



## General conditions for sales and delivery for Xycarb Ceramics B.V. and/or Schunk Semiconductor and/or Xycarb Ceramics Inc.

### Article I General

1. When these General Conditions for Delivery are part of tenders and agreements concerning the performance of deliveries and/or services by the contractor, all clauses of these conditions shall be operative between the parties, insofar there has been no explicit amendment in writing by both parties. A reference by the purchaser to his own conditions of purchase, invitations to tender or other conditions will not be accepted by the contractor.
2. In these conditions of delivery
  - product means: goods as well as services, such as maintenance, advice and inspection.
  - In these conditions of delivery
  - the contractor means: Xycarb Ceramics B.V. and/or Schunk Semiconductor and/or Xycarb Ceramics Inc.
  - the purchaser also means: he, to whom said tender is made;
  - service also means: contracting work.

### Article II Tender

1. Every tender made by the contractor is without engagement.
2. Every tender is based on the performance by the contractor under the agreement under normal circumstances and during normal working hours.

### Article III Agreement

1. If an agreement has been entered into writing, it is entered into on the day the contract is signed by the contractor, or the day the written order confirmation has been mailed by the contractor respectively.
2. By additional work is meant everything the contractor, in consultation with the purchaser, whether in writing or not, delivers and/or installs during the performance under the agreement exceeding the quantities explicitly laid down in the contract or in the order confirmation, or if the contractor performs more activities than explicitly laid down in the contract or order confirmation.
3. Verbal promises by and arrangements with subordinate employees of the contractor shall only bind the contractor after having been confirmed as such by the latter in writing.

### Article IV Price

1. In the prices given by the contractor VAT and other government levies and taxes on sales and deliveries are excluded. These prices are based on delivery ex works according to Incoterms prevailing on the date of tender, except for stipulations in the present conditions to the contrary. Works refers to the premises of the contractor.
2. If one or more elements of cost price are subject to an increase after the date of entering into the agreement - even if this occurs due to foreseeable circumstances - the contractor is entitled to increase the price agreed upon accordingly.



3. In the agreement the authority of the contractor is included to charge extra work done by him separately, as soon as the amount to be charged is known to him. The rules in paragraph 1 and paragraph 2 of this article apply accordingly to the calculation of extra work.
4. Cost estimates and plans are not charged separately, unless otherwise agreed upon. If the contractor should make new drawings, calculations, descriptions, models or tools, etc. for possible repeat orders, costs will be charged.
5. Packaging will not be included in the price and is charged separately. Packaging is not taken back.
6. Costs of loading and unloading and of transportation of raw materials, semimanufactures, models, tools, and other goods made available by the purchaser are not included in the price and are charged separately. Costs paid for by the contractor in this respect are regarded as an advance payment at the expense of the purchaser.
7. If the contractor has agreed to install a product, the price includes installation and ready-for-use delivery of the product at the address mentioned in the tender, as well as all costs, except for those costs which are not included in the price according to the preceding clauses or which are mentioned in article VII. Costs made due to weather conditions in which it is impossible to work will be charged.

**Article. V Drawings, calculations, descriptions, models, tools, etc.**

1. Information provided in catalogues, illustrations, drawings, data on size and weight, etc. are only binding if and insofar they are explicitly laid down in a contract signed by the parties or a confirmation of the order signed by the contractor.
2. Tenders issued by the contractor, as well as drawings, calculations, software, descriptions, models, tools, etc. produced or provided by the contractor remain his property, irrespective whether costs have been charged. The information contained within same or based upon methods of production and construction, products etc. remains exclusively reserved to the contractor, even if costs have been charged. The purchaser shall see to it that, except for performance under agreement, information given is only copied, shown, made known to or used by third parties with written permission by the contractor.
3. Any authorization/approval which may be necessary for the export and the use of the products to be delivered is to be obtained by the purchaser at his own expense. If the contractor assists the purchaser in any such endeavors then, the purchaser is to reimburse the contractor for any expenses which the contractor incurs.

**Article VI Term of delivery**

1. The term of delivery starts to run at the latest of the following points of time:
  - a. the day the agreement is entered into;
  - b. the day the contractor receives the documents, information, licences etc. necessary for performing the order;
  - c. the day the formalities required for commencing the work have been fulfilled;
  - d. the day the contractor receives what should be paid in advance before work will be commenced under the agreement.

If a date or week of delivery is agreed upon, the term of delivery shall be the period between the date the agreement is entered into and the date or week of delivery.



2. The term of delivery is based on the working conditions at the time the agreement is entered into and on timely delivery of the materials necessary for performing the work ordered by the contractor. If any delay might occur due to change in the said working conditions, for which change the contractor is not to blame, or because materials timely ordered for the performance of the work are not delivered on time, the term of delivery will be prolonged for as long as necessary.
3. With regard to the term of delivery the product is deemed to be delivered when it is ready for testing, if testing in the premises of the contractor has been agreed upon, and in other cases when it is ready for shipment, all this after the purchaser has been given notice in writing and without prejudice to the obligation of the contractor to fulfil possible installation obligations.
4. Without prejudice to other clauses in these conditions regarding prolongation of the term of delivery, the term of delivery is prolonged for the duration of the delay which arises on the side of the contractor when the purchaser has not met some obligation resulting from the agreement or has not co-operated as could be demanded from him with respect to the performance under the agreement.
5. Save for gross negligence on the part of the contractor, exceeding the term of delivery does not entitle the purchaser to terminate the agreement completely or partly. Exceeding the term of delivery - for whatever reason - does not entitle the purchaser to perform or to have work performed under the agreement without the Court's leave.
6. A contractual fine imposed when exceeding the term of delivery should be regarded as substituting a possible claim the purchaser might have for damages. Such a fine is not due if the exceeding of the term of delivery is the result of force majeure.

#### Article VII Installation

1. The purchaser is responsible towards the contractor for performing correctly and on time all installations, provisions and/or conditions necessary for the erection of the product to be installed and/or for the correct operation of the product in installed state on time, save if and insofar this performance is done by or on behalf of the contractor according to data presented and/or drawings made by or on behalf of the latter.
2. Without prejudice to the provisions sub 1, the purchaser shall in any case see to it at his own expense and risk that:
  - a. employees of the contractor can commence and continue their work during normal working hours from the moment they arrive at the place of installation and, moreover, if the contractor deems it necessary, outside of normal working hours provided that the purchaser has been notified in time;
  - b. suitable accommodation and/or all provisions under Government ordinances, the agreement and common use will be available to the employees of the contractor;
  - c. the access routes to the place of installation are fit for the required transportation;
  - d. the assigned place of erection is fit for storage and installation;
  - e. the necessary lockable depositories for materials, tools and other goods are available;
  - f. the necessary and usual workmen, auxiliary tools, auxiliary and industrial materials (fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting, etc. included), and the usual measuring and testing instruments of the company of the purchaser are in the right place at the disposal of the contractor on time and free of charge;
  - g. all necessary safety and precautionary measures have been taken and shall be maintained, and that all measures have been taken and shall be maintained in order to satisfy the appropriate Government regulations with respect to installation;
  - h. the mailed products are at the right place at the beginning of and during the installation.



3. Damages and costs which arise because the conditions stated in this article have not been fulfilled or have not been fulfilled on time are for the purchaser's account.
4. With regard to time for assembly and installation, article VI applies accordingly.

#### **Article VIII Inspection and acceptance test**

1. The purchaser shall inspect the product at the latest within 3 days after delivery as stated in article VI sub 3 or - if installation has been agreed upon - at the latest within 3 days after installation. If this term passes without written and specified notification of well-founded complaints, the product is assumed to have been accepted.
2. If an acceptance test has been agreed upon, the purchaser shall give the contractor the opportunity to perform the necessary tests and to apply those improvements and modifications which the contractor finds necessary after receipt or, if installation has been agreed upon, after installation. The acceptance test shall be performed immediately upon request of the contractor in the presence of the purchaser. If the acceptance test has been performed without specified and well-founded complaints, and if the purchaser does not meet said obligations, the product is assumed to have been accepted.
3. The purchaser shall put the necessary facilities, including those referred to in article VII sub 2 f, as well as representative samples of materials to be processed in sufficient quantities, on time, free of charge and in the right place at the disposal of the contractor for the acceptance test and for possible other tests, in order to simulate the circumstances of use of the product anticipated by the parties to the greatest extent possible. If the purchaser does not fulfil this, paragraph 2, the last sentence, applies.
4. In case of minor shortcomings, especially those which hardly or do not at all influence the anticipated use of the product, the product will be assumed to have been accepted despite these shortcomings. The contractor shall remedy such shortcomings as yet as soon as possible.
5. Without prejudice to the obligation of the contractor to meet his obligations of guarantee the acceptance according to the preceding paragraphs will exclude any claim of the purchaser for shortcomings in the performance of the contractor.

#### **Article IX Transition of risk and ownership**

1. As soon as the product has been delivered in the definition of art. VI sub 3, the purchaser bears the risk for all direct and indirect damage that may occur on or on account of this product, except insofar the damage is the result of the contractor's gross negligence. If the purchaser remains in default for taking up the product after having received a notice of default, the contractor will be entitled to charge all costs of storage of the product to the purchaser.
2. Without prejudice to the last paragraph and the provisions of article VI sub 3, the ownership of the product passes to the purchaser only when all debts of the purchaser to the contractor for deliveries or work, including interest and costs, have been paid for in full.
3. The case occurring the contractor shall have the right of unhindered access to the product. The purchaser shall give all co-operation to the contractor in order to provide the contractor the opportunity to execute the retention of ownership as stated in paragraph 2 by taking back the product, dismantling included if necessary.
4. The contractor is entitled, at the expense of the purchaser, to insure the delivery goods against theft, fire, water and other damage, unless the purchaser can provide evidence of already having done so himself.



### **Article X Payment**

1. If not otherwise agreed upon, net payment of the price agreed upon is to be made immediately upon receipt of invoice. .
2. Payment of additional work shall take place as soon as the purchaser has been charged for this.
3. All payments shall be made without any deduction or setting-off at the office of the contractor or into an account designated by him.
4. If the purchaser does not pay within the period agreed upon, he is considered in default by right and the contractor may without any notice of default charge interest at a rate of 3 points above the legal interest in force in The Netherlands counting from the expiry date as well as all judicial and extrajudicial costs in connection with the claim.
5. The purchaser is not entitled to withhold payment or to offset such payment due to counterclaims which are disputed by the contractor.

### **Article XI Guarantee**

1. Without prejudice to the following restrictions, the contractor guarantees the quality of the product he delivered as well as the quality of the materials used and/or delivered for the product, insofar deficiencies to the delivered product are concerned which cannot be detected at inspection or acceptance test respectively, of which the purchaser proves that these have arisen within 6 months after delivery under article VI sub 3 solely or mainly as a direct consequence of a defect in the construction applied by the contractor or due to inadequate workmanship or use of bad materials.
2. Paragraph 1 applies accordingly to deficiencies which cannot be detected at inspection or acceptance test respectively caused solely or mainly by poor installation by the contractor. If the contractor performs installation of the product, the term of guarantee of 6 months sub 1 goes into effect on the day the installation has been completed by the contractor, whereas in that case the term of guarantee ends in any case when 12 months after delivery under article VI sub 3 have passed.
3. The deficiencies falling under the guarantee sub 1 and 2 will be removed by the contractor by repair or replacement of the defective part, whether or not in the premises of the contractor or by mailing a part for replacement, this always at the contractor's discretion. All costs that go beyond the sole obligation as described in the preceding sentence, such as, but not restricted to, costs of transportation, costs of travelling and accommodation and costs of disassembly and assembly are at the expense of the purchaser.
4. In any case not included in the guarantee are deficiencies which arise from or are completely or partly caused by:
  - a. not taking into account the operating and maintenance instructions or other than anticipated normal use;
  - b. normal wear and tear;
  - c. installation or repair by third parties, including the purchaser;
  - d. the application of any Government regulation regarding the nature or the quality of the applied materials;
  - e. used materials or goods respectively used in consultation with the purchaser;
  - f. materials or goods which the purchaser has given to the contractor to be processed;
  - g. materials, goods, methods and constructions insofar applied at explicit instruction of the purchaser, together with materials and goods delivered by or on account of the purchaser;
  - h. parts the contractor has received from third parties, insofar as the third party has not given any guarantee to the contractor.



5. If the purchaser does not, does not adequately or does not timely meet with an obligation resulting from the agreement with the contractor or an agreement related to it, the contractor is not held to any guarantee for any of these agreements. If the purchaser proceeds to or has someone proceed to any dismantling, repair or other work concerning the product without prior written approval by the contractor, every claim resulting from the guarantee ceases to exist.
6. Complaints for deficiencies should be made in writing as soon as possible after discovery of the deficiencies, yet at the latest within 14 days after the term of guarantee has expired. Exceeding these terms results in expiration of every claim against the contractor relating to these deficiencies. Legal action should be instigated within 6 months after timely complaint under penalty of expiration.
7. If the contractor replaces parts/products to fulfil his obligations under the guarantee, the replaced parts/products become property of the contractor.
8. With respect to repair work or revision or other services performed by the contractor, guarantee is only given on the quality of the performance of the activities ordered unless otherwise agreed, this for a period of 6 months. This guarantee holds that the contractor has the sole obligation in case of defects to perform work again, insofar this proves to be defective. In that case the second full sentence of paragraph 3 applies accordingly.
9. No guarantee is given with respect to inspections, advice and similar activities by the contractor.
10. Alleged neglect on the part of the contractor to fulfil his obligations of guarantee does not relieve the purchaser from his obligations which arise from any agreement entered into with the contractor.

#### **Article XII Liability**

1. The contractor's liability is limited to fulfilment of the obligations of guarantee described in article XI of these conditions.
2. Save for gross negligence on the part of the contractor and save for the provisions in paragraph 1, all liability of the contractor, such as for commercial damage, other indirect damage and damage as a result of liability towards a third party, is excluded.
3. Thus, the contractor is also not liable for:
  - infringement of patents, licences or other rights of third parties as a result of the use of information presented by or on behalf of the purchaser;
  - damage or loss, from whatever cause, of raw materials, semimanufactures, models, tools, and other goods made available by the purchaser.
4. If the contractor gives help and assistance of whatever kind at installation without having installation assigned to him, this will be at the risk of the purchaser.
5. The purchaser is bound to hold the contractor harmless respectively to indemnify the contractor for all claims for damages made by third parties for which the liability of the contractor in relation to the purchaser is excluded in these conditions.

#### **Article XIII Force majeure**

In these General conditions for delivery, force majeure means every circumstance independent of the contractor's intention - even if this could already be anticipated at the time the agreement was entered into - which may permanently or temporarily prevent performance of the agreement, and, insofar as not already included, war, danger of war, civil war, riots, strikes, lock out, traffic disturbances, fire and other serious disruptions in the business of the contractor or his suppliers.



#### Article XIV Suspension and termination

1. In case the agreement cannot be performed as a result of force majeure the contractor has the right either to suspend the performance of the agreement for at the most 6 months or to terminate the agreement in whole or partly, all this without taking the matter to Court and without being held liable for damages. During the suspension the contractor is free to and at the end of the suspension he must choose either for performance or for complete or partial termination of the agreement.
2. In case of suspension as well as in case of termination sub 1, the contractor has the right to demand immediate payment of the raw materials, materials, parts and other goods he has reserved, processed and produced for the performance of the agreement, this for the value that should be reasonably pertaining thereto. In case of termination sub 1, after payment of the amount due according to the preceding full sentence, the purchaser is bound to accept the goods included therein, whilst failing to do so will give the contractor the right to store these goods at the expense of and for the risk of the purchaser or to sell these goods at the expense of the purchaser.
3. If the purchaser does not, does not adequately or does not timely fulfil any obligation which results from the agreement entered into with the contractor or from an agreement related to same, or if there are justified reasons to fear that the purchaser is not able or will not be able to fulfil his contractual obligations towards the contractor, and in case of bankruptcy, suspension of payment, shutting down, liquidation or partial assignment - whether or not as a security - of the company of the purchaser, including assignment of an important part of his receivables, the contractor has the right to either suspend the performance of each of these agreements for at the most 6 months or to completely or partly terminate these without notice of default and without taking the matter to Court, this without him being held liable for damages or to provide guarantee and without prejudice to further rights he is entitled to. During suspension the contractor is competent to and at the end of suspension he must choose between performance and complete or partial termination of the suspended agreement(s).
4. In case of suspension sub 3, the price agreed upon can be claimed immediately, with deduction of instalments already settled and of the costs saved by the contractor as a result of suspension, and the contractor has the right to store the raw materials, materials, parts and other goods reserved, processed and produced for the performance of the agreement at the purchaser's expense and risk. In case of termination sub 3 the price agreed upon - if no preceding suspension has taken place - can be claimed immediately, with deduction of instalments already settled and costs saved by the contractor as a result of termination, and the purchaser is bound to pay the amount specified herein before and to accept the goods included therein, whilst failing to do so will give the contractor the right to either store these goods at the purchaser's risk and expense or sell these at the expense of the purchaser.
5. The purchaser has no right to claim termination of the agreement with retroactive effect.

#### Article XV Disputes

1. Without prejudice to the application of paragraph 2 of this article and without prejudice for the possibility to demand a relief in summary proceedings from the President of the competent "Arrondissements- rechtbank" (District Court), all disputes that might arise as a result of an agreement to which these conditions for delivery apply completely or partly, or as a result of further agreements which are a consequence of such an agreement, shall be settled by arbitrators, excluding the common judge. This court of arbitration shall be appointed under the Regulations of the "Stichting Raad van Arbitrage voor Metaalnijverheid en -Handel" (Foundation Board of Arbitration for Mechanical Engineering Industry and Trade) in The Hague, and shall award in compliance with the Regulations of that Board.



2. As far as the disputes described in the preceding paragraph belong to the absolute competence of the "Kantonrechter" (Magistrates Court) according to rules of the Netherlands Code of Civil Proceedings, only the competent "Kantonrechter" (Magistrates Court) shall be able to settle the dispute.

**Article XVI Applicable law**

All agreements to which these conditions fully or partly apply shall be governed by Netherlands law, prevailing for the Kingdom in Europe.

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