



Nanosonics, Inc.  
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## Terms and Conditions of Sale

### NANOSONICS INC. GENERAL TERMS AND CONDITIONS OF SALE

- 1. General:** These general terms and conditions of sale (the "Terms") apply to the sale of any and all products and services, by Nanosonics Inc., herein referred to as "Seller", to the party to whom Seller's quotation or invoice is addressed, herein referred to as "Buyer". Seller and Buyer are sometimes collectively referred to as the "Parties" and each individually as a "Party". All sales of Seller to Buyer are subject to the Terms. In the event that any purchase order or other communication between Seller and Buyer contains terms and conditions in addition to or inconsistent with these Terms, these Terms will apply, unless acceptance of any other terms and conditions is made in writing by authorized representatives of Seller and Buyer.
- 2. Quotations; Acceptance of Orders:** Written quotations related to the sale of products or services covered by these Terms automatically expire 30 days after the date issued unless otherwise specified in the quotation. All quotations are subject to these Terms and to Seller's written order acknowledgment. Orders become effective only when accepted by Seller's written order acknowledgment.
- 3. Prices:** Unless otherwise agreed by the Parties, prices do not include any applicable property, sales, use, privilege or export taxes, custom duties or any other tax, fee or charge of any nature whatsoever imposed by any government authority on or measured by any transaction between the Parties.
- 4. Payment:** Buyer will pay Seller, via check, ACH bank payment, wire transfer or credit card in United States currency the net amount of the invoice issued by Seller to Buyer pertaining to the products or services sold within thirty (30) days of the date of the invoice. Credit card payments will incur an additional 3.5% processing fee based on the total of the invoice. A late payment charge of up to one and one-half percent (1.5%), or the highest rate permitted by applicable law, of the amount of the invoice may be charged for each month, or any portion thereof, that payment is not made within thirty (30) days of the date of the invoice. Payment shall be deemed to be made on the date of receipt by Seller. If Buyer in good faith disputes any invoiced charges, Buyer may withhold the disputed amount, but only if on or before payment, or the due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to Seller, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Seller will then investigate all disputes. If the amount is found to be payable (in whole or in part) then Buyer must pay the amount within seven (7) days of receiving notice and the basis of the decision. Invoiced charges that are not disputed in good faith within fifteen (15) days of the date of an invoice will be deemed to be correct.
- 5. Shipment, Delivery and Inspection:** The Buyer shall be charged an amount to cover costs incurred by the Seller in respect of handling and standard freight for orders shipped within the contiguous USA. Shipment dates are estimated and Seller will not be liable for late shipments. Seller shall use its reasonable commercial efforts to deliver products to Buyer by the date set out in Buyer's purchase order. Seller shall bear the risk of loss during shipment of product(s) to Buyer which shall pass to Buyer upon Buyer's receipt of such product(s) subject to the provisions of this paragraph. Buyer will promptly inspect all products delivered to it by Seller. Any claim against Seller under the Warranty in section 7 below or otherwise for shortages or for damages to or defects in the delivered product(s) that are observable in a reasonable visual inspection will be deemed waived unless the claim is made to Seller within thirty (30) days after such delivery. Title to the product(s) shall pass from Seller to Buyer upon full payment of Seller's invoice as set forth in Paragraph 4. A freight surcharge applies on shipments to Alaska and Hawaii.
- 6. Force Majeure:** Seller will not be liable for any delay or failure in performance of any order, in the delivery or shipment of any product or for any damages or losses suffered by Buyer or any third party which are caused by, or in any manner arise from, directly or indirectly, any labor disturbances, embargos, riots, storms, fires, explosions, acts of God or public enemies, inability to obtain necessary labor or raw materials, accidents or breakdown to, or mechanical failure of, machinery or equipment, changes in economic conditions, delays or interruptions in transportation or any other causes beyond Seller's control. In the event of such delay, the applicable shipment date(s) will be postponed to compensate for such delay. If Seller's performance is rendered permanently impossible or impracticable, either Party may cancel the affected order(s) upon written notice to the other Party, and, upon such cancellation, Seller will have no liability and Buyer will be liable only for the pro-rated or allocated portion of such order(s) completed, including without limitation all inventory and supplies not returnable for full credit or otherwise useable by Seller.
- 7. Seller's Limited Warranty:** Unless otherwise stated, Seller warrants to Buyer that the products sold by Seller to Buyer will be free from defects in workmanship and materials under normal use for a period of one (1) year after the date of the applicable invoice. Upon the return of the defective product, by Buyer to Seller, Seller will, at its sole option, repair or replace the defective product. Any defective product that is repaired or replaced is warranted only for the balance of the initial warranty period. Notwithstanding the foregoing, Seller does not warrant, and such limited warranty will be null and void, if the product fails to perform or is defective because of accident, casualty, misuse, abuse, fire, alteration, liquid damage, lightening, Act of God or public enemy, vandalism, tampering or because of improper setup, operation, repair, maintenance, testing or unauthorized service. THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY APPLICABLE TO THE PRODUCT(S) AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 8. Limitation of Liability; Exclusion of Damages:** Seller's liability with respect to any claim by Buyer or any third party arising out of or in any way relating to any product or services sold by Seller to Buyer (including without limitation such product's sale, or use) will be limited solely to the cost of such product. SELLER WILL NOT BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR OTHER LOSSES OF BUYER OR ANY THIRD PARTY ARISING OUT OF OR IN ANY WAY RELATING TO THE SALE, OR USE OF SUCH PRODUCT.
- 9. Confidential Information:** Seller's technical, trade secret, proprietary or similar information contained in plans, drawings, specifications, photographs and other documents (collectively, "Confidential Information") disclosed or furnished by Seller to Buyer or its officers, directors, employees or agents (collectively, "Representatives") and all copies thereof, including without limitation any and all materials of any kind containing or embodying any Confidential Information, are the sole and exclusive property of Seller. Disclosure of Confidential Information by Seller to Buyer or its Representatives will not be construed as granting to Buyer or its Representatives either expressly or by implication, any right, title or interest of any kind in any Confidential Information. Upon Seller's request, Buyer will promptly deliver to Seller all of the Confidential Information in Buyer's possession or under Buyer's control (including without limitation Confidential Information in the possession or under the control of any of Buyer's Representatives), whether in written, electronically-readable or other form, including without limitation all copies or extracts thereof or based thereon. All Confidential Information will be kept confidential by Buyer and will not be disclosed to any person or entity without Seller's prior written consent, except that Buyer may disclose the Confidential Information or portions thereof to those of its Representatives who reasonably need to know such information for legitimate business reasons; provided, however, that Buyer will be responsible for any breach of this covenant by it or any of its Representatives and will indemnify and hold harmless Seller and its officers, directors, employees and agents (collectively, the "Seller Indemnified Parties") for any costs, expenses or losses incurred or suffered by any of them as a result of such breach. Buyer (a) acknowledges that a failure to comply with this Section 9 will cause Seller irreparable harm and that a remedy at law for such a failure would be an inadequate

remedy for Seller and (b) consents to Seller's obtaining from a court having jurisdiction, specific performance, an injunction, a restraining order or any other equitable relief in order to enforce such provision. Seller's right to seek and obtain any such relief is in addition to, and not in lieu of, any other remedy to which it is entitled under applicable law (including without limitation monetary damages).

10. Default: If Buyer (a) fails to pay all or any part of any invoice when due, (b) fails to observe or perform any of its other obligations under these Terms or (c) becomes insolvent, is adjudicated a bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, seeks any similar relief under any bankruptcy laws or related statutes or a receiver is appointed for its assets, then Seller may declare an event of default. After an event of default, all sums due or to become due from Buyer to Seller may, at Seller's sole option, become immediately due and payable and concurrently, or in the alternative, Seller may at its sole option terminate any existing order(s) between the Parties and exercise any other remedies available to Seller under applicable law, including without limitation, repossession of Seller's product(s) in accordance with State and Federal law. If Seller does repossess such product(s), it is agreed that these Terms will no longer be in effect but that Buyer will remain liable for any past due payments, including interest if applicable and for any loss or damage which may have occurred to the equipment while in the possession of Buyer. Risk of loss is to remain with Buyer until the product(s) are returned to the possession of Seller.

11. Specifications: If Buyer provides any specifications or designs for products, Buyer will indemnify and hold harmless the Seller Indemnified Parties for all claims, losses, costs and expenses (including without limitation attorneys' fees and disbursements) from any patent, trademark or copyright infringement claim resulting from compliance with these specifications and designs. Seller will not be responsible for the accuracy or suitability of these specifications and designs or the performance of any products built in conformance with them.

12. Costs and Expenses; Indemnification: Buyer will be responsible for all costs and expenses, including without limitation attorneys' fees and disbursements, incurred by Seller in enforcing any term or condition in these Terms and Buyer will indemnify and hold harmless and promptly reimburse Seller for such costs and expenses. If Seller is made a defendant in any proceeding, action or arbitration by Buyer, any person or entity deriving title from Buyer or any other third party on the basis of breach of warranty, negligence, strict liability, tort or any other theory, and if no award or judgment is made or rendered against Seller, Buyer will indemnify and hold harmless the Seller Indemnified Parties from all costs and expenses incurred by any of them in connection with such proceeding, action or arbitration, including without limitation reasonable attorneys' fees and disbursements.

13. Cancellation and Return: Any contract or order may be cancelled by Buyer only with the prior written consent of Seller and upon reimbursement to Seller for all costs, expenses and losses incurred by Seller as a result of such cancellation, including without limitation a reasonable profit and overhead. Except for reasons as set forth in paragraph 5, Buyer may only return an order with the prior written consent of Seller. If the product(s) ordered are returned with Seller's consent, Buyer shall bear the risk of loss until such product(s) are returned to the possession of Seller. Buyer shall also be responsible for the costs of such return to Seller.

14. Governing Law; Language; Jurisdiction; Venue: Seller's quotation, invoice, these Terms and Seller's order acknowledgment are governed by and must be construed according to the laws of the State of Pennsylvania, without reference to the principles of conflicts of law that may require the application of the laws of another jurisdiction. Each of the Parties hereby irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the United States District Court for the applicable state court located in the State Pennsylvania for any action or proceeding arising out of or relating to the sale of Seller's products to Buyer, (b) waives any objection to the laying of venue of any such action or proceeding in such courts and (c) waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

15. Compliance with Laws and Regulations. Buyer will comply with all federal, state and local laws, regulations and ordinances applicable to its business and activities and will indemnify Seller for any and all claims, damages, penalties, assessments and liabilities imposed on Seller relating to or resulting from Buyer's failure to comply with such applicable laws, regulations and ordinances. Buyer acknowledges that the products are or may be subject to the regulation of the FDA or other Federal or State Agencies. Buyer shall not use or permit the products to be used in a manner that does not comply with applicable FDA or other regulations or for any non-medical, entertainment or amusement purposes.

16. Entire Agreement; Amendment; Waiver: Seller's quotation, invoice, these Terms and Seller's order acknowledgment constitute the entire agreement between the Parties with respect to the sale of Seller's products to Buyer, superseding all prior representations, agreements or understandings, written or oral, between the Parties with respect to such sale. These Terms cannot be amended orally or by any course of conduct by either Party, but may only be amended by a written agreement executed by the Parties. The failure by Seller to (a) enforce any provision hereof will not be construed as a waiver of such provision or of Seller's right to enforce such provision and (b) object to provisions contained in any purchase order or other communication from Buyer will not be construed as a waiver of these Terms nor an acceptance of any such Buyer provisions.

17. Successors and Assigns; Assignment: These Terms will be binding upon the Parties and their respective successors and assigns; provided, however, that Buyer shall not assign any of its rights or duties hereunder without Seller's prior written consent, which consent may not be reasonably withheld.

#### **Additional Terms and Conditions for Repairs/Service contracts**

1. Out of Warranty Repair: Once the Warranty has expired, all devices will be classed as Out of Warranty and all repairs are chargeable.

2. Service Contracts: The Seller offers a range of versatile service contracts designed to meet your needs for support of our products.

3. Repairs Not Covered by Service Contract: A preliminary quote may be given verbally based on the symptoms and warranty status described by Buyer. This is intended to assist the Buyer in his/her decision whether to place an order for repair or not. The preliminary quote will be a non-binding indicative quote which is inclusive of labor, material, handling and shipping. Upon receipt of the unit for repair, the Seller will verify the repairs needed, after which a quotation will be prepared. Repairs will not commence until the appropriate purchase order has been received. Any damage to equipment resulting from improper usage or improper packaging will be the responsibility of Buyer.

4. Loaner Equipment: All loaner equipment is owned by Seller. Repair and maintenance of loaner equipment is the responsibility of Seller. Any damage to loaner equipment resulting from improper usage or improper packaging will be the responsibility of Buyer. If loaner equipment is not returned to Seller within 5 business days after product is returned to Buyer, Seller can invoice Buyer for fees normally associated with a non-contract loaner provision.

5. Repair Warranty: Once a repair is completed by the Seller, a repair warranty will be offered which will either be six months after the date of repair OR the remainder of the manufacturer warranty whichever provides the greatest length of coverage.

6. Limitation of Warranties: Except as expressly set out in this Agreement, all conditions, warranties and other terms, whether express or implied, written or oral, statutory or otherwise, with respect to any goods, products or services provided hereunder, including and without limitation, as to quality, care and skill and fitness for purpose, are excluded.