

## TERMS OF USE

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Welcome to the E5<sup>®</sup> website, operated by E5 Incorporated (“**E5 Incorporated**,” “**we**,” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, “**Terms of Use**”), govern your access to and use of E5NanoSilica.com (the “**Website**”), including any content, functionality, and services offered on or through the Website (collectively, the “**Services**”). With each visit to the Website you signify your agreement to these Terms of Use.

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING OUR WEBSITE AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS. THESE TERMS OF USE APPLY WHETHER YOU ACCESS OR USE THE SERVICES AS A GUEST OR AS A REGISTERED USER.**

This Website is offered and available to users who are 18 years of age or older and are acting on behalf of a customer. By using the Website, you represent and warrant that you are of legal age to form a binding contract with E5 Incorporated and meet all of the foregoing eligibility requirements.

**IF YOU DO NOT MEET THESE REQUIREMENTS OR IF YOU DO NOT AGREE TO ABIDE BY THESE OR ANY FUTURE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE SERVICES, CHOOSE TO NOT SIGN, AND DO NOT CONCLUDE THESE TERMS OF USE, AND DO NOT USE VIEW, DOWNLOAD, OR OTHERWISE USE OR ACCESS (OR CONTINUE TO USE OR ACCESS) THE WEBSITE OR THE SERVICES.**

### **1. Changes to Terms of Use**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when posted and apply to all access to and use of the Website thereafter.

Your continued use of the Website following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

### **2. Accessing the Website and Account Security**

- 2.1. We reserve the right to withdraw or amend this Website, and any Service or material we provide on the Website, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website, or the entire Website, to users, including registered users.
- 2.2. To access the Website or some portions Website, you may be asked to provide certain registration details or other information. It is a condition of your use of the Website that all the information you provide on the Website is correct, current, and complete. You agree that all information you provide to register with this Website or otherwise, including, but not limited to, through the use of any interactive features on the Website, is governed by our **Privacy Policy**, and you consent to all actions it takes with respect to your information consistent with such policy.
- 2.3. If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures (the “**User Credentials**”), you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Website or portions of it using your User Credentials.

- 2.4. By enrolling in the Services and accessing it using your User Credentials, and any other security and identification methods as we may require from time to time, such as security questions or one-time passcodes, you acknowledge and agree that this system includes security procedures that are commercially reasonable. You further agree to comply with any E5 Incorporated procedures and processes to obtain any User Credentials, or to further access or use the Services.

**YOU AGREE TO NOTIFY US IMMEDIATELY OF ANY UNAUTHORIZED ACCESS TO OR USE OF YOUR USER CREDENTIALS OR ANY OTHER BREACH OF SECURITY.**

- 2.5. We have the right to disable any user account, password, User Credentials, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

### **3. Intellectual Property Rights**

- 3.1. The Website and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by E5 Incorporated, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.
- 3.2. These Terms of Use permit you to use the Website on behalf of a customer, and only for the customer's business purposes, and to access/receive the Services. ***You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our Website.***
- 3.3. You must **NOT**:
  - 3.3.1. Modify copies of any materials from the Website.
  - 3.3.2. Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.
  - 3.3.3. Access or use the Website or Services for any commercial purposes other than as set forth above.
  - 3.3.4. If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Website in breach of these Terms of Use, your right to use the Website will stop immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title, or interest in or to the Website or any content on the Website is transferred to you, and all rights not expressly granted are reserved by E5 Incorporated. Any use of the Website not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws.

### **4. Trademarks**

The E5® name and all related names, logos, product and service names, designs, and slogans are trademarks of E5 Incorporated or its affiliates or licensors. You must not use such marks without the prior written permission of E5 Incorporated. All other names, logos, product and service names, designs, and slogans on this Website are the trademarks of their respective owners.

### **5. Confidentiality**

Except where disclosure is required for legal, accounting, or regulatory purposes, you and E5 Incorporated agree that all information, items, records, data and other material provided pursuant to or in connection with the Services, shall be kept in strict confidence, shall be used only for the purposes of such agreements, and shall not be disclosed by either party, its agents or employees, without, in each instance, the prior written consent of the other party; provided, however, that you or we may disclose generally, your membership and participation in the programs and services of E5 Incorporated

without your consent. You acknowledge and agree that E5 Incorporated may disclose your information, without your consent or review, to the extent required or permitted by law. Each party agrees to take commercially reasonable precautions to prevent the unauthorized disclosure of such information, including complying with security procedures deemed necessary by E5 Incorporated. All computer programs, manuals, materials, forms, facilities, ideas, concepts, techniques, and know-how used, prepared or developed by us, and any improvements extensions or modifications thereof, are and shall remain the exclusive property of E5 Incorporated, and may not be used by you, your agents, employees or others, without our prior written consent. In certain circumstances, E5 Incorporated may require you to enter into licensing or use agreements with regard to any software programs provided by or through E5 Incorporated for you use in receiving any Services; and you hereby agree to enter into such licensing or use agreements.

## **6. Prohibited Uses**

You may use the Website only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Website:

- 6.1. In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- 6.2. For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- 6.3. To impersonate or attempt to impersonate E5 Incorporated, an E5 Incorporated employee, another user, or any other person or entity (including, without limitation, by using email addresses, usernames, or screen names associated with any of the foregoing).
- 6.4. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Website, or which, as determined by us, may harm E5 Incorporated or users of the Website, or expose them to liability.

Additionally, you agree **not** to:

- 6.5. Use the Website in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Website, including their ability to engage in real time activities through the Website.
- 6.6. Use any robot, spider, or other automatic device, process, or means to access the Website for any purpose, including monitoring or copying any of the material on the Website.
- 6.7. Use any manual process to monitor or copy any of the material on the Website, or for any other purpose not expressly authorized in these Terms of Use, without our prior written consent.
- 6.8. Use any device, software, or routine that interferes with the proper working of the Website.
- 6.9. Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- 6.10. Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer, or database connected to the Website.
- 6.11. Attack the Website via a denial-of-service attack or a distributed denial-of-service attack.
- 6.12. Otherwise attempt to interfere with the proper working of the Website.

## 7 **Changes to the Website**

We may update the content on this Website from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the Website may be out of date at any given time, and we are under no obligation to update such material.

## 8 **Information About You and Your Visits to the Website**

All information we collect on this Website is subject to our **Privacy Policy**. By using the Website, you consent to all actions taken by us with respect to your information in compliance with such policy.

## 9 **Links from the Website**

If the Website contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

## 10 **Geographic Restrictions**

We provide this Website and Services for use only by persons located in the United States. We make no claims that the Website or any of its Services or content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If you use or access the Website from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

## 11 **Disclaimer of Warranties**

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE IS AT YOUR OWN RISK. THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER E5 INCORPORATED NOR ANY PERSON ASSOCIATED WITH E5 INCORPORATED MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER E5 INCORPORATED NOR ANYONE ASSOCIATED WITH SPECIFICATION PRODUCTS REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, E5 INCORPORATION HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **12 Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL E5 INCORPORATED, ITS PERSONNEL, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **13 Indemnification**

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS E5 INCORPORATED, ITS PERSONNEL, LICENSORS, AND SERVICE PROVIDERS, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, JUDGMENTS, AWARDS, LOSSES, COSTS, EXPENSES, OR FEES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO YOUR VIOLATION OF THESE TERMS OF USE OR YOUR USE OF THE WEBSITE, INCLUDING, BUT NOT LIMITED TO, YOUR USER CONTRIBUTIONS, ANY USE OF THE WEBSITE'S CONTENT, SERVICES, AND PRODUCTS OTHER THAN AS EXPRESSLY AUTHORIZED IN THESE TERMS OF USE, OR YOUR USE OF ANY INFORMATION OBTAINED FROM THE WEBSITE.

#### **14 Governing Law and Jurisdiction**

All matters relating to the Website and these Terms of Use, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction).

Any legal suit, action, or proceeding arising out of, or related to, these Terms of Use or the Website shall be instituted exclusively in the federal courts of the United States or the courts of the State of Indiana, in each case located in Hamilton County, although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

#### **15 Waiver and Severability**

No waiver by E5 Incorporated of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of E5 Incorporated to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms of Use will continue in full force and effect.

#### 16 **Entire Agreement**

These Terms of Use and our **Privacy Policy**, constitute the sole and entire agreement between you and E5 Incorporated regarding the Website and Services, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Website and Services.

#### 17 **Your Comments and Concerns**

This Website is operated by E5 INCORPORATED, having its principal place of business at 1718 Pleasant Street, Noblesville, IN, 46060, USA.

All feedback, comments, requests for technical support, and other communications relating to the Website should be directed to the Contact Information below.

#### 18 **Contact Information**

If you provide contact information to E5 Incorporated, including your telephone number, mobile telephone number, email address, or mailing address, you hereby expressly consent to receive telephone calls, SMS text messages, emails, and physical mail from E5 Incorporated regarding our services, subject to the terms of our **Privacy Policy**.

To ask questions or comment about these Terms of Use, contact us at [info@E5NanoSilica.com](mailto:info@E5NanoSilica.com).