

TOOsonix Terms and Conditions for Sale

Definitions

“TOOsonix” means the TOOsonix company or corporation named on the quotation or Agreement acceptance and/or designated partner who supplies the Product(s) and/or Services.

“Customer” means the person(s), firm, company or corporation who purchases the Product(s) and/or Services from TOOsonix.

“Agreement” means any agreement between TOOsonix and Customer for the supply of Product(s) and/or Services, resulting from Customer’s request or order placed by Customer, on these terms and conditions and the terms on the face of the document under which it is accepted by TOOsonix.

“Product(s)” means any product, components, goods or materials agreed in the Agreement to be supplied to the Customer by TOOsonix (including any part or parts of them).

“Services” means any services (including without limitation any maintenance, repair and overhaul services) agreed in the Agreement to be provided to the Customer by TOOsonix (including any part or parts of them).

Essential Basis of the Agreement.

Customer acknowledges that TOOsonix has set its Product prices and entered into the Agreement in reliance upon the limitations and exclusions of liability, the disclaimers of warranties, and Customer’s indemnity obligations set forth herein, that the same form an essential basis of the agreement between the Parties, and that the consideration would be higher if TOOsonix were required to bear liability in excess of that stated herein.

Passing of Risk and Title

Full legal beneficial and equitable title to the Product(s) shall remain vested in TOOsonix (even though they have been delivered and risk has passed to Customer) until payment in full for the Product(s) has been received by TOOsonix.

Until full legal, beneficial and equitable title to and property in the Product(s) passes to Customer, Customer shall hold the Product(s) on a fiduciary basis as TOOsonix bailee, and shall store the Product(s) at its premises, insure them without any charge to TOOsonix, and keep them clearly identifiable as belonging to TOOsonix. TOOsonix may, on demand and without prior notice, repossess and resell the Product(s) if any sum due to TOOsonix from Customer is not paid when due. For this purpose, TOOsonix, its employees, agents and sub-contractors will be entitled to unrestricted access to any premises where any of the Product(s) are situated.

After title to and property in the Product(s) passes to Customer, TOOsonix authorizes Customer to use and/or sell the Product(s) in the normal course of Customer’s business and to pass good title in the Product(s) to its purchasers without notice of TOOsonix’s rights. If Customer sells the Product(s) prior to paying the full price thereof, Customer shall hold the proceeds of sale in trust for TOOsonix.

TOOsonix’s rights and remedies set forth herein are in addition to, and shall not in any way prejudice, limit or restrict any of TOOsonix’s other rights or remedies under the Agreement or in law or equity. TOOsonix shall be entitled to maintain an action against Customer for the price of the Product(s) notwithstanding that legal, equitable and beneficial title to and property in the Product(s) has not passed to Customer.

Mutual Resolution of Customer Complaints.

Customer and TOOsonix will cooperate in dealing with customer complaints concerning the Product(s) and will take such action to resolve such complaints as deemed necessary or appropriate by Customer or as may be otherwise reasonably requested by TOOsonix. Customer agrees to report to TOOsonix any complaint regarding a Product of which Customer becomes aware within 24 hours of becoming aware.

Customer and TOOsonix agrees to mutually assist to facilitate the resolution of complaints. For purposes of this Agreement, a complaint can be the occurrence of any of the following:

- (i) Receipt of any Product(s) quality claims, medical claims, or other written claims or complaints
- (ii) Receipt of any written communication from any applicable regulatory agency pertaining to a Product.

Limited Warranty.

TOOsonix warrants that the Products will be free from defects in materials and workmanship and will conform in all material respects to technical specifications. The foregoing limited warranty shall continue for twelve (12) months from the date of delivery. During the warranty period, TOOsonix shall repair or replace the Products at TOOsonix sole option. Such repair or replacement shall be TOOsonix' sole obligation and Customer's sole remedy hereunder, and shall be conditioned upon TOOsonix receiving written notice of such claimed defect within ten (10) days after its discovery. The limited warranty shall be void and of no effect if: (a) anyone other than TOOsonix makes or attempts to make any modifications, repairs, attachments or additions to the Products or installs or moves Products for which installation is required by TOOsonix; (b) the Products is not maintained or operated in accordance with TOOsonix' instructions (c) the Products has been subjected to misuse, abnormal conditions or negligent handling or operation; or (d) the Products is resold, leased or rented to or for the use by any person other than the original Customer without TOOsonix' consent. Used and refurbished Products does not have any warranties, and Products not manufactured by TOOsonix shall only have such warranties (if any) as may be provided by the manufacturer.

Exclusions.

No representation or warranty will be implied from any description of, or claims regarding, the Products or its effectiveness or ability to achieve any particular results, whether written or oral, contained in specifications, samples, bulletins, marketing or promotional materials or similar statements made or furnished to Customer by any person.

Warranty Disclaimer.

The above limited warranty is exclusive and in lieu of all other representations and warranties of TOOsonix, express or implied, written or oral; TOOsonix disclaims and excludes any implied warranty, including, without limitation, warranties of merchantability and fitness for a particular purpose. In no event shall TOOsonix be liable for loss of use, loss of profits, punitive damages, attorney's fees and expenses, consequential, incidental or special damages, or any other direct or indirect damages whatsoever.

Limitation of Liabilities and Remedies.

Under no circumstances will either party of this agreement have any liability to the other party for, and each party hereby expressly waives, any indirect, incidental, consequential, special, or punitive damages of any description, even if advised of the possibility of such damages, whether arising out of warranty or contract, negligence or other tort, or otherwise, including without limitation, foreseeable business losses, loss of profits, and reliance damages. This limitation applies regardless of the legal grounds for such liability.

TOOsonix disclaims any liability that results from other use of the Equipment than the any permitted use according the Agreement.

Indemnity.

Customer will indemnify, defend, and hold harmless TOOsonix, including TOOsonix's affiliates and their officers, directors, agents, employees, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relate to:

- (i) Customer's modification of or addition to any Product(s) manufactured by TOOsonix;
- (ii) Customer's breach of this Agreement hereunder any other use of the Products than permitted in the Agreement;
- (iii) Customer's gross negligence or willful misconduct; or
- (iv) Customer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Product(s).

Financing and Assignment:

This Agreement binds Customer, regardless of any financing arrangements, subrogations or assumptions. Customer may not assign its rights or delegate its obligations hereunder except with the prior written consent of TOOsonix. TOOsonix may subcontract the performance of any obligation of TOOsonix under the Agreement, and TOOsonix may assign any right or obligation under the Agreement, to an affiliated party of TOOsonix.

Independent Contractors.

No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between TOOsonix and Customer. Customer and TOOsonix are independent contractors. Neither Party will make any warranties or representations or assume any obligations on the other Party's behalf. Neither Party is or will claim to be a legal representative, partner, agent, or employee of the other Party. Each Party is responsible for the direction and compensation, and is liable for the actions of, its employees and subcontractors.

Amendments:

The Agreement may not be amended, altered or modified except in writing by an authorized signatory of TOOsonix. No other purported additions, amendments, alterations or modifications by Customer or any other person, whether oral or written, shall be binding on TOOsonix, regardless of TOOsonix's failure to object or TOOsonix's shipment of products. In the event of a conflict between these terms and conditions and any other part of this Agreement, these terms and conditions shall govern.

Governing Law:

This Agreement shall be governed by and construed in all respects in accordance with laws of Denmark. Any dispute arising in connection with this Agreement that could not be settled amicably shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules. Such arbitration shall be conducted in Copenhagen, Denmark in the English language.

Severability:

If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

Entire Agreement:

The Agreement constitutes the entire agreement between the Parties in connection with the sale of the Product(s) and/or Service(s) and shall supersede and replace all documentation previously issued by TOOsonix or the Customer, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both TOOsonix and Customer.