



GENERAL TERMS AND CONDITIONS OF SALE

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

- 1. General**

These terms and conditions apply to all sales of goods or products (the "Products") by Hydra Sponge Co. ("Hydra") to a purchaser of the Products (a "Buyer") regardless of whether Buyer purchases the Products through a written sales agreement or purchase order, whether electronic, verbal or written (collectively or individually, an "Order"). Hydra's acceptance of any Order is expressly subject to Buyer's assent to each and all of the terms and conditions set forth herein. Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's failure to submit written objection thereto, or from Buyer's acceptance of all or any part of any Products ordered.
- 2. Payment Methods**
 - a) Prepayment

Buyer can choose to pay for any Order by wire transfer, check, and/or ACH transfer prior to shipment. All payments must be made in US funds.
 - b) Credit terms

Buyer may apply for credit terms of Net 30, after successfully completing a Credit Application, at which time a credit limit shall be established. Credit limits shall be recalculated yearly and Buyer shall be notified of any changes. No Order shall be processed until the Credit Application is received and reviewed. Hydra may at any time refuse to make shipment or delivery if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in compliance with Hydra's credit policies. Hydra policies or practices may be changed at any time. Hydra may require payment in full or other security in advance. Without limiting the generality of the foregoing, if Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay Hydra's invoices as they become due, Hydra reserves the right to: (a) cancel all or any part of an Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment of Products.
 - c) Sales Tax

Any tax which Hydra may be required to pay or collect through assessment or otherwise under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any Products, including, without limitation, taxes upon or measured by receipts from sales, shall be for the account of Buyer and may be added to the price of such Products. Buyer shall promptly pay the amount thereof to Hydra upon demand but may, in lieu of such payment, furnish tax exemption certificates acceptable to the appropriate taxing authorities to Hydra.
 - d) Shipping

Lead-times are dependent on type and amount of Products. All items shipped are FOB shipping point by UPS or freight truck, but title to any Products shipped shall remain with Hydra until fully paid for by Buyer. A complete physical address must be provided by Buyer.
- 3. Prices**

Our prices are FOB shipping point, with charges added to the invoice, unless other arrangements are confirmed prior to delivery. Prices are subject to change without notice.
- 4. Setoff; Deductions.** In no event is Buyer authorized to setoff, deduct, recoup or withhold any amount from the amounts owed or payable to Hydra, unless specifically authorized in writing by Hydra.
- 5. Defects**

Notice of defective Products must be made within thirty (30) days of delivery. Absence of such notice constitutes a waiver by Buyer on all claims or defects.
- 6. Lost Shipments**

As soon as Buyer realizes that a shipment has been lost, Buyer shall contact the carrier company to help locate and track the shipment.
- 7. Damages in Shipment**

All Products are shipped FOB shipping point. Buyer shall inspect the shipped Products upon delivery, and if damage has occurred during shipment, Buyer shall not accept any Products until the person making the delivery has endorsed the bill of lading with a statement for the extent of any such damage. Buyer is responsible for filing a claim for any damaged Products.
- 8. Warranty**

Hydra warrants that the Products shall be delivered free of material defects. HYDRA MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THESE STANDARD TERMS AND CONDITIONS, AND HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9. Cancellation.**

An Order cannot be canceled or modified by Buyer, except with the express written consent of Hydra.
- 10. Termination.** Hydra may terminate an Order or any part thereof at any time and for any reason. Upon such termination, Buyer agrees to waive all claims for damages, including, without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provided such costs do not exceed the price of such Order.
- 11. Indemnification**

To the maximum extent allowed by law, Buyer 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: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of any Products; (b) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation related to any Products; or (c) Buyer's breach of an Order or the terms and conditions herein.
- 12. Limitation of Liability**

IN NO EVENT SHALL HYDRA BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER ASSERTED. HYDRA'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO AN ORDER SHALL NOT EXCEED THE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM OR, AT THE ELECTION OF HYDRA, THE REPAIR OR REPLACEMENT OF SUCH PRODUCTS. ALL CAUSES OF ACTION AGAINST HYDRA ARISING



OUT OF OR RELATING TO AN ORDER OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE (1) YEAR OF THE TIME OF ACCRUAL THEREOF. Transportation charges for the return of any Products shall not be paid unless authorized in advance by Hydra, its officers, directors or agents. Buyer acknowledges and agrees that the manufacturing services performed by Hydra shall not be interpreted as approval of any design or function determined by Buyer and Hydra assumes no liability in regard to Buyer's compliance with the fulfilment of any of its obligations with respect to any statute, regulation or bylaw, or Buyer's failure to comply with or fulfil any of its obligations. Final determination of the suitability of any Products for the use contemplated by Buyer is the sole responsibility of Buyer.

13. Force Majeure.

Hydra shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the reasonable control of Hydra.

14. Assignment.

No part of any Order may be assigned by Buyer without prior written approval of Hydra. Hydra shall be entitled to cancel an Order upon written notice to Buyer in the event that Buyer assigns or attempts to assign such Order without Hydra's prior written consent.

15. 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.

16. Entire Agreement.

The terms and conditions herein, together with any Order, comprise the complete and final agreement

between Hydra and Buyer, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between Hydra and Buyer, either written or oral, on its subject.

17. Modifications.

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

18. Governing

Notwithstanding anything to the contrary or the conditions that may be contained in any Order or other documentation, Hydra accepts an Order only on the terms and conditions contained herein. These terms and conditions exclude any other terms and conditions inconsistent therewith which Buyer might seek to impose even though such other terms and conditions may purport to exclude or supersede any terms and conditions inconsistent with them.

19. Choice of Law and Forum Selection

All dealings between Hydra and Buyer 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 Buyer 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.

Hydra Sponge Co.

300 Westlink Dr.
Washington, MO 63090, USA

Ph: 001 800 325 9922

Fax: 001 636 349 5660

www.hydra-sponge.com

Company of the FoamPartner Group

www.foampartner.com

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