

## TERMS OF SERVICE

The Terms of Service (“Terms”) for access to and use of the website located at [www.HyWatts.com](http://www.HyWatts.com) and its subdomains, including all data, content and functionality thereof (collectively, the “Website”), which is operated by HyWatts, Inc. (“HyWatts”).

These Terms govern your access to and use of the Website. Please read these Terms carefully, as they include important information about your legal rights. By accessing and using the Website, you are agreeing to these Terms. If you do not understand or agree to these Terms, please do not use the Website. For purposes of these Terms, “you” and “your,” means you as the user of the Website. If you use the Website on behalf of a company or other entity then “you” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) you agree to these Terms on the entity's behalf.

**Please note that these terms of service contain an arbitration clause and class action waiver. By agreeing to these Terms, you agree (a) to resolve all disputes with us through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and (b) that you waive your right to participate in class actions, class arbitrations, or representative actions. You have the right to opt-out of arbitration in the arbitration clause as explained more fully in the arbitration clause.**

### Who May Use the HyWatts Website.

The Website is operated in the United States. Those who choose to access the Website from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. The Website although designed principally for users in the United States also seeks to facilitate the rights of individuals under Chapter III of REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repeal of Directive 95/46/EC (General Data Protection Regulation).

### Our Privacy Policy.

Our Privacy Policy describes how we handle the information you provide to us when you use the Website. For an explanation of our privacy practices, please visit our Privacy Policy.

### Rights Granted for Website Use.

**Rights.** Subject to your compliance with these Terms, HyWatts hereby grants to you, a personal, worldwide, royalty-free, non-assignable, non-sublicensable, non-transferrable, and non-exclusive right to access and use the Website. The foregoing has the sole purpose of enabling you to use and enjoy the benefits of the Website as provided, in the manner permitted by these Terms and subject to the use restrictions described below.

**Restrictions.** You may not do any of the following, unless applicable laws or regulations prohibit these restrictions or you have our written permission to do so: (a) download, modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Website; (b) duplicate, decompile, reverse engineer, disassemble or decode the Website (including any underlying idea or algorithm), or attempt to do any of the same; (c) use, reproduce or remove any copyright, trademark, service mark, trade name, slogan, logo, image, or other proprietary notation displayed on or through the Website; (d) use automation software (bots), hacks, modifications (mods) or any other unauthorized third-party software

## HyWatts, Inc.

designed to modify the Website; (e) exploit the Website for any commercial purpose; (f) access or use the Website in any manner that could disable, overburden, damage, disrupt or impair the Website or interfere with any other party's access to or use of the Website or use any device, software or routine that causes the same; (g) attempt to gain unauthorized access to, interfere with, damage or disrupt the Website or the computer systems or networks connected to the Website; (h) circumvent, remove, alter, deactivate, degrade or thwart any technological measure or content protections of the Website; (i) use any robot, spider, crawlers or other automatic device, process, software or queries that intercepts, "mines," scrapes or otherwise accesses the Website to monitor, extract, copy or collect information or data from or through the Website, or engage in any manual process to do the same; (j) introduce any viruses, trojan horses, worms, logic bombs or other materials that are malicious or technologically harmful into our systems; (k) use the Website for illegal, harassing, unethical, or disruptive purposes; (l) violate any applicable law or regulation in connection with your access to or use of the Website; or (m) access or use the Website in any way not expressly permitted by these Terms.

### OWNERSHIP AND CONTENT

**Ownership of the Website.** The Website, including content, information, trademarks and other materials, are protected under copyright, trademark and other intellectual property laws. You agree that HyWatts owns all right, title and interest in and to the Website. We and our licensors reserve all rights in connection with the Website and its content, including the exclusive right to create derivative works.

**Ownership of Trademarks.** The HyWatts name, the HyWatts logo and all related names, logos, product and service names, designs and slogans are registered trademarks of HyWatts or its affiliates or licensors. Other names, logos, product and service names, designs and slogans that appear on the Website are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by HyWatts.

### DISCLAIMERS, LIMITATIONS OF LIABILITY AND INDEMNIFICATION

**Disclaimers.** Access to and use of the Website are at your own risk. You understand and agree that the Website is provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, HyWatts, its affiliates, related companies, officers, directors, employees, agents, representatives, partners and licensors ( "HyWatts Entities") DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

**Limitations of Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, YOU AGREE THAT IN NO EVENT WILL THE HYWATTS ENTITIES BE LIABLE (A) FOR DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE WEBSITE AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF THE HYWATTS ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) FOR ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE WEBSITE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. THE HYWATTS ENTITIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED SHALL NOT EXCEED THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## ARBITRATION AND CLASS ACTION WAIVER

**Informal Process First.** You agree that in the event of any dispute between you and the HyWatts Entities, you will first contact HyWatts and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation, any court action.

**Arbitration Agreement and Class Action Waiver.** After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, “Claim”) relating in any way to your use of the HyWatts Website will be resolved by arbitration, including threshold questions of arbitrability of the Claim. You and the HyWatts agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the “JAMS Rules”) then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). Arbitration will be handled by a sole arbitrator in accordance with the JAMS Rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class arbitrations and class actions are not permitted. You understand that by agreeing to these Terms, you and HyWatts are each waiving the right to trial by jury or to participate in a class action or class arbitration. Notwithstanding the foregoing, you and HyWatts will have the right to bring an action in a court of proper jurisdiction for injunctive or other equitable or conservatory relief, pending a final decision by the arbitrator. You may instead assert your claim in “small claims” court, but only if your claim qualifies, your claim remains in such court and your claim remains on an individual, non-representative and non-class basis.

**Costs of Arbitration.** Payment for any and all reasonable JAMS filing, administrative and arbitrator fees will be in accordance with the JAMS Rules. If the value of your claim does not exceed \$10,000, HyWatts will pay for the reasonable filing, administrative and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought was frivolous or brought for an improper purpose.

**Opt-Out.** You have the right to opt-out and not be bound by the arbitration provisions set forth in these Terms by sending written notice of your decision to opt-out to [legal@HyWatts.us](mailto:legal@HyWatts.us) or to the U.S. mailing address listed in the “How to Contact Us” section of these Terms. The notice must be sent to the HyWatts within thirty (30) days of your registering to use the Website or agreeing to these Terms, otherwise you shall be bound to arbitrate disputes in accordance with these Terms. If you opt-out of these arbitration provisions, HyWatts also will not be bound by them.

## ADDITIONAL PROVISIONS

**Updating These Terms.** HyWatts may modify these Terms from time to time in which case it will update the “Last Revised” date at the bottom of these Terms. If we make changes that are material, we will use reasonable efforts to attempt to notify you, such as by e-mail and/or by placing a prominent notice on the first page of the Website. However, it is your sole responsibility to review these Terms from time to time to view any such changes. The updated Terms will be effective as of the time of posting, or such later date as may be specified in the updated Terms. Your continued access or use of the Website after the modifications have become effective will be deemed your acceptance of the modified Terms.

**Termination of Rights.** If you breach any of the provisions of these Terms, all rights granted by HyWatts will terminate automatically. All sections which by their nature should survive the termination of these Terms shall continue in full force and effect subsequent to and notwithstanding any termination of this Agreement by HyWatts or you. Termination will not limit any of HyWatts’s other rights or remedies at law or in equity.

## **HyWatts, Inc.**

**California Residents.** If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Website of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

**Miscellaneous.** If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the rights granted hereunder may be assigned by the HyWatts but may not be assigned by you without the prior express written consent of the HyWatts. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for reference only and shall not be read to have any legal effect. The Website is operated by us in the United States. Those who choose to access the Website from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. These Terms are governed by the laws of the State of California, without regard to conflict of laws rules.

**How to Contact Us.** You may contact us regarding the Website or these Terms at: 2001 Addison Street, Suite 300, Berkeley, California, 94704, United States of America or by e-mail at [info@hywatts.com](mailto:info@hywatts.com)