

XYCARB CERAMICS INC.

TERMS AND CONDITIONS OF SALE

This Acknowledgment constitutes acceptance of Customer's purchase order for the goods and services specified on the face hereof ("Products"), subject to Customer's consent to the Terms and Conditions of Sale below. Any additional or different terms, including but not limited to those on Customer's purchase order, are hereby objected to by Xycarb. If Xycarb does not receive a written objection within 10 days of the date of this Acknowledgment, Customer's purchase order, as amended or supplemented by this Acknowledgment, constitutes a binding obligation to purchase the Products.

PRICES

(a) Prices shown on the face of this Acknowledgement are in US dollars, include packaging for domestic shipment, and are exclusive of any other amounts including without limitation fees for export, special packaging, transportation and insurance.

(b) Prices do not include any taxes, customs duties or tariffs. When Xycarb has the legal obligation to pay or collect any such taxes, the appropriate amount shall be paid by Customer. If Customer is exempt from any such taxes, Customer must provide Xycarb with a valid exemption.

PAYMENT

(a) Xycarb will invoice Customer for each shipment. The amount invoiced will include the price of the Products plus all applicable taxes, fees, transportation, insurance, and other charges. If all Products in Customer's purchase order are not shipped at the same time, Xycarb will invoice Customer at the time of shipment for the products that are shipped.

(b) Provided Customer has an approved credit application, payments, in US dollars, are due 30 days after the date of invoice. Any unpaid due amounts will be subject to interest at 1.5% per month, or, if less, the maximum rate allowed by law.

(c) For Products that are to be exported, payment must be by a confirmed, irrevocable letter of credit, sufficient to cover the full amount of the invoice, and shall be made against Xycarb's invoice upon presentation of Xycarb's shipping documents.

DELIVERY

(a) The shipment dates in this Acknowledgment are estimates only. Customer acknowledges that such dates may change due to unpredictable market trends.

(b) Products shall be packed for shipment in Xycarb's standard shipping cartons, marked for shipment to the destination specified in Customer's purchase order, and made available for pickup by the carrier at Xycarb's shipping location, at which time risk of loss shall pass to Customer.

(c) Customer shall pay all freight, insurance, and other shipping expenses, as well as expenses for any special packing.

(d) Xycarb retains title to all Products until Xycarb receives full payment.

CHANGES AND CANCELLATIONS

(a) Customer may reschedule or cancel purchase orders for standard Products (but not for services) upon 30 days written notice. Customer may reschedule or cancel purchase orders for non-standard Products, or for services, only if Customer gives written notice longer than the applicable lead-time.

(b) Xycarb may, from time to time in its sole discretion: (i) discontinue or limit its production of any Product; (ii) allocate, terminate or limit deliveries of any product in time of shortage; and (iii) modify the design of, specifications for, or construction of any Product, provided the modification has equivalent form, fit and function.

(c) All shipments and charges set forth on any invoice will be deemed correct unless Xycarb receives from Customer, no later than fifteen (15) days after the date of shipment, a written notice specifying the shipment, the purchase order number, and the exact nature of the non-conformity.

WARRANTY

(a) Xycarb warrants to Customer that each Product, as delivered, will be free from defects in materials and workmanship for a period of one

(1) year from the date such product is delivered to Customer ("Warranty Period"). Xycarb's sole liability and Customer's exclusive remedy for products that fail to conform to this Xycarb product limited warranty ("Nonconforming Products") is limited to repair or replacement of such Nonconforming Products, at Xycarb's sole option and election. The warranty for the repaired or replaced Product is limited to the scope and duration of the original warranty for the Nonconforming Product. This warranty is contingent upon proper use of the Product in the application for which it was intended and does not apply to any Product that is subjected to unusual physical or electrical stress, misuse, neglect, improper testing or storage, or unauthorized repair.

(b) The above warranty is for Customer's benefit only, and is non-transferable. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION (a) ABOVE, XYCARB MAKES NO WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE. XYCARB SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES AND CONDITIONS OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

(c) Return of defective Products must be made according to Xycarb's then-current return and RMA policies.

(d) Customer shall indemnify, defend and hold harmless Xycarb for any costs, expenses, damages, or other losses arising out of (i) any warranty greater scope or duration than that set forth in this Xycarb Product Limited Warranty; (ii) failure to disclaim implied warranties and limit remedies and liabilities, by and on behalf of Xycarb.

LIMITATION OF LIABILITY

XYCARB'S LIABILITY TO CUSTOMER ARISING OUT OF OR RELATING TO ANY PRODUCTS SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO XYCARB FOR SUCH PRODUCTS. IN NO EVENT WILL XYCARB BE LIABLE FOR LOST USE, PROFITS, REVENUE, COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR ANY OTHER SPECIAL, INDIRECT, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER XYCARB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

GENERAL

(a) All designs, data, drawings, mask works, software, or other technical information supplied by Xycarb to Customer in connection with this sale shall remain Xycarb's sole property.

(b) Xycarb will be excused from any obligation to the extent performance thereof is rendered impossible by acts of God, fire, flood, riots, material shortages, strikes, governmental acts, disasters, earthquakes, inability to obtain labor or materials through its regular sources, or any other reason beyond the reasonable control of Xycarb.

(c) None of the Products or underlying information or technology may be exported or reexported, directly or indirectly, contrary to US law or US Government export controls.

(d) THESE TERMS AND CONDITIONS ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. The federal and state courts in Austin, Texas will have exclusive jurisdiction to adjudicate any dispute arising out of these Terms and Conditions of Sale.

