

## Simply NUC Commercial Purchaser End-User Terms and Conditions

This Commercial Purchaser End-User Agreement (“Agreement” or “Terms and Conditions”) governs the commercial retail purchase and use of products (“Product”) sold in the United States by Simply NUC, LLC. (“Simply NUC”), including its affiliates or subsidiaries and purchased by a commercial purchaser (“Company”) for its own commercial use. By purchasing and using the Product(s), Company agrees to be bound by the terms of this Agreement. If Company does not agree with the terms and conditions of this Agreement, do not use the Product and return the Product(s) to Company’s place of purchase, subject to its, or Simply NUC’s, return policy, as applicable.

1. COMPANY ACKNOWLEDGEMENT. Company acknowledges and agrees with the terms and conditions of these Terms and Conditions by the placement of an order to purchase, or through Company’s actual purchase of, Product(s) from Simply NUC. All goods are supplied on these terms and conditions and no person in the employment of or as agent for, Simply NUC has any authority to supply goods on any other terms and conditions or to vary these terms and conditions whatsoever. Previous dealings, or other terms accompanying a purchase order submitted by Company, shall not vary, modify, or negate these terms and conditions in any respect.

2. ORDERS AND PAYMENT. Orders for Product(s) are not binding on Simply NUC until accepted by Simply NUC. Once an order is accepted by Simply NUC, it is non-cancelable and non-returnable by Company. Company agrees to pay the total purchase price of the Product(s) plus shipping and other charges related to your purchase (including, but not limited to, taxes or other governmental charges.) Terms of payment are within Simply NUC’s sole discretion and, unless otherwise agreed to in writing by Simply NUC, payment must be received by Simply NUC prior to Simply NUC’s acceptance of an order. Each accepted order will be viewed as a single agreement, independent of any other orders. Company’s order is subject to cancellation by Simply NUC, in Simply NUC’s sole discretion. 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. If Simply NUC issues an invoice to Company with a payment due date after its acceptance of an order, instead of requiring up-front payment, (an “Invoice”), all amounts due under the Invoice are due and payable within the time period noted on the Invoice, measured from the date of the Invoice. Simply NUC reserves the right to charge a late fee of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is higher. Late fees will be recalculated monthly based on the then current outstanding balance. Additionally, without waiving any rights or remedies to which it may be entitled, Simply NUC will have the right to suspend, terminate or refuse additional unfulfilled orders for Products from Company until Simply NUC receives all overdue amounts from Company. Simply NUC will have no liability to Company for any such suspension, termination or refusal of additional orders when Company is in arrears on previous orders.

3. TITLE TO AND DELIVERY OF GOODS. Simply NUC warrants that it has good title to all Products it sells. Title to the Product(s) shall remain the sole and absolute property of Simply NUC as legal and equitable owner and Company shall hold such goods as bailee only, until such time as Company has paid the full price for the Product(s). Company shall be liable to Simply NUC for any loss or damage to the Product(s) during such bailment. Upon full payment for the Product(s), title thereto shall pass to Company. Title to the software (if any) contained in the Product(s) will remain with the applicable licensor(s), and Company’s rights therein are contained in the license agreement between such licensor(s) and Company.

4. SHIPPING CHARGES AND TAXES. Shipping, handling, taxes, or governmental fees, are additional costs to the purchase price of the Product(s), unless otherwise expressly agreed to in writing by Simply NUC at the time of sale. Company is responsible for all such charges. Company may be excused from rendering payment for sales or use taxes to Simply NUC if Company provides Simply NUC with a valid and correct tax exemption certificate applicable to Company’s purchase of Product(s) and the Product ship location. Shipping and delivery dates are estimates only and are subject to change.

5. **RISK OF LOSS.** Risk of loss or damage during shipment pass from Simply NUC to Company upon delivery to the shipper (F.O.B. Shipper, freight prepaid and added). Notwithstanding the foregoing, title to the Products will pass to Company as set forth above in Section 3.

6. **PRICING.** Simply NUC reserves the right to make adjustments to its pricing, Product(s), and service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, component part price changes, supplier price changes, and errors in advertisements. All orders are subject to Product availability. Therefore, Simply NUC cannot guarantee that it will be able to fulfill Company's orders, or provide the Products within anticipated delivery dates.

7. **CREDITS.** Any credit issued by Simply NUC to Company for any reason must be used within one (1) year from the date that the credit was issued and may only be used for future purchases of Product(s). Any credit or portion thereof not used within the one (1) year period will automatically expire.

8. **NOT FOR RESALE.** Company agrees to comply with all applicable laws and regulations of the various states and of the United States. Company agrees and represents that Company is buying for Company's own internal use only, and not for resale. Simply NUC has separate terms and conditions governing resale of Product by third parties.

9. **EXPORT SALES AND RESTRICTIONS ON USE.** If this transaction involves an export of Product(s) (including, but not limited to, commodities, software or technology) that is subject to the Export Administration Regulations ("EAR"), then such items will be exported from the United States by Simply NUC in accordance with EAR and Company agrees that they shall pay all expenses associated with export, including, but not limited to, all expenses necessary to be compliant with EAR standards during the export process. Company agrees that Company will not divert, use, export, or re-export such items contrary to United States law. Company expressly acknowledges and agrees that Company will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time, but currently includes Cuba, Iran, Sudan, and Syria. Company also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including, but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturer's warranties for exported Product(s) may vary or may be null and void for Product(s) exported outside the United States. Company agrees that the Product(s) purchased will not be used for activities related to weapons of mass destruction, including activities related to the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons, or chemical or biological weapons. Company further agrees that Company will not sell, lease, or otherwise transfer Product(s) to end-users engaged in these activities.

10. **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 Company shall defend and indemnify Simply NUC against any claims by third party resulting from Company's use of Simply NUC Products in high risk applications. Company is solely responsible for the design and implementation of configurations, networks and systems pertaining to Company's applications and environments. 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 Company or its agents, contractors or third party suppliers; or (iv) Company's failure to use updated or modified Products to avoid a claim of infringement or misappropriation.

11. **RETURN OR EXCHANGE OF GOODS.** Returns and exchanges are governed by the policies of the retailer or reseller where Company purchased the Product(s), unless Company's purchase of the Product(s) was directly from Simply NUC. If Company purchased the Product(s) directly from Simply NUC, then Company will be subject to Simply NUC's return policy, which can be found on Simply NUC's website [www.SimplyNUC.com](http://www.SimplyNUC.com) and Company agrees to those terms. Simply NUC reserves the right to amend its return policy in its sole and absolute discretion at any time. Note that if Company fails to follow the return or exchange instructions and policies provided by Simply NUC, Simply NUC is not responsible for Product that is lost, damaged, modified, or otherwise processed for disposal or resale. At Simply NUC's sole discretion, credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing.

12. **CHANGED OR DISCONTINUED PRODUCTS.** Simply NUC is a continually evolving company which may involve frequent updates and revisions to its Product line. Simply NUC may update or discontinue a Product offering at any time without prior notice to Company. A change in Product may occur after Company places an order but before Simply NUC ships the Product out to Company. As a result, Product that the Company receives may display minor differences from original Product orders.

13. **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 Company in connection with the software. A portion of the software may contain or consist of open source software, which Company may use under the terms and conditions of the specific license under which the open source software is distributed. Company agrees that Company will be bound by any and all such license agreements. Title to the software remains with the applicable licensor(s).

14. **WARRANTIES.** Simply NUC provides a warranty on Simply NUC products. Please refer to Simply NUC's website for terms that govern Simply NUC's warranty policies regarding Products. Simply NUC may amend its warranty policies at anytime in its own discretion. 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). The Simply NUC warranty set forth on Simply NUC's website at the time of Company's purchase of Product(s) shall apply to those Products. 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 does not imply any warranty that is not expressly outlined on its website. 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.

15. **SERVICE AND SUPPORT.** Simply NUC may offer certain services in connection with Company's purchase of the Product(s). In addition to these Terms and Conditions, Simply NUC and/or Company's third-party service provider may provide such service and support to Company in accordance with the terms and conditions of Simply NUC's Service Department located on Simply NUC's website, or as otherwise delivered to Company. Simply NUC and/or Company's third-party service provider may in their discretion revise their general and optional service and support programs and the terms and conditions that govern them without prior notice to Company. Company's purchase of services is subject to this Agreement and the terms and conditions of Simply NUC Service Department, if applicable, published online at the time of Company's purchase. In the event Company sends in Company's computer for servicing, it is Company's responsibility to backup all existing data, software, and programs from Company's computer before receiving support or service from Simply NUC. Company agree that Simply NUC and/or Company's third party service provider will not be liable for loss or recovery of data, programs, or loss of use of any systems that occurs as a result of said support or service. This includes any act or omission, including negligence, on the part of Simply NUC and/or any third party service provider during the support or servicing process. Additionally, Simply NUC may use new, equivalent to new, or reconditioned parts when servicing Company Product that has been returned to Simply NUC for repair or other service related work.

16. **BRANDING OR MARKING ON Simply NUC PRODUCT.** If any special branding or mark of Products is requested by Company (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. Company represents and warrants that any inclusion of a brand or mark requested by Company will not violate any intellectual property right of any other person and that Company has legal authority to place such brand or mark on the Products. Company 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 Company and placed on the Products.

17. **LIMITATION OF LIABILITY.** THE PRODUCT(S) IS PROVIDED TO COMPANY 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 (EXCEPT AS EXPRESSLY SET FORTH HEREIN). Simply NUC AND ITS AFFILIATES, EMPLOYEES, AND AGENTS ARE NOT LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. MOREOVER, Simply NUC IS NOT LIABLE BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, LOST PROFITS, LOSS OF BUSINESS OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, OR THE PROVISION OF SERVICES AND SUPPORT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, Simply NUC AND ITS AFFILIATES', EMPLOYEES', AND AGENTS' TOTAL AGGREGATE LIABILITY TO COMPANY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT OR COMPANY'S PURCHASE OF THE PRODUCT SHALL NOT EXCEED THE AMOUNT COMPANY PAID FOR THE PRODUCT.

18. **INDEMNIFICATION.** Company shall indemnify Simply NUC against any third party claim or action resulting from Company's failure to properly maintain the Product in use at Company, or if Company 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 Company 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.

19. **NO AGENCY RELATIONSHIP.** 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 Company and Simply NUC. Company and Simply NUC are independent contractors to each other. Neither Simply NUC nor Company will make any representations or warranties, or assume any obligations on the other's behalf. Neither Simply NUC nor Company 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.

20. **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.

21. **INTELLECTUAL PROPERTY RIGHTS.** No transfer of ownership of any intellectual property will occur under this Agreement. Company grants Simply NUC a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Simply NUC and its designees to perform the ordered services. All right, title and interest in Simply NUC's intellectual property (including all

copyrights, patents, trademarks, and trade secrets) embodied in the Product hardware belongs solely and exclusively to Simply NUC and Company has no rights whatsoever in the Product hardware except as expressly granted in these Terms and Conditions or under a separate agreement between Simply NUC and Company. Company may not modify, remove, delete, augment, change or sell the Product in whole or in part. Simply NUC also retains all intellectual property rights, title and interest in any ideas, concepts, techniques or know how associated with deliverables of the Product.

22. GOVERNING LAW AND VENUE. Company agrees that this Agreement, the purchase and use of the 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 this Agreement, Company's purchase or use of the Product, Simply NUC's advertising, or any related purchase shall be governed by the laws of the state of Utah, without regard to conflicts of law.

23. DISPUTE RESOLUTION. 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, Company 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). 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. Further, Company will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim associated with Company's purchase of Company's Simply NUC computer system. 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). The arbitration will take place exclusively in Salt Lake City, Utah. 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 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.

24. MISCELLANEOUS. Company may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Simply NUC. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement will be deemed waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The purchase of Simply NUC Products does not create any relationship between Simply NUC and Company other than that of purchaser and seller, and not that of employer/employee, partnership, joint venture, or similar relationship. If any term or condition herein is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof, or the whole of these Terms and Conditions. Notices provided under these Terms and Conditions will be given in writing. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.