

TERMS OF USE

verykool Website - Terms of use and legal restrictions

ATTENTION: PLEASE READ THESE TERMS OF USE ("TERMS") CAREFULLY BEFORE USING THIS WEBSITE ("SITE"). USING THIS SITE INDICATES THAT YOU HAVE READ AND ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS, YOU ARE NOT AUTHORIZED TO USE THIS SITE. THESE TERMS GOVERN YOUR USE OF THE SITE, ANY CONTENT (SUCH AS TEXT, DATA, INFORMATION, SOFTWARE, GRAPHICS, OR PHOTOGRAPHS) THAT INFOSONICS CORPORATION AND ITS SUBSIDIARIES (COLLECTIVELY "verykool") MAY MAKE AVAILABLE THROUGH THE SITE (COLLECTIVELY, "MATERIALS") AND ANY SERVICES THAT verykool MAY PROVIDE THROUGH THE SITE (COLLECTIVELY, "SERVICES"). THE SITE, MATERIALS, AND SERVICES ARE REFERRED TO IN THESE TERMS COLLECTIVELY AS THE "verykool WEBSITES."

By registering you are accepting to receive our email communication.

We strive to respect your preferences and privacy. We want to provide valuable, creative, original and fun content and activities to you. This is why is crucial for us to maintain you informed regarding site updates, new wallpapers, songs, ringtones and contests. We will do our best to keep email communications to a minimal. If you do not want to receive email communications from us, please send us an email to: zone@verykool.net with the subject "unsubscribe me". Please notice that unsubscribing from our email communications will not affect your subscription to the verykool Zone, so you will continue having access to the site.

Use of verykool Websites

Except as set forth in "Other agreements; software, services or access", below, verykool authorizes you to use the verykool Websites only for your own personal, non-commercial purposes. Use of the verykool Websites for any public or commercial purpose (including, without limitation, on another site or through a networked computer environment) is strictly prohibited. If you make copies of any of the Materials, you must retain on any such copies all copyright and other proprietary notices contained in the original Materials. You may not modify, publicly display, publicly perform, or distribute the Materials. As between you and verykool, verykool owns the verykool Websites. The verykool Websites is protected under United States and international copyright laws. Any unauthorized use of the verykool Websites may violate copyright, trademark, and other laws.

Access

You are responsible for obtaining and maintaining all equipment and services needed for access to and use of the verykool Websites and for paying all charges related thereto. When you register to open an account anywhere on the verykool Websites, or when you contact verykool through the verykool Websites for the purpose of receiving products or services, verykool may collect certain personal information about you. verykool's use of such information is governed by the provisions of the verykool Online Privacy Statement for the Site. You agree to provide true, accurate, current, and complete information (and, for as long as you continue to use your verykool Websites account, to update such information to keep it true, accurate, current, and complete). You are responsible for maintaining the confidentiality of your verykool Websites password and you are solely responsible for all activities that occur under your password. You agree to notify verykool immediately of any unauthorized use of your password or any other breach of security related to the verykool Websites. verykool reserves the right to require you to change your password if verykool believes that your password no longer is secure. Access to verykool Websites granted under other separately executed agreements by verykool and You shall supersede the terms contained in this Section.

Prohibited uses

You agree not to use the verykool Websites (including, without limitation, any Materials or Services you may obtain through your use of the verykool Websites): (a) in a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law (each a "Law"); (b) to stalk, harass, or harm another individual; (c) to impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity; or (d) to interfere with or disrupt the verykool Websites or servers or networks connected to the verykool Websites. You further agree not to (x) use any data mining, robots, or similar data gathering or extraction methods in connection with the verykool Websites; or (y) attempt to gain unauthorized access to any portion of the verykool Websites or any other accounts, computer systems, or networks connected to the verykool Websites, whether through hacking, password mining, or any other means.

Termination

Except as set forth in "Other agreements; software, services or access", below, verykool may terminate, suspend, or modify your registration with, or access to, all or part of the verykool Websites, without notice, at any time and for any reason. You may discontinue your participation in and access to the verykool Websites at any time. If you breach any of these Terms, your authorization to use the verykool Websites automatically terminates and you must immediately destroy any downloaded or printed Materials (and any copies thereof).

Disclaimers

THE verykool WEBSITES IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE verykool WEBSITES IS WITH YOU. SHOULD THE MATERIALS OR SERVICES PROVE DEFECTIVE, YOU, AND NOT verykool, ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING AND REPAIR. verykool EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE verykool WEBSITES (INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, verykool MAKES NO WARRANTY THAT THE verykool WEBSITES WILL MEET YOUR REQUIREMENTS OR THAT THE verykool WEBSITES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE OR THAT DEFECTS IN THE verykool WEBSITES WILL BE CORRECTED. verykool MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE verykool WEBSITES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE verykool WEBSITES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU THROUGH THE verykool WEBSITES OR FROM verykool, ITS PARENTS, SUBSIDIARIES, OR OTHER AFFILIATED COMPANIES, OR ITS OR THEIR SUPPLIERS (OR THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS OF ANY SUCH ENTITIES) (COLLECTIVELY, "THE verykool PARTIES") SHALL CREATE ANY WARRANTY. verykool DISCLAIMS ALL EQUITABLE INDEMNITIES.

Limitation of liability

IN NO EVENT WILL ANY OF THE verykool PARTIES BE LIABLE FOR (A) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR (B) ANY DAMAGES WHATSOEVER IN EXCESS OF ONE HUNDRED UNITED STATES (US\$100.00) DOLLARS (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF REVENUES, LOST PROFITS, LOSS OF GOODWILL, LOSS OF USE, BUSINESS INTERRUPTION, OR OTHER INTANGIBLE LOSSES), ARISING OUT OF OR IN CONNECTION WITH THE verykool WEBSITES (INCLUDING, WITHOUT

LIMITATION, USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE verykool WEBSITES), WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT, STATUTE, OR ANY OTHER LEGAL THEORY AND EVEN IF ANY verykool PARTY HAS BEEN ADVISED (OR SHOULD HAVE KNOWN) OF THE POSSIBILITY OF SUCH DAMAGES.

Exclusions and limitations

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for certain damages. Accordingly, some of the above disclaimers and limitations of liability may not apply to you. To the extent that any verykool Party may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of the verykool Party's liability shall be the minimum permitted under such applicable law.

Other agreements; software, services or access

verykool may provide products (such as hardware or software) or access to verykool Websites under the terms of a separate agreement between you and verykool (each, an "Other Agreement"). verykool's obligations with respect to any product or access that it makes available to you under any Other Agreement shall be governed solely by the Other Agreement under which such product or service is provided and these Terms shall not be deemed or construed to alter the terms of such Other Agreements.

For example, the use of any software that is made available to download from the verykool Websites ("Software") is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement"). You may not install any Software that is accompanied by or includes a License Agreement unless you first have agreed to the License Agreement terms. If no end user license agreement accompanies or is included with the Software, then such Software shall be deemed to be Materials hereunder and these Terms shall govern your use of such Software. FURTHER REPRODUCTION OR REDISTRIBUTION OF ANY SOFTWARE IS EXPRESSLY PROHIBITED, UNLESS SUCH REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PERMITTED BY THE LICENSE AGREEMENT ACCOMPANYING OR INCLUDED WITH SUCH SOFTWARE.

Modifications to verykool Websites

verykool reserves the right to modify, suspend, or discontinue the verykool Websites at any time without notice to you. For example, verykool may make changes to the Materials and/or Services, or to the products and prices described in them, at any time without notice. The Materials and Services may be out of date and verykool makes no commitment to update the Materials and Services whatsoever. Information published on a Site may refer to products, programs, or services that are not available in your country. Consult your local verykool business contact for information regarding the products, programs, and services that may be available to you.

User submissions

Certain areas of the verykool Websites (e.g., chat rooms or customer ratings and review areas) may permit you to submit feedback, information, data, text, software, music, sound, photographs, graphics, video, messages, or other materials (each, a "User Submission"). By submitting a User Submission, you grant to verykool an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, license (sub licensable through multiple tiers) to (a) use, distribute, reproduce, modify, adapt, publish, translate, publicly perform, and publicly display your User Submissions (or any modification thereto), in whole or in part, in any format or medium now known or later developed and (b) use (and permit others to use) your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that verykool deems appropriate in its sole discretion (including, without limitation, to incorporate your User Submission or any modification thereto, in whole or in part, into any technology, product, or service). verykool reserves the right to display advertisements in connection with User Submissions and to use

User Submissions for advertising and promotional purposes. verykool may, but is not obligated to, pre-screen User Submissions or monitor any area of the verykool Websites through which User Submissions may be submitted. You agree that you are solely responsible for all of your User Submissions. verykool is not required to host, display, or distribute any User Submissions on or through the verykool Websites and may remove at any time or refuse any User Submissions for any reason. verykool is not responsible for any loss, theft, or damage of any kind to any User Submissions. verykool does not want to receive any User Submission that is confidential. You understand and agree that any User Submission will be considered non-confidential and non-proprietary and that verykool will be free to disclose your User Submission to any third party absent any obligation of confidence on the part of the recipient. verykool does not guarantee that you will have any recourse through verykool or any third party to edit or delete any User Submission you have submitted.

By submitting any User Submission, you represent and warrant that:

- (a) you are at least 13 years old;
- (b) you own all rights in your User Submissions (including, without limitation, all rights to the audio, video, or digital recording and the performance contained in your User Submissions) or, alternatively, you have acquired all necessary rights in your User Submissions to enable you to grant to verykool the rights in your User Submissions described herein;
- (c) you have paid and will pay in full all license fees, clearance fees, and other financial obligations, of any kind, arising from any use or commercial exploitation of your User Submissions;
- (d) you are the individual pictured and/or heard in your User Submissions or, alternatively, you have obtained permission from each person (including consent from parents or guardians for any individual under the age of eighteen (18)) who appears and/or is heard in your User Submissions to grant the rights to verykool described herein;
- (e) your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;
- (f) you voluntarily agree to waive all "moral rights" that you may have in your User Submission;
- (g) any information contained in your User Submission is not known by you to be false, inaccurate, or misleading;
- (h) your User Submission does not violate any Law (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);
- (i) your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another's privacy;
- (j) you were not and will not be compensated or granted any consideration by any third party for submitting your User Submission;
- (k) your User Submission does not incorporate materials from a third party web site, or addresses, email addresses, contact information, or phone numbers (other than your own);
- (l) your User Submission does not contain any viruses, worms, spyware, adware, or other potentially damaging programs or files;

(m) your User Submission does not contain any information that you consider confidential, proprietary, or personal; and

(n) your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

Links to third-party websites

Links on the verykool Websites to third-party websites are provided solely as a convenience to you. If you use these links, you will leave the verykool Websites. verykool is not obligated to review such third-party websites, does not control such third-party websites, and is not responsible for any such third-party websites (or the products, services, or content available through the same). Thus, verykool does not endorse or make any representations about such third-party websites, any information, software, products, services, or materials found there or any results that may be obtained from using them. If you decide to access any of the third-party websites linked to from the verykool Network, you do this entirely at your own risk.

Linking to this Site

You may create links to this Site from other websites, but only in accordance with the following terms and in compliance with all applicable laws.

Absent verykool's written authorization otherwise, a website that links to this Site:

- (a) may link to, but shall not replicate, any Materials (including any verykool logo);
- (b) shall not create a browser or border environment around any Materials;
- (c) shall not imply that verykool endorses such website or any products, services, or content available through such website;
- (d) shall not misrepresent its relationship with verykool;
- (e) shall not present false or misleading information about verykool, its products, or its services;
- (f) shall not contain content that could be construed as distasteful, offensive, or controversial; and
- (g) shall contain only content that is appropriate for all age groups.

Trademarks

verykool, the verykool logo and its dude are trademarks of Infosonics Corporation.

International and export issues

verykool administers this Site from its offices in the United States. verykool makes no representation that the verykool Websites is appropriate or available for use outside the United States and access to the verykool Websites from territories where its contents are illegal or restricted is prohibited. If you choose to access the verykool Websites from outside the United States, you do so on your own initiative and are responsible for compliance with applicable Laws. You agree to comply with all export and re-export restrictions and regulations of the Department of Commerce and any other United States or foreign agencies and authorities in connection with your use of the verykool Websites and to not, in violation of any Laws, transfer, or authorize the transfer, of any Materials to a prohibited country or otherwise in violation of any Laws. In particular, but without limitation, the Materials may not, in violation of any Laws, be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders or U.S. Department of Commerce Entity List of proliferation concern non-verykool site, or the US State Department Debarred Parties List non-verykool site. By using any Materials subject to any such

restrictions and regulations, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

Indemnification

You agree to indemnify, defend, and hold harmless the verykool Parties from and against any and all claims, liabilities, damages, losses, costs, expenses, or fees (including reasonable attorneys' fees) that such parties may incur as a result of or arising from your (or anyone using your account's) violation of these Terms. verykool reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with verykool's defense of such claim.

Electronic communications

When you visit the Site or send e-mails to verykool, you are communicating with verykool electronically. We may respond to you by e-mail or by posting notices on the Site. You agree that all such notices, disclosures, and other communications that verykool provides to you electronically satisfy any legal requirement that such communications be in writing.

General

These Terms, together with any additional terms to which you agree when using particular elements of the verykool Websites, constitute the entire and exclusive and final statement of the agreement between you and verykool with respect to the subject matter hereof, superseding any prior agreements or negotiations between you and verykool with respect to such subject matter. The verykool Parties are third party beneficiaries with respect to the provisions in these Terms that reference them. These Terms and the relationship between you and verykool shall be governed by the laws of the State of California as applied to agreements made, entered into, and performed entirely in California by California residents, notwithstanding your actual place of residence. All lawsuits arising from or relating to these Terms or your use of the verykool Websites shall be brought in the Federal or State courts located in Santa Clara County, California, and you hereby irrevocably submit to the exclusive personal jurisdiction of such courts for such purpose. The failure of verykool to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you nevertheless agree that the court should endeavor to give effect to the intentions of verykool and you as reflected in the provision, and that the other provisions of these Terms remain in full force and effect. The section titles in these Terms are for convenience only and have no legal or contractual effect. These Terms shall remain in full force and effect notwithstanding any termination of your use of the verykool Websites. These Terms will be interpreted without application of any strict construction in favor of or against you or verykool. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by verykool without restriction.

Modifications to these Terms

verykool may, in its sole and absolute discretion, change these Terms from time to time. verykool will post notice of such changes on the applicable Site. If you object to any such changes, your sole recourse shall be to cease using the verykool Websites. Continued use of the verykool Websites following notice of any such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes. Certain provisions of these Terms may be superseded by expressly-designated legal notices or terms located on particular pages of the verykool Websites and, in such circumstances, the expressly-designated legal notice or term shall be deemed to be incorporated into these Terms and to supersede the provision(s) of these Terms that are designated as being superseded.

Revised March 2010