

# General Terms and Conditions of Purchase

Hydra Sponge Co., 300 Westlink Dr., Washington MO 63090, USA

## 1. General

- a) These terms and conditions apply to all purchase orders (an "Order") issued by Hydra Sponge Co. ("Hydra") to any company ("Seller") selling goods or products ("Products") to Hydra.
- b) These terms and conditions apply exclusively to any Order of Hydra and Seller's shipment of any Products subject to an Order shall be deemed an effective mode of acceptance of these terms and conditions. Alternative or conflicting terms and conditions of Seller shall not be recognized, unless Hydra accepts them in writing.
- c) These terms and conditions also apply to all future business between Hydra and Seller, even if Hydra accepts any Products without reservation and is aware of the deviating or conflicting conditions of Seller.
- d) All offers by Seller, including demonstrations, shall be provided free of charge, unless agreed otherwise in writing.

## 2. Orders

- a) The type, specification and scope/volume of any Products to be delivered by Seller shall be established by both parties in detail pursuant to a written Order. All objections by Seller to any Order must be submitted in writing to Hydra within two (2) days.
- b) If any Order is submitted with no price or guide price, Hydra reserves the right to approve the price after receiving confirmation or an invoice for such Order.
- c) An Order shall be concluded upon receipt of written confirmation by Seller that such Order has been accepted with no amendments.
- d) Orders can only be passed on to third parties with the express permission of Hydra. In this case, Seller shall act in its own name, on its own account and is liable for the actions of the third party as if they were its own.

## 3. Changes to an Order

- a) Hydra reserves the right to change any submitted Orders. Once Hydra has informed Seller of this intention, Seller shall provide information about the level of any resulting additional or lower costs and scheduled changes within a reasonable period of no more than seven (7) business days. Hydra shall then inform Seller if any Order shall be changed as notified or shall remain as originally agreed.
- b) Changes to an Order can be suggested by Seller if they result in an improvement, but such changes must be confirmed in writing by Hydra.

## 4. Information on Order Processing Documents

Hydra's order number and Seller's bank account details must be provided on all documents, such as order confirmations, delivery slips, invoices and similar documents.

## 5. Documents

Documents provided by Hydra, such as drawings, models and samples etc. shall remain the property of Hydra in all cases. They are to be used by Seller exclusively in the interest of Hydra. Such documents must not be used in any way or passed on to third parties without the express written permission of Hydra. All documents are to be immediately returned to Hydra upon request. If documents are passed on without the permission of Hydra, Hydra is entitled to claim compensation for damages.

## 6. Delivery Dates/Deadlines; Delayed Delivery

- a) All Products are to be delivered FOB designated location unless other terms have been agreed to and documented.
- b) The agreed delivery dates and delivery deadlines are to be strictly adhered to by Seller. To avoid the risk of potential failures to meet delivery dates and delivery deadlines, Seller is required to arrange for express delivery and cover associated costs. In the event of delayed delivery, Hydra furthermore reserves the right to decide whether to request fulfilment and assert a claim for a penalty payment or

whether it no longer requires the fulfilment of such Order. The assertion of claims for damages remains unaffected in all cases. Notwithstanding the foregoing, the terms of this provision do not apply if exceeded delivery dates/deadlines are the result of subsequent objective impossibility. In this case the delivery deadline shall be extended in a reasonable way or the delivery date shall be postponed.

- c) In the event of delayed delivery, Hydra is entitled to assert all legal claims. A delivery shall be regarded as delayed and automatically shall result in the consequences of a delayed delivery if it cannot be made by the agreed delivery date or within the agreed delivery period. Alternative provisions must be made in writing.
- d) The provision of a penalty payment does not release Seller from its obligation to make the delivery in accordance with any Order.

## 7. Volumes

- a) The volumes defined in an Order are to be strictly adhered to by Seller. Normal trading customs are to be taken into account. Hydra is only required to accept partial deliveries if they have been expressly requested by Hydra or have been provided with their prior approval.
- b) Hydra reserves the right to provide Seller with over-deliveries in return for compensation for its turnover and to insist on the fulfilment of the ordered volumes in the event of under-deliveries.

## 8. Passage of Title; Risk of Loss.

Title to any Products and risk of loss shall remain with Seller until the Products have been delivered to Hydra's facility. If a shipment is not accompanied by a bill of lading, packing slip or similar delivery document, Hydra's count and/or weight shall be conclusive.

## 9. Acceptance and Inspection of the Products

Hydra shall not inspect the delivered Products upon receipt. Any delivered Products shall be inspected with regard to volume and quality at a later point in time. Payments to Seller do not represent an acceptance of the volume and quality of the delivered Products. Associated legal claims of Hydra therefore remain fully valid after the delivered Products have been checked and paid for and Seller shall accordingly waive the right to use the defense of delayed notice of defect. The terms of this provision also apply if only some of the delivered Products have been paid for by Hydra. The costs of sample-taking, testing, etc. resulting from those deliveries that have not been made in accordance with an Order and for incorrect deliveries shall be paid for by Seller. If the delivered Products are faulty, Hydra is entitled to request a free replacement delivery or free repair of the fault by Seller within the warranty period of thirty (36) months after delivery. If the repair of the fault is not carried out within a reasonable period, Hydra can request a price reduction or withdraw from such Order. The assertion of claims for damages remains unaffected in all cases.

## 10. Quality

- a) Seller guarantees that any delivered Products correspond to the agreed specifications, that an outgoing products check has been carried out and documented, that such Products are in a condition required by the subject Order, are suitable for the intended use and that non-faulty raw materials were used. Seller undertakes to maintain a suitable quality management system and provide the means and equipment required for quality assessments, which shall also be documented.
- b) If measurement methods are required by Hydra with regard to measurement equipment for establishing the quality of the Products, these must be strictly adhered to by Seller.
- c) Seller shall accept an audit by Hydra at any time.

**11. Packaging, Transportation and Insurance**

- a) The loss of and damage to any Products which are caused by faulty packaging or incorrect modes of transportation shall be paid for by Seller. Following inspection of any Products, Hydra shall notify Seller if they are damaged or if transport damage is evident as a result of insufficient packaging.
- b) Hazardous Products are to be packaged according to applicable laws and identified accordingly. The corresponding safety data sheets are to be delivered along with any such Products. Dangerous Products are also to be packaged and labelled according to the applicable laws. The hazardous goods classification or, if applicable, the note "non-hazardous goods" is to be stated on the delivery slip.
- c) Equipment for safe unloading and instructions for Hydra's staff regarding the legal safety guidelines for the handling of dangerous Products must be provided by Seller.
- d) Freight and packaging, insurance costs, licence fees and all public fees shall be charged to Seller. The delivery must be made to the designated location unless agreed otherwise, including all additional fees.
- e) A delivery slip with all technical information, the delivery address and order number is to be included with each dispatched Order.

**12. Invoicing**

Seller shall prepare an invoice with two copies immediately after delivery. The invoice shall include Hydra's order number and Seller's bank account details.

**13. Payment**

Payments shall be made within fourteen (14) days with a three percent (3%) discount or within thirty (30) days after receipt of the invoice. Alternative payment conditions shall be agreed by Hydra and Seller in writing.

**14. Termination**

- a) For Convenience  
Hydra may terminate any Order or any part of an Order for convenience at any time upon fifteen (15) days prior notice to Seller.
- b) Termination for Cause  
Hydra may terminate any Order or any part of an Order for cause in the event of any default by Seller, including any failure to comply with any terms and conditions of an Order or these terms and conditions. Late deliveries, deliveries of Products that are defective or that do not conform to the applicable Order and failure to provide Hydra, upon request, with reasonable assurances of future performance shall all be bases for termination for cause.

**15. Warranties**

Seller represents, warrants and guarantees that all goods furnished under any Order shall conform in all respects to all samples, specifications and appropriate standards, shall be new, and shall be free from defects in materials or workmanship. All warranties implied by applicable law, including implied warranties of merchantability and fitness for a particular purpose, shall apply to all goods furnished under any Order, notwithstanding any other terms or disclaimers set forth in Seller's invoices or other confirming documents. All warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Hydra, its successors, assigns, customers and users of any of the Products sold by Hydra. Seller represents and warrants to Hydra that the title conveyed on all Products delivered to Hydra under these terms and conditions and any Order shall be good and marketable, and such Products shall be delivered free from any security interest or other lien or encumbrance (including any statutory or common law lien). Seller guarantees that the delivery and use of any Products shall not breach any third party rights (e.g. patents, brands, designs, copyright, and rights relating to computer software) and undertakes to release Hydra from and hold Hydra harmless with regard to all third party claims.

**16. Indemnification**

To the maximum extent allowed by law, Seller shall defend and indemnify Hydra and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Hydra may incur or be obligated to pay as a result of, arising from or relating to any defect or nonconformance of any Products purchased under any Order, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

**17. Assignments and Subcontracting**

No part of any Order may be assigned or subcontracted by Seller without prior written approval of Hydra.

**18. Notices**

All notices must be in writing and shall be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable Order or by written notice.

**19. Entire Agreement**

The terms and conditions herein, together with any Order, comprise the complete and final agreement between Hydra and Seller, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between Hydra and Seller, either written or oral, on its subject.

**20. Modifications**

No Order nor these terms and conditions may be modified or amended except in writing signed by both Hydra and Seller specifically referring to the applicable Order and/or these terms and conditions.

**21. Choice of Law and Forum Selection**

All dealings between Hydra and Seller shall be governed by the laws of Missouri. Any legal or equitable action of whatever nature against or by Hydra arising out of or related to any Order, or arising out of any dealings between Hydra and the Seller shall solely be brought in the appropriate court in the state of Missouri located in the jurisdiction where Hydra has its principal place of business

**22. Final provisions**

- a) Should individual provisions of any Order be partially or completely ineffective or undefined, this shall not effect the enforceability of the remaining provisions. A provision which, as far as legally possible, most closely reflects the provision intended by the parties in economic terms, shall be used in place of the ineffective provision or undefined aspect.
- b) Hydra and Seller shall keep confidential all information that they have received from the other party that is neither public nor generally accessible. Confidentiality shall be maintained after the end of any contractual relationship.
- c) Seller's claims shall not be offset, pledged or assigned without the prior approval of Hydra.

**Hydra Sponge Co.**

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