware or firmware or the accompanying documentation; (ii) rent or lease any rights in the software, hardware or firmware or accompanying documentation in any form to any person; or (iii) remove any proprietary notice, labels, or marks on the software or firmware, documentation, and containers. Reseller acknowledges and agrees that Simply NUC provides sufficient information including access on its website to source code for the original open source programs included in the Products. Reseller agrees to comply with the open source requirements in this Agreement and to the open source license applicable to each open source program that is included in a Product. Reseller further agrees and acknowledges that rights attached to the open source programs are separate from and do not depend on the open source

programs being part of a Product. The open source programs are distributed under the open source license applicable to such open source programs and only such license, with no additional license conditions. Copies of the applicable open source license must be included in the packaging for the Product so that Commercial Customers are aware of their rights to use, copy, modify and distribute the open source programs.

12. RETURNED GOODS POLICY.

Returns are subject to Simply NUC's then current Return Policy found on Simply NUC's website at www.SimplyNUC.com. In all instances, authorization must be received from your Simply NUC customer service representative and a Return Merchandise Authorization (RMA) number must be issued to you before any returns will be accepted. With respect to all Products returned to Simply NUC in accordance with these Terms and Conditions: (i) Reseller agrees to comply with Simply NUC's reasonable policies concerning return authorization procedures, including, if necessary, obtaining a return merchandise authorization (RMA) number from Simply NUC's technical support department at support@simplynuc.com prior to returning the Product; and (ii) Simply NUC agrees to use commercially reasonable efforts to promptly approve and effectuate any such Product returns and, in each case, to take no more than 30 days to effectuate same.

13. EXCUSABLE DELAYS.

Simply NUC shall not be liable for its failure to perform if performance is prevented, restricted, or interfered with due to any act beyond the reasonable control of Simply NUC like fire or earthquake or other casualty or accident; inability to procure materials, power, or supplies due to external third party action; or war or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency, court or intergovernmental body; or any other act or condition that falls outside of Simply NUC's reasonable control. Simply NUC, when so affected and upon giving notice to Reseller, shall be excused from such performance to the extent of such prevention, restriction or interference; provided that Simply NUC shall use reasonable efforts to avoid or remove the causes of nonperformance and will continue performance after the act which caused non-performance no longer exists.

14. NO WAIVER.

Any failure or delay by either Party in exercising any right or remedy provided by or in relation to the Quote or these Terms and Conditions in any instance does not constitute a waiver and shall not prohibit a Party from exercising such right or remedy at a later time or from exercising any other right or remedy available.

15. SEVERABILITY.

If any provision of the Quote or these Terms and Conditions shall, for any reason, be held invalid, illegal, or unenforceable by a court or tribunal of competent jurisdiction, such provision shall be deemed severable and such invalidity, illegality, or unenforceability shall not affect any other provision of the Quote or these Terms and Conditions.

16. ASSIGNMENT.

Reseller shall not assign, transfer, or delegate any of its rights, duties, interests, or obligations under the Quote without the prior written consent of Simply NUC. Simply NUC expressly reserves the right to terminate the Quote on: (a) the sale of all or substantially all the assets of Reseller to a third party unauthorized reseller or any other third party or (b) the sale or transfer of the entire business or substantially all the stock of Reseller to a third party unauthorized reseller or any other third party. Any such assignment, transfer, or delegation without Simply NUC's prior written consent shall be void and cause for termination of the Quote.

17. CHOICE OF FORUM.

The parties agree that the purchase and use of all Simply NUC Product, or any claim, dispute, or controversy (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, consumer protection, common law, and equitable claims) arising from or relating to the use of any Simply NUC Product shall be governed by the laws of the state of Utah, without regard to conflicts of law. Any claim, dispute, or controversy (whether in contract, tort, or otherwise, whether preexisting,

present or future, and including, but not limited to, statutory, common law, intentional tort, and equitable claims) arising from or relating to the Product(s), any services rendered, or the interpretation or application of these Terms and Conditions, or Simply NUC's or any of its affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF Simply NUC, RESELLER OR A THIRD PARTY INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If a matter goes to arbitration, it will be conducted pursuant to the Rules of the American Arbitration Association with the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services (JAMS) in Salt Lake City, Utah (unless the arbitrator orders otherwise). The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator shall be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery, or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Simply NUC arising out of any Product(s) purchased by Reseller will be exclusively litigated in court rather than through arbitration and the prevailing party in any litigation or arbitration pertaining to the collection of amounts due to Simply NUC arising out of the sale, purchase, or trade of Product(s) shall be entitled to recovery of reasonable attorneys' fees and costs. If any provision of this arbitration clause is found to be unenforceable, then the unenforceable provision shall be severed and the remaining terms shall be enforced.

18. CHANGES.

Changes in any Quote and the Terms and Conditions can only be made by the written agreement of authorized representatives of the Parties. No part of the Quote and the Terms and Conditions may be amended, modified, supplemented, or waived in any manner whatsoever (including course of dealing or of performance or usage of trade) except as mutually agreed upon in writing signed by authorized representatives of the Parties.

19. LAWS; EXPORT; SELLING INTO FOREIGN COUNTRIES.

Reseller will comply with all applicable laws and regulations, including those of other jurisdictions that may apply to Reseller including, without limitation, (i) the Foreign Corrupt Practices Act of 1977 or any similar laws. The Products are subject to export controls of the United States and other countries ("Export Controls"). Export or diversion contrary to U.S. law is prohibited. U.S. law prohibits export or reexport of any Simply NUC Product to any country that is not entreated under a Trade Agreement with the United States of America. U.S. also prohibits export or re-export to a resident or national of those countries ("Prohibited Country" or "Prohibited Countries"). Reseller agrees that it will not directly or indirectly sell Simply NUC Product into any Prohibited Country. U.S. law also prohibits export or re-export of Simply NUC Product to any person or entity on the the U.S. Department of State Debarred List; U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers (collectively, the "Lists"). U.S. law also prohibits use of any Simply NUC Product with chemical, biological or nuclear weapons, or with missiles ("Prohibited Uses"). Reseller represents and warrants that it is not located in, or a resident or national, of any Prohibited Country; that it will not transact any direct or indirect business pertaining to the selling of Simply NUC product to any Prohibited Country, or to any person, resident, national or business doing business in a Prohibited Country; that it will not sell Simply NUC Product to any person or organization that it is on any of the aforementioned Lists; that it will not use any Simply NUC Product for any Prohibited Uses; and that it will comply with Export Controls.

Reseller is responsible for obtaining any licenses or other authorizations relating to the export of Products under these Terms & Conditions and is responsible for ensuring compliance with the requirements of any such licenses or authorizations. In the event of an international shipment request through Reseller, Simply NUC will only accept such an order when presented with proof of any applicable export license required by the US government or any other applicable national government. Simply NUC will not be liable for any

delays or failure to deliver Product that comes as a result of Reseller's failure to obtain required licenses or certifications for export into a given country.

Reseller shall comply with all federal "Anti-Corruption Laws" or "Anti-Bribery Laws" effective in the jurisdictions where Reseller markets or sells Simply NUC Products as well as the Foreign Corrupt Practices Act of the United States and Canada's Corruption of Foreign Public Officials Act.

20. HIGH RISK DISCLAIMER.

Simply NUC Products have not been tested or certified for use in any high-risk applications, including the operation of aircraft, nuclear facilities, vehicles, air traffic control, weapons systems or any other application where the failure or malfunction of any Simply NUC Product can lead to death, dismemberment, personal injury, property damage or environmental damage. Simply NUC makes no assurances that their Products are suitable for such high risk applications and Reseller shall defend and indemnify Simply NUC against any claims by any government third party End User resulting from use of Simply NUC Products in high risk government applications. Reseller and End User are responsible for the design and implementation of configurations, networks and systems pertaining to End User's applications and environments that Reseller sells into. Additionally, Simply NUC shall have no obligation under these Terms and Conditions for any claim of infringement to the extent that it results from: (i) modifications to the Products made other than by Simply NUC; (ii) combination or use of the Product with equipment, products, systems, software, materials or processes not furnished by Simply NUC, if absent such combination, no infringement would exist; (iii) the use or incorporation of any materials supplied to Simply NUC by Reseller, the Government Customer or its agents, contractors or third party suppliers; or (iv) failure to use updated or modified Products to avoid a claim of infringement or misappropriation.

21. INDEPENDENT CONTRACTOR RESELLER STATUS / LIMITS OF REPRESENTATION

No provision within these Terms & Conditions will be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Reseller and Simply NUC. Reseller and Simply NUC are independent contractors to each other. Neither Simply NUC nor Reseller will make any representations or warranties, or assume any obligations on the other's behalf. Neither Simply NUC nor Reseller shall have the authority to claim to be a legal representative, agent, franchisee or employee of the other. Each party is responsible for their own employees and subcontractors. Reseller is, however, authorized to represent to Customers facts about the Products as Simply NUC itself states in its product descriptions, advertising, and promotional literature, or as may be stated in other non-confidential, written material furnished by Simply NUC. Reseller shall not make reference to Simply NUC's corporate name or trademarks in any of its products or literature, without the express written approval of Simply NUC. Reseller may sell Products to Commercial EndUser Customers and Non-Commercial End User Customers within the Territory. Reseller shall not use any trademark, trade name, or stylized symbol of Simply NUC or its affiliated entities as part of Reseller's name or name of Reseller's business. Reseller shall not register, or have registered, any trademark, trade name or symbol of Simply NUC or its affiliated entities (or which is confusingly similar thereto) in Reseller's name or use it for any activity other than the promotion of the sale of the Products in the Territory and in the best interest of Simply NUC.

22. BRANDING OR MARKING ON SIMPLY NUC PRODUCT.

If any special branding or mark of Products is requested by Reseller (other than an Simply NUC brand or mark), Simply NUC makes no representations regarding the right or ability to include any brand or mark on the Products. Reseller represents and warrants that any inclusion of a brand or mark requested by Reseller will not violate any intellectual property right of any other person and that Reseller has legal authority to place such brand or mark on the Products. Reseller further agrees to indemnify Simply NUC from all claims, damages, and expenses for any intellectual property infringement claims (including payment for attorneys' fees and costs) arising out of inclusion of any non-Simply NUC brand or mark requested by Reseller and placed on the Products.

23. FORCE MAJEURE.

Neither party will be liable to the other for any failure to perform any of its obligations under these Terms and Conditions in the event that such performance is delayed or made impossible to fulfill by reasons beyond a party's control such as acts of war, fire, flood, strike, riot or the intervention of a governmental

authority. In such an event, the delaying party must provide the recipient party with written notice of Force Majeure. Accordingly, the delayed party's performance may be, in the event of delay, excused for thirty (30) days. If the delay will take longer than thirty days, then the recipient party may terminate in whole or in part, the Order or any other request for Product between the parties, by giving written notice to the delaying party.

24. SUPPLEMENTAL TERMS FOR OEM RESELLERS.

The following terms in this section will apply only to those Resellers who are Original Equipment Manufacturer (OEM) Resellers and will supersede any provision found in the preceding Terms & Conditions 1-17 that conflict with any of the provisions found in this section below:

(a) OEM Reseller or OEM: is an Original Equipment Manufacture Reseller that is purchasing Simply NUC Products for an OEM project where the OEM Reseller embeds or bundles Simply NUC Products with the OEM Reseller's proprietary hardware resulting in a unique hardware system, that the Reseller then resells that OEM system under the OEM's own brand. With regard to OEM Resellers, the term "Simply NUC" includes Simply NUC Products that are provided without Simply NUC branding and the term "end user" means any third party purchaser that buys an OEM system as it is described herein.

(b) Terms of Resale: OEM is allowed to resell Simply NUC Products that are embedded in OEM hardware and sold as an OEM device or as part of an embedded OEM solution as long as there is hardware, software and service value added to the Simply NUC Product. In the event that an OEM agrees with a third party distributor to resell said OEM products, OEM agrees that any agreement they enter into with a third party distributor shall reference these Terms and Conditions as baseline terms for that agreement. OEM shall also include in any agreement with any third party, a provision that limits liability as to Simply NUC for any incidental, consequential, special, indirect, exemplary or punitive damages as a result of that third party's use or any end user's use of said OEM product. Simply NUC's pricing model and discounts offered to Reseller are proprietary and confidential and Reseller agrees not to show that information to any third party.

(c) Additional Taxes and Fees: Reseller is responsible for paying all import or export fees, duties, tariffs, and other fees and charges tied to importing and exporting Products internationally from Simply NUC's facilities, unless otherwise agreed upon by the parties.

(d) Labels: Reseller agrees not to remove any Simply NUC branding, logos, marks or any other identifying information from any Simply NUC Product embedded in any OEM hardware application.

(e) Unique Materials: In the event that OEM requests Simply NUC Products be produced with unique materials, or any part of the design or make of the Simply NUC Product is changed to benefit OEM specifications in its embedded application or design, and that Product or those unique materials are not used within sixty (60) days of OEM order due to a change in conditions, demand, or cancellation of a purchase order by a third party requestor, and if Simply NUC cannot sell said Product under any other reasonable circumstance, then Simply NUC may in its discretion invoice OEM for the unused Product or materials and deliver such to OEM. OEM agrees, if they order a unique system, Product or material under this provision, to pay Simply NUC for the unique Product, materials or system(s) as well as any restocking fees Simply NUC may reasonably incur as a result of holding said unique items in inventory.

(f) Warranty Exclusions: Simply NUC's limited warranty policy does not cover OEM applications under the following circumstances: (i) any components added to the Product after such Product is shipped to OEM; (ii) any problems caused by such added component or any third party products; (iii) any repairs as a result of alteration or repair by anyone other than a certified Simply NUC representative; (iv) any damage to the Simply NUC Product as a result of embedding the Product into OEM hardware applications; (v) any damage or problems due to external causes including neglect, accident, misuse, problems with electrical power, abuse, acts of God, or normal wear and tear.

(g) OEM's Responsibilities: OEM shall ensure that any OEM hardware system created using any Simply NUC Product and sold in the United States, complies with all regulatory requirements on both State and

Federal levels. Additionally, in the event that an OEM Reseller makes any modifications or additions to any portion of the Simply NUC Product embedded within the OEM application, OEM is solely responsible for obtaining and maintaining all necessary regulatory approvals for both the OEM system and the modified Simply NUC Product, if necessary, on both State and Federal levels. In the event that OEM is shipping an OEM system with modified Simply NUC Product overseas, OEM is again solely responsible for obtaining and maintaining all necessary approvals and authorizations of that particular country for both the OEM system as well as the modified Simply NUC Product. OEM acknowledges that any product safety compliance marks on Simply NUC Products generally qualify Simply NUC Product to be shipped into the United States, Canada and European countries. Additional compliance marks may be necessary to ship Simply NUC Product to other countries. The OEM Reseller is solely responsible for obtaining any additional marks for the countries that OEM wishes to ship Product to.