

These Terms and Conditions apply to all products or spare parts sold, leased, or otherwise supplied by ("Products"), and all services performed by ("Services"), Fundamental Technologies International, Inc. dba Kuster Company ("Kuster") pursuant to a purchase order or other order placement document submitted by a buyer or its designee ("Buyer") to Kuster. **All Kuster Products and Services are supplied only under the following Terms and Conditions, and the use and/or acceptance of any Kuster Products or Services by Buyer shall constitute Buyer's acceptance of these Terms and Conditions in their entirety.**

1. Price.

(a) All prices are expressed in United States dollars, EXW, Long Beach, California, per ICC INCOTERMS 2010, and unless otherwise agreed in writing by Kuster, are subject to change without notice and are at the prices in effect at the time of Buyer's order placement. Quotations will be given on request for any Product or Service offered by Kuster. Any quotation will remain in effect only for the period of validity specified therein or, if no such period is stated, for thirty days from the date the quotation is issued by Kuster.

(b) All prices are exclusive of costs of transportation and insurance and any applicable federal, state, or local use, sales, property (ad valorem), and similar taxes and license fees, import duties and the like. No consular or other fees for legalizing invoices or stamping shipping documents, or other fees or documentation charges required by the laws of any country or destination, are included in quoted selling prices. Buyer shall pay all such costs, taxes, fees, and duties, and where appropriate, shall report the same. When applicable, such costs, taxes, fees and duties may appear as separate Products or Services on Kuster's invoice.

2. Payment.

(a) Payment for all Products shall be net cash United States funds prior to shipment (except that certain Buyers with an established credit account currently approved by Kuster in writing may pay net cash within thirty days following invoice date). Upon written approval by Kuster, Kuster may also accept payment by letter of credit on terms acceptable to Kuster in its sole discretion. Partial shipments will be invoiced as made. All invoices are payable in Long Beach, California. The Buyer shall pay fifty percent (50%) of the total purchase price for any order before any action is taken or work begun by Kuster, unless other arrangements are approved by Kuster in advance in writing.

(b) Interest from the invoice due date until payment, at eighteen percent per annum (or such lesser amount as is the maximum legal rate), will be charged by Kuster on invoiced amounts remaining unpaid sixty days after the due date. If unpaid amounts are collected through a collection agency, legal proceedings, or an attorney, Buyer shall immediately pay all reasonable collection fees, attorneys' fees, and court costs incurred by Kuster in connection therewith.

(c) Payment terms for Services shall be agreed between Kuster and the Buyer in writing in advance of the delivery of such Services; provided, however, that in the event that such a written agreement shall not be in place for any reason, then Kuster shall charge Buyer for such Services at its standard commercial rates.

3. Delivery Dates and Excusable Delays. All shipment and/or delivery or completion dates for Products or Services are subject to Kuster's availability schedule, and to receipt of any advance payments required under Section 2(a). Kuster will make every reasonable effort to meet any date(s) quoted; however, Kuster will not be liable for its failure to meet any quoted date(s) or for any other delay in performance due to any unforeseen circumstances or any causes beyond Kuster's reasonable control including, without limitation, strike or lockout; civil disturbance; international conflicts; fire; natural disaster; accident; failure or breakdown of parts necessary for completion; subcontractor, supplier, or Buyer-caused delays; delay in obtaining any required export or other license; inability to timely obtain labor, materials, or manufacturing facilities or equipment; engineering issues affecting acceptable quality or performance standards; or compliance with any law, regulation, or order of any governmental body or instrumentality thereof. Performance shall be deemed suspended for such time as any such circumstances or causes shall delay its execution. Whenever such circumstances or causes have been remedied, Kuster will make and Buyer shall accept performance hereunder. No penalty clause of any kind from Buyer shall be effective as against Kuster. As used herein, performance shall include, without limitation, fabrication, assembly, shipment, delivery, and warranty repair or replacement, as applicable.

4. Packing. All Products shall be packed, if appropriate, for shipping and storage in accordance with standard commercial practices.

5. Shipment. Unless otherwise agreed by Kuster in writing, all Products are sold EXW per ICC INCOTERMS 2010. When, as an accommodation to Buyer, Kuster agrees to make shipment to Buyer's nominated delivery point, Kuster will ship in accordance with Buyer's shipping instructions and Buyer shall bear all charges and all risks arising in connection with such shipment. In the absence of shipping instructions from Buyer, or if Kuster considers Buyer's shipping instructions unavailable or commercially unsuitable, Kuster reserves the right to ship by any commercially reasonable method at Buyer's cost. Kuster shall not be liable for any short or incomplete shipments unless Kuster receives from Buyer written notice of any such shortage or missing Products within fifteen days of receipt of shipment by Buyer.

6. Changes, Cancellation, and Returns.

(a) Kuster reserves the right to change designs, materials, and specifications of its Products, and to discontinue any such Products, without any notice or liability to Buyer.

(b) If Buyer issues a change order or cancels an order, Buyer shall be liable to pay to Kuster the whole cost and loss incurred by Kuster resulting from such change or cancellation, as such is reasonably determined by Kuster, which shall include all costs, direct and indirect, plus a pro rata proportion of normal profit.

(c) No credit shall be given for any Product returned by Buyer unless returned with the prior approval of an authorized representative of Kuster issuing to the Buyer a Return Goods Number. Only sales managers, major department managers, or officers of Kuster are authorized to approve return of Products. Risk of loss or damage in respect of any Product returned with Kuster's authorization will remain with Buyer until the Product is received by Kuster. Except for Products validly returned under warranty as set out in Section 11, a charge of not less than fifteen percent (15%) of the purchase price or such larger amount as Kuster may consider reasonable in the circumstances, with a minimum of \$100.00 per Product, will be charged by Kuster on all Products returned, in order to pay for cost of inspection, repacking, handling, and accounting for the Product. Kuster shall not be responsible for holding or accounting for any Products returned without the required Return Goods Number. If freight and other transportation costs are not prepaid on any returned Product, the cost thereof will be deducted from any credit issued by Kuster. No credit will be given on any non-standard Product manufactured at the request of, or to the individual specifications of, Buyer.

7. Other Manufacturer's Equipment.

(a) If any Product sold to Buyer by Kuster contains any parts or materials obtained by Kuster from any third party, these parts or materials are sold to Buyer **AS IS. AS TO ANY SUCH PARTS OR MATERIALS, KUSTER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. BUYER'S REMEDY FOR ANY FAILURE OR DEFECT IN SUCH PARTS OR MATERIALS IS LIMITED TO REPAIR OR REPLACEMENT AS PROVIDED IN SECTION 11 BELOW. FURTHER, WITH RESPECT TO SUCH THIRD PARTY PARTS OR MATERIALS, KUSTER DISCLAIMS LIABILITY FOR ANY PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.** Kuster has no responsibility or liability whatsoever for such parts or materials, other than to transfer to Buyer any rights capable of transfer that Kuster may have received in the parts or materials from the third party.

(b) Connection or attachment of, or use by Buyer of, any Product supplied by Kuster with equipment obtained from a source other than Kuster, or incorporation of any Product into such equipment, voids Kuster's warranty under Section 11, unless Kuster is advised of the type of equipment to be run with the Kuster Products and has granted prior approval of compatibility to Buyer in writing. Kuster further expressly disclaims all assurances and warranties as to fitness for any specific purpose as regards any such Product.

8. Use and Acceptance of Product. Buyer represents and warrants, by acceptance or use of a Product, that Buyer is familiar with the Product and its proper use and all safety issues attendant thereto. Before using any Product, Buyer shall give the Product reasonable and prudent examination and/or tests to determine the suitability of the Product for Buyer's intended use. Buyer shall be deemed to have accepted any Product upon Buyer's use of the Product, or in any event, no later than fifteen (15) calendar days after Buyer's receipt of the Product unless, before that time, Kuster has received from Buyer written notice of any defect or nonconformity from Buyer. **Buyer acknowledges that certain Kuster Products can, if misused or mishandled, cause significant damage to persons or to property. Buyer shall use the Products in strict accordance with specifications, instructions, and appropriate safety procedures. Any harm or loss caused by Buyer's failure to use the Products properly and safely shall be the sole responsibility of Buyer, and shall fall within the scope of Buyer's indemnity of Kuster in Section 12 below.**

9. Assistance to Customer. At Buyer's request, Kuster may make Kuster employees or contractors available to Buyer to train Buyer to operate Products supplied by Kuster, or to perform other actions as agreed in writing between Buyer and Kuster. Rates for such training and/or Services by Kuster employees or contractors shall be agreed to by the parties in writing. If Kuster does make any Kuster employee or contractor available to Buyer, it is only on the condition that the employees shall be under the sole supervision of Buyer, Buyer shall supply all necessary equipment and supplies for the proper performance of the training or Services performed by the employees or contractors, and Kuster shall have no liability whatsoever to Buyer for the Kuster employees or contractors during the time that they are under Buyer's supervision. In addition, Buyer shall be responsible and liable to Kuster for any acts or omissions or omissions of or to the Kuster employees or contractors under Buyer's supervision, and the indemnity of Section 12 below shall apply with respect to all acts of such employees or contractors.

10. Repair of Products. Any repair to any Product supplied by Kuster to Buyer effected at Buyer's request outside normal working hours (8:00 a.m. to 5:00 p.m., U.S. Pacific time zone Monday through Friday) shall be charged by Kuster at double the labor rate otherwise chargeable.

11. Limited Warranty and Remedy.

(a) **Buyer's Remedies are Limited to Repair and Replacement.** Buyer's remedies for any and all breaches of any nature, including without limitation breaches of contract and warranty, are limited to the remedies of repair and replacement as specifically stated in these Terms and Conditions. The remedies provided herein are the exclusive remedies of Buyer for failure of Kuster to meet its obligations, whether claims of Buyer are based on contract, in tort, or otherwise, and upon expiration of the applicable warranty period all obligations of Kuster with respect to the Products will terminate.

(b) **Disclaimer of Warranties Not Expressly Stated.** THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED. KUSTER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

(c) **Limited Product Warranty.** Kuster warrants each Product supplied by it to Buyer (excluding any parts or materials that are components of the Product and are subject to Section 7 above concerning parts or materials supplied by others) to be free from defects in materials and workmanship if, and only if, all of the following conditions are met:

(1) The Product claimed to be defective has been exposed only to normal storage, use, and service, has been reasonably maintained, has not been subjected to any misuse, negligent use, or accident that caused the Product to suffer a defect, and has not been repaired or altered except by an authorized representative of Kuster;

(2) The Product claimed to be defective has been returned at Buyer's expense to Kuster's plant at Long Beach, California (or to such other location as Kuster may designate), within ten (10) business days after Buyer first discovered the alleged defect;

(3) The alleged defect in the Product is actually caused by a defect in materials or workmanship by Kuster as opposed to materials or workmanship originally supplied or provided by another party; and

(4) The Product is not one that is expendable in normal use and that has been expended in normal use.

The above warranty shall remain in effect until **twelve** months after shipment to Buyer, except: a) subsurface electronic equipment is warranted only until 90 days after shipment to Buyer; b) scintillation detectors are warranted only to be in working order upon delivery to Buyer; and c) **NO SUBSURFACE ELECTRONIC EQUIPMENT IS WARRANTED AGAINST FAILURE, DEFECTS, OR DAMAGE DISCOVERED OR OCCURRING IN CONNECTION WITH DOWN-HOLE DRILLING OPERATIONS.**

Any Product that has had its serial number, temperature indicator, or other analytical component altered, defaced, or removed will not be warranted.

(d) **Limited Service Warranty.** Kuster warrants that any Service provided hereunder shall be in conformance with the specifications set forth in the relevant scope of work document agreed to in writing by Kuster and Buyer. In the event that the Services do not so conform, then Buyer's sole remedy shall be for Kuster to re-perform that part of the non-conforming Services, provided that Kuster is notified thereof by Buyer prior to Kuster's departure from the work site.

(e) **Specialty Products and Radioactive Sources.** In the event that Kuster supplies to Buyer any Product based upon Buyer's request that Kuster develop, produce, test, or put to use any non-standard Kuster Product (a "Specialty Product") so as to satisfy a unique need of Buyer, Buyer acknowledges and agrees that any such Specialty Products may not have or contain the same or similar characteristics as Kuster's standard Products and may not have a historical performance against which such Specialty Product can be measured. In developing, producing, testing, and/or supplying any such Specialty Product, Kuster shall be relying upon information and specifications provided by Buyer, and as such Kuster shall bear no responsibility for any failure of such Product to meet the specific needs or intended uses of the Buyer. Rather, Kuster's sole warranty with respect to any such Specialty Product shall be limited to warranting that the Product meets the specifications agreed in advance by Kuster. Buyer acknowledges that radioactive materials may be used in certain Products supplied by Kuster and that such Products are potentially dangerous. Buyer therefore agrees to comply with all applicable government regulations governing the use and handling of the radioactive materials. In the event that any radioactive material becomes stuck in a well, Buyer, at its sole risk and expense will (i) use special precautions to prevent damaging the material during recovery operations, or (ii) if the material cannot be recovered, isolate the radioactive material by cementing it in place or by other means consistent with applicable government regulations.

(f) **Limited Remedies Available Under Warranty.** Except as otherwise provided above, Kuster's liability under the above-described limited warranty shall be limited to the repair or replacement of the Products sold hereunder. Kuster will repair or replace the Product at no cost to Buyer, but the decision as to whether to repair or replace will be solely that of Kuster. Repairs or replacement Products are only warranted for the remaining unexpired portion of the warranty period. **The Buyer acknowledges and agrees that the remedies set forth in this Section 11 shall be the Buyer's sole and exclusive remedy against Kuster, and that Kuster shall have no liability or responsibility whatsoever to Buyer for any claim or losses of any nature, except as set forth in this Section. The Buyer shall not be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy, whether in tort or otherwise.**

(g) **Notice of Claims Required.** All claims under the warranty set out in this agreement must be made promptly after the alleged defect occurs or comes to light and must be received by Kuster within the warranty period. The claim must include the Product's description, part number, serial number (if any), date of shipment or delivery, and a full description of the circumstances giving rise to the claim. Any Product returned under claim of defect shall be sent prepaid by appropriate transportation. Buyer is responsible for all damage or loss resulting from improper packing or handling, and for any loss or damage occurring during

the transmission of the Product to Kuster. If any Product is returned and is found not to be defective, Kuster will notify Buyer and, at Buyer's option, will return the Product to Buyer at Buyer's expense, and Buyer shall reimburse Kuster for all costs incurred in testing and examining the Product.

12. INDEMNITY, DEFENSE, AND RELEASE BY BUYER. EXCEPT TO THE EXTENT CAUSED BY KUSTER'S SOLE NEGLIGENCE, BUYER AGREES TO RELEASE, UNCONDITIONALLY INDEMNIFY, DEFEND AND HOLD HARMLESS KUSTER, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, INVITEES, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "KUSTER INDEMNIFIED PARTIES"), AGAINST ALL LIABILITY, COSTS, EXPENSES, CLAIMS (INCLUDING INJUNCTIONS, SUBPOENAS, AND OTHER COURT ORDERS, AND ALL GOVERNMENTAL INQUIRIES AND INVESTIGATIONS OF ANY SORT), DAMAGES, LOSSES (INCLUDING LIABILITY TO ANY THIRD PARTY IN RESPECT OF PROPERTY LOSS OR DAMAGE OR INJURY OR DEATH OF PERSONNEL), JUDGMENTS, AND AWARDS (COLLECTIVELY, "LOSS") THAT ANY KUSTER INDEMNIFIED PARTY MAY AT ANY TIME SUFFER OR SUSTAIN AS A DIRECT OR INDIRECT RESULT OF THE BUYER'S PURCHASE, USE, OR RESALE OF ANY PRODUCT OR SERVICES SUPPLIED BY KUSTER HEREUNDER (EXCEPT FOR COSTS ASSOCIATED WITH THE LIMITED WARRANTY PROVIDED BY KUSTER PURSUANT TO SECTION 11 HEREOF), EVEN IF SUCH LOSS IS CAUSED BY STRICT LIABILITY OR THE JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OF KUSTER OR ANY KUSTER INDEMNIFIED PARTY.

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THESE TERMS AND CONDITIONS TO THE CONTRARY, BUYER AGREES TO REPAIR, REPLACE, OR ADEQUATELY COMPENSATE KUSTER OR ANY KUSTER INDEMNIFIED PARTY FOR ANY OF ITS EQUIPMENT WHICH IS (A) LOST OR DAMAGED (OTHER THAN DAMAGE FROM ORDINARY WEAR AND TEAR) WHILE BEING USED IN THE WELL BELOW THE ROTARY TABLE OR (B) DAMAGED DUE TO ABNORMAL ABRASION OR CORROSION DUE TO EXPOSURE TO WELL EFFLUENTS. BUYER'S RESPONSIBILITY FOR SUCH LOSS OF OR DAMAGE TO KUSTER'S DOWN HOLE EQUIPMENT SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS DUE TO STRICT LIABILITY OR THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OF KUSTER OR ANY KUSTER INDEMNIFIED PARTY. IN DISCHARGING ITS OBLIGATION UNDER THIS PARAGRAPH, BUYER SHALL RECEIVE CREDIT FOR ANY PROCEEDS DUE FROM INSURANCE ARRANGED BY KUSTER.

NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, BUYER SHALL DEFEND AND INDEMNIFY KUSTER AND ANY KUSTER INDEMNIFIED PARTY, IN EACH AND EVERY CASE, AGAINST ANY LOSS OR DAMAGE (INCLUDING LIABILITY TO ANY THIRD PARTY IN RESPECT OF PROPERTY LOSS OR DAMAGE OR INJURY OR DEATH OF PERSONNEL), EVEN IF THE LOSS OR DAMAGE IS DUE TO STRICT LIABILITY OR THE SOLE, JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OF KUSTER OR ANY KUSTER INDEMNIFIED PARTY, IN RESPECT OF THE FOLLOWING:

(I) LOSS OF OR DAMAGE TO THE WELL (INCLUDING CASING AND ASSOCIATED MATERIALS AND SERVICES), ANY SUBSURFACE GEOLOGICAL FORMATION OR STRATA AND LOSS OF ANY OIL OR GAS;
(II) BLOWOUT, CRATERING, FIRE, EXPLOSION AND/OR KILLING OR CONTROL OF ANY WELL WHICH SHALL BECOME OUT OF CONTROL FOR ANY REASON, INCLUDING BUT NOT LIMITED TO DEBRIS REMOVAL; AND
(III) POLLUTION AND ITS REMOVAL AND CLEANUP (OTHER THAN SURFACE SPILLAGE OF FUELS, LUBRICANTS, RIG SEWAGE, GARBAGE OR WASTE MATERIAL IN KUSTER'S POSSESSION AND CONTROL TO THE EXTENT ATTRIBUTABLE TO THE SOLE NEGLIGENCE OF KUSTER).

IN NO EVENT SHALL KUSTER OR ANY KUSTER INDEMNIFIED PARTY BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY PUNITIVE DAMAGES OR FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS OR LOSS OF PRODUCTION. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, THE LIABILITY OF KUSTER OR ANY KUSTER INDEMNIFIED PARTY FOR ANY LOSS, (WHETHER BY REASON OF ANY BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, OR OTHERWISE AND IRRESPECTIVE OF THE STRICT LIABILITY OR NEGLIGENCE (I.E. SOLE, JOINT, COMPARATIVE OR CONCURRENT) OF KUSTER OR ANY KUSTER INDEMNIFIED PARTY) SHALL IN NO EVENT EXCEED THE PAYMENT, IF ANY, RECEIVED BY KUSTER FOR ANY PRODUCT OR SERVICE PROVIDED BY KUSTER HEREUNDER. MOREOVER, BUYER AGREES TO RELEASE, INDEMNIFY AND HOLD KUSTER OR ANY KUSTER INDEMNIFIED PARTY HARMLESS FROM AND AGAINST ANY LOSS IN EXCESS OF SUCH PAYMENT RECEIVED BY KUSTER. BUYER FURTHER AGREES TO PROVIDE SUFFICIENT INSURANCE (OR SHALL SELF-INSURE) FOR THE BENEFIT OF EACH OF THE PARTIES HERETO AS SHALL BE NECESSARY TO PROTECT BOTH BUYER, KUSTER OR ANY KUSTER INDEMNIFIED PARTY FROM ANY SUCH LOSS AS ALLOCATED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH. Upon written request, each party shall furnish to the other party certificates of insurance evidencing the fact that adequate insurance to support each party's obligations hereunder has been secured.

13. Export Transactions: Compliance with United States Law.

(a) Notwithstanding any other provision contained in these Terms and Conditions to the contrary, in the case of an order for any Product for delivery to an ultimate destination outside the United States, Buyer agrees and accepts that:

(1) Buyer shall at the time of order, without request from Kuster, give notice in writing to Kuster, stating the country of ultimate destination ("**Ultimate Destination Country**") of the Product and the name and address of the end user in the Ultimate Destination Country; and

(2) Buyer shall comply with all terms and conditions of all required export and other licenses (including license exceptions) ("**Licenses**") including, without limitation, regarding export, re-export, and transshipment; and

(3) Kuster is authorized to disclose to any lawful governmental authority with jurisdiction over the transaction subject hereto the details of any Product to be supplied by Kuster to Buyer; and

(4) Buyer shall not re-export any Product from the Ultimate Destination Country without the prior written consent of Kuster; and

(5) Buyer shall, at Kuster's request, provide representations and undertakings in writing in such form as Kuster may require relating to the Ultimate Destination and end user of all Products and confirming acceptance and observance of all the provisions of this Section 13.

Acceptance of any order for any Product to which this Section 13 applies, and any contract or agreement relating thereto, shall be subject to and be deemed to include the condition that it is conditional upon all such Licenses being granted. Notwithstanding the terms of the preceding sentence, in the event of any such License: (1) being denied, Buyer shall be deemed to have cancelled the order; or (2) being issued in terms not acceptable to Buyer and Buyer canceling the order, Section 6(b) hereof shall apply.

(b) Notwithstanding any other provision contained in these Terms and Conditions, Kuster reserves the right, in respect of any order for any Product ostensibly for delivery to an ultimate destination in the U.S., to require Buyer to make a declaration in such form as Kuster may require representing that the ultimate destination of the Product is within the U.S.; and in the event that Buyer refuses or unreasonably delays in making such declaration in a timely manner, Kuster reserves the right to treat Buyer as having cancelled such order, in which event Section 6(b) hereof shall apply.

(c) Buyer represents that, to the best of its knowledge, no illegal Inducement was offered or given by any party in connection with the sale of Products or Services hereunder, and that no illegal inducements shall be paid by Buyer (or by any third party on Buyer's behalf) in connection with any resale of the Product by Buyer, or in connection with the sale by Buyer of any services in connection with which the Product is used. Any breach by Buyer of the representations set forth in this Section 13(c) shall entitle Kuster to release, defense, and indemnification under Section 12 hereof. For the purposes of this Section 13(c), an "**Inducement**" shall mean anything of value offered or given in order to influence business decisions made by the recipient in connection with the purchase of the Product or Services, or the purchase of services from Buyer in which the Products are used; provided, however, that an Inducement shall not include legitimate business expenses, or hospitality gifts of nominal value, the offer or giving of which in either case is legal under all the law applicable in the jurisdiction where made.

(d) Notwithstanding any other trade terms or conditions agreed with Kuster in any communication with Buyer, under no circumstances shall Kuster accept any conditions, terms of trade, course of dealing, or business arrangement that could constitute participation in or acceptance of any trade boycott of a third country, except such embargoes as are mandated by applicable US law.

14. Intellectual Property Rights of Kuster. Under no circumstances shall the sale of any Product hereunder transfer any intellectual property rights from Kuster to Buyer, regardless of whether Kuster has designed, configured, engineered, or manufactured any Product or delivered any Service specifically to Buyer's specifications. Buyer expressly acknowledges that any design, engineering, technical work, or other intellectual property of any kind developed by Kuster in connection with meeting any order from Buyer or supplying any Product or Service to Buyer shall constitute Kuster's proprietary data and shall be solely Kuster's intellectual property, and Buyer shall have no ownership or license rights with respect to any such intellectual property except as may be agreed by Kuster in writing.

15. Confidentiality. All data, designs, drawings, specifications, and other information, revealed or disclosed in any form or manner to Buyer by Kuster, including but not limited to any detail or feature of any Product or part thereof, whether written, oral, electronic, visual, graphic, photographic, observational, or otherwise, and documents supplied to, or produced or created by, Kuster hereunder (collectively defined as "**Information**") will be held in strict confidence by Buyer. This confidentiality obligation shall not apply to any data given freely by Kuster to prospective customers (for example, in product brochures or on Kuster's website). All such Information will be treated and protected by Buyer as strictly confidential and will not be disclosed to any third party without the prior written consent of Kuster and may be disclosed within Buyer's organization only on a need-to-know basis. At Kuster's request, Buyer will immediately return to Kuster any Information provided to, or produced or created by, Kuster, including all copies of Information made by Buyer in tangible form, and Buyer shall certify to Kuster in writing that Buyer has deleted the Information from all electronic storage media on which it was placed by Buyer. The foregoing obligations shall not apply to any information which (i) is publicly known or becomes publicly known through no fault of or disclosure by Buyer; (ii) is given to Buyer by someone other than Kuster as a matter of right and without restriction of disclosure; (iii) was known to the Buyer prior to the acceptance of these Terms and Conditions; or, (iv) is legally compelled to be disclosed. If Buyer receives a subpoena, order, notice, process or other legal process seeking disclosure of Kuster's Information, Buyer shall immediately notify Kuster in order to allow Kuster the opportunity to oppose the order, notice, or process, or seek a protective order. If requested by Kuster, Buyer shall cooperate fully with Kuster in contesting such disclosure. Except as such demand shall have been timely limited, quashed or extended, Buyer may thereafter comply with such demand, but only to the extent required by law. Where Kuster obtains a protective order, nothing in these Terms and Conditions shall be construed to authorize Buyer to use in any manner or disclose Kuster's Information to parties other than such governmental or judicial agency or body or beyond the scope of the protective order. Disclosures that are made to Buyer under these Terms and Conditions which are specific shall not be deemed to be within the foregoing exceptions merely because they were embraced by general disclosures that are either in the public domain or in the possession of Buyer. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the possession of Buyer, but only if the combination itself and its principle of operations are in the public domain and in the possession of Buyer.

16. General.

(a) Order confirmation or acceptance by Kuster as to any Product or Service shall constitute Kuster's offer to supply the same only in accordance with these Terms and Conditions. Buyer's acceptance of Kuster's quotation, tender, or offer shall be subject to these Terms and Conditions. Any purported acceptance of a Kuster offer by Buyer under terms that vary from, conflict with, or modify these Terms and Conditions shall not be effective. Neither Kuster's commencement of performance under these Terms and Conditions nor Kuster's delivery of any Product shall be deemed to constitute acceptance by Kuster of any term that varies from, conflicts with, or modifies these Terms and Conditions, regardless of whether such varying terms by Buyer are set out in any acknowledgement, order, or other document of Buyer.

(b) Acceptance of any Product or Service by Buyer shall constitute acceptance of, and is limited to, these Terms and Conditions. Notice of objection is hereby given to any term, provision, or condition of Buyer that modifies or conflicts with these Terms and Conditions.

(c) Kuster recognizes that Buyer may, for operating convenience, desire to utilize its own forms in connection with an order, and, in such case, any term, condition, or provision in such form that modifies, conflicts with, or is added to these Terms and Conditions shall be deemed to waived by Buyer unless accepted in writing by an officer of Kuster.

(d) Unless and to the extent altered or amended by an instrument in writing signed by Kuster and Buyer, (i) these Terms and Conditions constitute the entire agreement of Kuster and Buyer with respect to the Product or Service, and contain all of the covenants and agreements of Kuster and Buyer with respect thereto; (ii) Buyer acknowledges that no representations, promises, or agreements, oral or written, have been made by Kuster or anyone acting on behalf of Kuster, which are not contained herein; and (iii) any prior agreements, promises, negotiations, or representations not expressly set forth in these Terms and Conditions are of no force or effect. These Terms and Conditions may not be altered or amended except by an instrument in writing signed by Kuster and Buyer.

(e) Failure by Kuster to enforce any or all of these Terms and Conditions in any case or cases shall not constitute a waiver of or preclude subsequent enforcement of any or all of such Terms and Conditions.

(f) Any attempted or purported assignment or transfer by Buyer of any of the rights or obligations contained herein shall render such attempted or purported assignment or transfer null and void. Kuster may perform and fulfill all or any of its obligations hereunder by or through any subsidiary or affiliate.

(g) If any provision of these Terms and Conditions is capable of more than one construction, the provision shall be interpreted in the manner that will render it valid. If any provision hereof is determined to be void, the determination shall not affect any other provision and all other provisions not construed to be void shall remain in full force and effect.

17. Arbitration. ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE TRANSACTION SUBJECT TO THESE TERMS AND CONDITIONS, OR REGARDING THE BREACH, TERMINATION, OR INVALIDITY THEREOF, SHALL BE FINALLY SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE UNCITRAL ARBITRATION RULES AS AT PRESENT IN FORCE. The appointing authority, should one be needed, shall be the American Arbitration Association. The language of the arbitral proceeding shall be English. The place of arbitration shall be Dallas, Texas. Judgment on the award may be entered by any court of competent jurisdiction. Notwithstanding the foregoing, Kuster shall, in order to protect its proprietary and intellectual property rights hereunder, have the right to seek preliminary, injunctive, or other equitable relief from any court with jurisdiction over the Buyer; provided, however, that such court shall have no authority to issue any judgment for monetary damages, which authority shall be reserved solely to an arbitral panel proceeding in accordance with this Section 17.

18. Limited Statute of Limitations. AS PERMITTED BY THE TEXAS BUSINESS AND COMMERCE CODE, §2.725(a), THE STATUTE OF LIMITATIONS FOR ANY BREACH OF CONTRACT RELATIVE TO THE SALE OF ANY ITEM PURSUANT TO THESE TERMS AND CONDITIONS SHALL BE ONE YEAR FROM THE DATE THE CAUSE OF ACTION ACCRUES.

19. No Authority of Seller's Agents. No agent or representative of Kuster has any authority to bind Kuster to any affirmation, representation, or warranty concerning the Products except as may be stated herein, nor shall any agent or representative have any authority to alter any term thereof except as may be approved in writing by an officer of Kuster.

20. Choice of Law. Any agreement or transaction to which these Terms and Conditions apply shall be deemed to have been made in the State of Texas. These Terms and Conditions shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Texas. The UN Convention on Contracts for the International Sale of Goods shall not apply.