

**Silca Service- und Vertriebsgesellschaft für Dämmstoffe mbH
D-40822 Mettmann, Germany**

The sale of materials and goods („Product“) by Silca („Seller“) shall be subject to the following provisions. Terms and conditions of Buyer shall in no event apply or deem to apply by accepting payments, unless Seller has explicitly agreed thereto in writing.

Receipt by Seller of Buyer’s order or order confirmation without objection of Seller to the terms and conditions therein, shall not constitute acceptance by Seller of such terms and conditions.

1. Product Information

- 1.1. Any information relating to the Product and its use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of Seller, shall not take effect as terms of the Contract unless expressly referred to in the Contract.
- 1.2. Unless otherwise agreed, Buyer does not acquire any property rights in software, drawings, technical information, etc., which may have been made available to him. Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the Product.
- 1.3. Delivery to and possession by Buyer of drawings and technical specifications furnished by Seller in connection with the delivery of the Product does not convey any permission to Buyer to manufacture the Product or to disclose the technical specifications, manuals and the like to any third party for any other purpose without the prior written consent of Seller.

2. Prices and Terms of Payment

Unless otherwise agreed in writing, the price does not include VAT and is based upon ex works (INCOTERMS 2000) delivery.

Unless otherwise agreed, net payment in full on all invoices is due 30 (thirty) days after the date of ex works delivery and any unpaid balance shall be subject to delay interest of 8 (eight) percent p. a. thereafter.

Buyer must not withhold any due payments by reasons of any counter-claims not recognized by Seller, nor must Buyer set any such counter-claims off from any payments due.

3. Delivery, Remedies for Delay

- 3.1. The quoted/agreed delivery date is subject to unavoidable delays and Seller shall be free of any liability for delayed delivery because of any cause not within Seller’s control, including but not limited to strikes, fire, accidents, explosions, acts of God, acts of governmental authorities, war or warlike operations, threats of terrorism or strikes of terrorists or other events beyond Seller’s reasonable control.
- 3.2. When there is delay in delivery of any Product, for which Seller is to be held responsible, Buyer is entitled to claim liquidated damages equal to 0,5 % (or such other percentage as may be agreed) of the ex works price of the delayed Product for each complete week of delay, provided Buyer notifies Seller of the delay within 15 (fifteen) days of the date, when delivery should have taken place.
Where Buyer so notifies Seller, however, after 15 (fifteen) days of the agreed date of delivery, liquidated damages will run from the date that Seller has received Buyer’s notice. Liquidated damages for delay shall not exceed 5 (five) percent of the ex works price of the delayed Product.
- 3.3. If Seller has not delivered the Product for reasons for which he is responsible by the date on which Buyer has become entitled to the maximum amount of liquidated damages for delay, and if the Product has still not been delivered, then Buyer may by notice in writing to Seller, terminate the Contract in respect of such part of the Product as cannot in

consequence of Seller’s failure to deliver be used as intended by Buyer.

- 3.4. Liquidated damages for delay and termination of the respective sale contract are the exclusive remedies available to Buyer in case of delay in delivery or non-delivery.

4. Quantities

Seller reserves the right to reduce quantities and amend the delivery schedule to such quantities as Seller may determine, in the event, that Seller does not receive the required quantities of material from its sources of supply for any cause beyond its control.

If Buyer is not satisfied with the quantities and/or deliveries as so reduced and/or so amended, Buyer’s exclusive remedy shall be to cancel the sale contract by giving Seller written notice of cancellation within 3 (three) days after receipt of notice from Seller of such reduction and/or amendment.

5. Liability for Non-Conformity of the Product

- 5.1. Buyer shall examine the Product as soon as possible after arrival at its destination and shall notify Seller in writing of any lack of conformity of the Product within 10 (ten) days from the date when Buyer discovers or ought to have discovered the lack of conformity.
In any case Buyer shall have no claim and no remedy for lack of conformity of the Product, if he fails to notify Seller thereof within 12 (twelve) months from the date of ex works delivery of the Product.
- 5.2. The Product will be deemed to conform to the contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the Parties, but Buyer will be entitled to any abatement in the price usual in the trade or through course of dealing for such discrepancies.
- 5.3. On receipt of Buyer’s notice in writing specifying the lack of conformity (and provided Buyer has given such notice in compliance with the provisions of clause 5.1. hereinabove), Seller shall at his option remedy the lack of conformity as follows:
 - (a) Seller shall within a period of time which is reasonable in the circumstances replace the non-conforming Product on an ex works delivery basis; or
 - (b) Seller shall within a period of time which is reasonable in the circumstances repair the Product at Buyer’s premises, for which Buyer has to grant access to Seller’s personnel and to give all reasonable support and assistance.

If Seller has chosen to deliver substitute products, then Buyer shall place the non-conforming product at Seller’s disposal and return the same at Seller’s place of business or any other place destined by Seller, the delivery cost of which being reimbursed by Seller.
- 5.4. If Seller does not fulfil his duties under Clause 5.3. within a reasonable period of time, Buyer may, by written notice, fix an additional period of time of reasonable length for performance by Seller of Seller’s repair or replacement obligations. If Seller fails to fulfil either of these obligations at all or successfully within such additional period of time,

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Buyer is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided, that such price reduction shall under no circumstances exceed 30 (thirty) percent of the purchase price.

- 5.5. Where the lack of conformity of the Product is so substantial as to significantly deprives Buyer of the benefit of the Contract, Buyer may declare the Contract avoided by giving written notice to Seller. Buyer is then entitled to compensation for the proven direct loss he has suffered up to a maximum of 10 (ten) percent of the purchase price.
- 5.6. Seller is not liable for lack of conformity of the Product arising out of materials provided by or a design made or a product quality specified by Buyer. Seller is liable only for any lack of conformity of the Product which appears under the normal conditions of operation provided for in the Contract or outlined by Seller in its product description and under proper use of the Product. Seller's liability does not cover defects or deficiencies which are caused by faulty maintenance, incorrect erection/installation or faulty repair by Buyer, or by alterations carried out without Seller's consent in writing. Finally, Seller's liability does not cover normal wear and tear or damage from corrosive materials, incorrect solvents, fluids or lubricants and undue exposure to excessive high temperatures.
- 5.7. THE ABOVE LIABILITY OF SELLER FOR LACK OF CONFORMITY OF THE PRODUCT IS IN LIEU OF ALL OTHER LIABILITIES OR WARRANTIES, EXPRESS OR IMPLIED BY CONTRACT OR UNDERLYING LAW. SELLER DOES NOT GIVE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY AGENT OR REPRESENTATIVE OF SELLER SHALL CONSTITUTE A WARRANTY BY SELLER OR GIVE RISE TO ANY LIABILITY OR OBLIGATION OTHER THAN STATED ABOVE.

6. Retention of Title

The Product shall remain the property of Seller until full payment of the price has been effected. Buyer shall at the request of Seller assist him in taking any measures necessary to protect Seller's title to the Product in the country concerned. The retention of title shall not affect the passing of risk in accordance with the respective applicable INCOTERM.

7. Force Majeure

- 7.1. A Party is not liable for failure to perform any of his obligations insofar as that failure was due to an impediment beyond his control which could not reasonably have avoided or overcome.
- 7.2. A Party seeking relief shall, as soon as practical after the impediment and its effects upon his ability to perform become known to him, give notice to the other Party of such impediment and its effects on his ability to perform. Notice shall also be given promptly when the ground of relief ceases.
- 7.3. Neither Party can invoke an impediment beyond his control as an excuse to make payments to the other, when due and payable.
- 7.4. If the grounds of relief subsists for more than 3 (three) months, either Party shall be entitled to terminate the Contract by written notice to the other.

8. Limitation of Liability

- 8.1. In no event, whether as result of breach of contract, warranty, tort or otherwise shall either Party to the other be liable for any consequential, indirect, incidental or punitive damages, including but not limited to loss of profit or revenues, loss of use of the Product or any associated equipment and plant, cost of capital, down-time costs or claims of third parties for such damages.
- 8.2. If Seller furnishes Buyer with advice or other assistance which concerns any Product supplied or any system or equipment in which any such Product may be installed, whether pursuant to any express agreement or in connection with the delivery of the Product, the furnishing of such advice or assistance shall not subject Seller to any liability, whether in contract, warranty, tort or otherwise.
- 8.3. The total liability of Seller in respect of any and all claims, whether in contract, warranty, tort or otherwise arising out of or resulting from the performance or non-performance of any obligation under this Contract, shall not exceed the price attributable to the Product (or service if billed separately) which gives rise to the claim. Any such liability shall terminate upon the expiration of the 12 (twelve) months period specified in Clause 5.1. and any action taken by Buyer before judicial or arbitral tribunals after 12 (twelve) months from the date of delivery of the Product shall be time-barred. It is expressly agreed that after the expiry of such term, Buyer will not plead non-conformity of the Product or make a counter-claim in respect thereof, in defense to any action taken by Seller against Buyer for non-performance of this Contract.

9. Governing Law and Jurisdiction

- 9.1. Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i. e. these General Terms and Conditions and any Specific Conditions agreed upon by the Parties) shall be governed
- by the United Nations Convention on Contracts for the International Sale of Goods (CISG) and
 - to the extent that such questions are not covered by CISG, by reference to the Substantive Law of Switzerland.
- 9.2. Place of performance and court jurisdiction for both Parties shall be Seller's registered seat of business. However, Seller shall be entitled to collect outstanding payments by means of an action, summary payment requests or other appropriate court proceedings through the competent courts at Buyer's principal place of business.