

## General Terms and Conditions of Purchase

### 1. Application

- a. Unless otherwise expressly agreed to in writing, the under mentioned general terms and conditions of purchase apply to all purchase orders of goods or services of Karl-H. Mühlhäuser GmbH & Co. KG and Mühlhäuser – Obermann GmbH, hereinafter Mühlhäuser.
- b. These terms and conditions of purchase apply exclusively. Deviating, contradictory or supplementary terms and conditions of the supplier shall only be part of the contract in so far as Mühlhäuser expressly consents to their applicability in writing. This consent requirement applies in any case, even if Mühlhäuser accepts the supplier's deliveries without reservation in knowledge of contrary or deviant terms and conditions.
- c. The terms and conditions of purchase shall apply in their respective versions as a framework agreement for future orders with the supplier, without Mühlhäuser having to refer to them in each individual case. The latest version of the terms and conditions of purchase can be found at [www.khmtunnel.com/en/company/downloads](http://www.khmtunnel.com/en/company/downloads).
- d. Any references to the applicability of statutory provisions are for the purpose of clarification only. Even without such references, the statutory provisions shall apply without limitation insofar as they are not directly modified or expressly excluded in these terms and conditions of purchase.
- e. Should individual provisions of these terms and conditions be or become totally or partially ineffective, the validity of the remaining provisions is not affected. The wholly or partially invalid provision shall be replaced by a provision which resembles the invalid provision as closely as possible in terms of economic success.

### 2. Conclusion of contract

- a. Orders, amendments and other legally relevant declarations are only considered placed when made in writing. This also applies to declarations submitted by fax or email. Written orders do not require a signature to be valid.
- b. All correspondence must be conducted with the purchasing department. Agreements with other departments that modify the provisions of the terms and conditions of purchase require the express written confirmation by the purchasing department.
- c. Acceptance of our order shall be confirmed within five working days by way of signature on a copy of the order or a separate order confirmation, otherwise Mühlhäuser is entitled to revoke the order. Within this period, the supplier shall also point out or notify Mühlhäuser of any errors (e.g. typographical or calculation errors) or incompleteness.
- d. Any modifications or additions to the purchase order shall be highlighted, and shall become valid only upon written consent. Receipt of goods and/or payments does not constitute acknowledgement or confirmation.

### 3. Prices & Terms of Payment

- a. The price given in the order shall be binding. Unless otherwise agreed to in writing, the price shall include all services and additional services provided by the supplier as well as incidental expenses (e.g. appropriate packaging, export documents, customs duties, import charges, transportation costs including any transport and necessary insurances. If applicable, VAT must be stated separately.
- b. The invoice shall be settled within 60 days after delivery, but not before receipt of a proper and verifiable invoice, without prejudice to the right of subsequent complaints. For payment within 14 days, Mühlhäuser is entitled to deduct a three percent discount. Payments are subject to verification of the invoices.
- c. Mühlhäuser may exercise its legal rights of set-off and retention. Moreover, Mühlhäuser shall be entitled to off-set claims against the supplier.
- d. The supplier shall have a right of set-off or retention only against counterclaims which have been legally recognized or are undisputed from the same legal relationship.

### 4. Delivery, delivery period, transfer of risk and delayed delivery

- a. Unless otherwise agreed to in writing, the supplier shall deliver DAP destination (Incoterms 2010), including appropriate packaging.
- b. The risk of accidental loss and / or accidental deterioration and / or damage of the goods shall be transferred to Mühlhäuser with delivery at the place of performance. Provided acceptance has been agreed upon, this shall be decisive for the transfer of risk.
- c. The delivery date(s) indicated in the order shall be binding. By recognizing, for any reason, that an agreed delivery date cannot be met, the supplier shall immediately notify Mühlhäuser of this fact in writing, stating the reasons for the delay and its expected duration. The supplier shall be deemed in default with a delivery without the requirement of Mühlhäuser giving further reminders if he fails to meet a fixed delivery date.
- d. Partial deliveries or deliveries before the agreed delivery date will only be accepted on the basis of a prior explicit agreement of Mühlhäuser.
- e. In the event of non-delivery or delay in delivery, then the rights of Mühlhäuser – in particular the right of withdrawal and compensation – shall be determined in accordance with the statutory provisions. If delivery is delayed beyond a reasonable grace period set by Mühlhäuser, Mühlhäuser is entitled to - without prior notice - refuse acceptance, withdraw from the contract, insist in fulfillment of the contract, or to claim compensation for non-fulfillment.
- f. Unconditional acceptance of the goods and/or services does not constitute a waiver of claims for damages.

- g. The supplier shall supply Mühlhäuser with spare parts at fair market prices for a minimum period of 12 years after delivery, in particular for items that become part of a Mühlhäuser product.
- h. All types of wood packaging materials used (pallets, crates, dunnage etc.) must be treated according to IPPC standards and labeled accordingly.
- i. The goods receiving department is open at the following times:  
Monday - Thursday: 08:00 h - 15:00 h  
Friday: 08:00 h - 14:00 h

### 5. Transfer of ownership

With delivery of the goods, ownership shall be transferred to Mühlhäuser unconditionally and irrespective of payment of the purchase price. At the latest, however, Mühlhäuser shall acquire unencumbered ownership of the goods upon full payment of the purchase price. Any form of retention of title shall cease to exist with the transfer of ownership.

### 6. Suspension and cancellation

- a. Mühlhäuser shall be entitled by written notice to the supplier:
  - i. to suspend or postpone the delivery of the equipment or any part thereof;
  - ii. to cancel without prejudice to Mühlhäuser other rights, the agreement in whole or in part at any time if Mühlhäuser is of the reasonable opinion that the supplier will be unable to comply with all the requirements of the agreement;
  - iii. to terminate the agreement forthwith by notice in writing to that effect, where the head contract or other contract connected with the equipment is terminated.
- b. In the event that the head contract or this agreement is terminated or cancelled in consequence of any negligence, omission or default by the supplier, then the rights of Mühlhäuser and the supplier shall be the same as if the supplier had, by such negligence, omission or default, repudiated the agreement and Mühlhäuser had, by such notice under this clause hereof, accepted such repudiation.
- c. In all other cases, Mühlhäuser shall be liable to pay the supplier in accordance with this agreement for the equipment delivered up to the date of such termination or cancellation, together with all costs necessarily and reasonably incurred by the supplier in anticipation of the performance of the supplier's obligations under the agreement.

### 7. Documentation

- d. The supplier shall provide the following documents and information:
  - i. The commodity code (HS/CN code)
  - ii. Certificates of origin, (long-term) supplier's declarations on preferential origin, movement certificates in accordance with the preferential rules of origin.
  - iii. Marking and classification of goods that are subject to export control restrictions.
- e. Technical descriptions and user manuals of devices are to be delivered free of charge in the languages requested by Mühlhäuser.
- f. Any requested documentation is considered an essential component of the order. If the requested documentation is not made available, the order will not be regarded as delivered in full.
- g. The original invoice shall be issued with one copy for each individual order number (no collective invoices). Invoices shall be sent separately from the goods. Any deliveries of goods from territories outside the EU's customs area must be accompanied by copy of the invoice or a proforma invoice.
- h. Shipping documents (e.g. invoices and delivery notes) shall indicate Mühlhäuser's order number, item price and quantity as well as the project reference number. Mühlhäuser is entitled to reject documents without these details, and consequent delays in processing will not be the responsibility of Mühlhäuser.

### 8. Liability

- a. Unless otherwise stipulated below, the rights of Mühlhäuser in the event of material and/or legal defects/deficiencies and/or other breaches of duty by the supplier are subject to statutory provisions.
- b. In accordance with statutory provisions, the supplier's liability shall include, without limitation, the assurance that the goods have the agreed quality upon passing the risk to Mühlhäuser. The product descriptions which have been incorporated into an individual contract – for instance by reference thereto in Mühlhäuser's order – and therefore constitute part of the subject matter of this contract or which have been included in the contract in the same way as these conditions of purchase shall be deemed the agreed nature and quality of the goods. Within the meaning of the above provision, it does not matter whether the product description originates from Mühlhäuser or the supplier.
- c. The legal obligation to examine goods upon delivery and notify the delivering party of any defects shall be subject to the applicable statutory provisions (Secs. 377 HGB) with the following exception: Mühlhäuser's obligation to check goods upon delivery shall be restricted to defects which are clearly identifiable during Mühlhäuser's incoming goods inspections by means of visual checks including the delivery documents and by random checks of Mühlhäuser's quality assurance personnel (e.g. damage in transit, incorrect or short deliveries). In case acceptance has been agreed, Mühlhäuser shall not be obliged to check the goods. In all other respects, these obligations shall be dependent on whether and to what extent an inspection of delivery is feasible in the ordinary course of business in each individual case.
- d. The obligation to notify defects discovered at a later time remains unaffected. In all cases a complaint by Mühlhäuser shall be considered to be immediate and timely if received by the supplier within 10 calendar days after identification of the defect. Payment of the delivery does not constitute a waiver of claims.

- e. The supplier warrants the contractual nature of the goods for a period of 24 months after commissioning by the end customer, but at the latest 36 months from the transfer of risk to Mühlhäuser.
- f. Mühlhäuser shall inspect the delivered goods upon receipt, provided that this is usual practice in the ordinary course of business and according to their type and intended use.
- g. If Mühlhäuser requests rectification, the supplier shall immediately fulfill this claim.
- h. Mühlhäuser is entitled to request rectification of the defect or delivery of a replacement. In any case Mühlhäuser may further claim damages and reimbursement of expenses in accordance with statutory provisions.
- i. If the supplier fails to remedy the claims for defects, or if immediate rectification is of the essence, Mühlhäuser may take the necessary measures at the supplier's expense and without prejudice to his obligations; except in urgent cases, the supplier shall be notified before the measures are implemented.
- j. The supplier guarantees that the delivered products are free of third-party rights, and that no rights - including protective rights - of third parties are infringed upon. The supplier shall indemnify Mühlhäuser from any third-party claim for such breach.

## 9. Drawings and other documents

- a. Mühlhäuser reserves all property rights and copy rights in and to all documents and other resources made available to supplier for the execution of an order placed by Mühlhäuser including, without limitation, drawings, illustrations, designs, calculations, descriptions, plans, models, samples, technical specifications, data storage media, other documents, tools, parts and materials. All of the above documents and resources shall only be used for the performance of the agreed contract and shall be returned (including any copies or other records made) to Mühlhäuser upon performance of the contract.
- b. Upon completion of the work, the supplier shall immediately send Mühlhäuser the final drawings, calculations and other technical documents relating to the delivery in the required number of copies and format. The supplier shall transfer - free of charge ownership of the goods to Mühlhäuser. This shall not affect the intellectual property rights associated with such items. Mühlhäuser or third-parties may use them free of charge for maintenance and modification purposes, and to produce spare parts.

## 10. Import and Export controls, customs

- a. For deliveries and services from other EU member states outside of Germany, the supplier shall provide the EU tax identification number.
- b. Imported goods must be cleared through customs by the supplier and delivered duty-paid. The supplier shall, at his own expense, give explanations and information in accordance with regulation (EC) No. 1207/2001, allow customs inspections, and to obtain requested official certificates. The supplier shall also provide all necessary records for the import documentation in order to utilize customs preferences.
- c. The supplier shall brief Mühlhäuser in all detail regarding duties and permits for (re-) exports in accordance with the applicable German, European and US-American export and customs regulations, as well as the export and customs regulations of the country of origin of the goods and services, comprehensively and in writing - as soon as possible before the date of delivery.

In this respect the supplier shall provide the following information and data:

- i. the export list number as specified in annex AL of the German Foreign Trade Regulation or a comparable item of the relevant export lists;
- ii. the "Export Control Classification Number" according to the "U.S. Commerce Control List" (ECCN), provided the goods are subject to the "U.S. Export Administration Regulations" (EAR);
- iii. the commodity code (HS/CN code);
- iv. the country of origin (foreign trade policy/non-preferential origin);
- v. supplier declarations (long-term) for preferential origin (for EU suppliers) or certificates of preferences/origin (non-EU suppliers);
- vi. all other information and data required by Mühlhäuser for export and import, and in the event of sale and re-exportation of the goods.

The supplier shall notify Mühlhäuser without delay and in writing of any changes to the above information and data.

- d. If the supplier violates its contractual obligations under paragraph 9c, the supplier shall bear all expenses and damages incurred as well as other disadvantages suffered by Mühlhäuser as a result of this violation.

## 11. Compliance

- a. The supplier is responsible for adherence to the relevant rules of technology (including, but not limited to, DIN standards, VDE regulations, VDI guidelines, DVGW regulations) and the legal provisions on product safety (including, but not limited to, the Product Safety Act); international minimum standards of labor law, including without limitation, all conventions of the International Labor Organization regarding employment rights, working hours and occupational safety, as well as all applicable statutory and official regulations.
- b. The supplier shall not participate actively or passively, directly or indirectly, in any form of bribery or corruption, human rights violation or discrimination against his employees, forced labor or child labor. The supplier shall not hire any employees below the minimum age of 15 years. In countries subject to the exception for development countries as specified in ILO Convention 138, the minimum age may be reduced to 14 years.
- c. The supplier shall ensure that all delegates commissioned by him who are involved in any way in the production of the products supplied by him to Mühlhäuser shall comply with the obligations listed in clauses 10a to 10b above.
- d. The supplier is obliged to ensure that the products to be delivered comply with the provisions of Regulation (EC) No 1907/2006 for the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH Regulation"). The substances contained in the supplier's products shall be pre-registered or

registered after expiry of the transitional period, if required by the provisions of the REACH Regulation, if the substance is not exempted from registration.

- e. Suppliers based in a non-EU member state shall appoint an EU-based Only Representative ("OR") according to Article 8 of the REACH Regulation, who must be disclosed to Mühlhäuser by name and address. The OR is responsible for fulfilling all of the supplier's registration and other REACH obligations. If the OR has undertaken pre-registration or registration, this must be communicated to Mühlhäuser with the registration number of the substance. In the event of a change of the OR, or discontinuation of the OR, the supplier shall inform Mühlhäuser without delay.
- f. The supplier assures that the products supplied by him do not contain substances from the so-called candidate list according to section 59 clauses 1 and 10 of the REACH Regulation. The supplier shall notify Mühlhäuser immediately in writing if products supplied by him contain substances in the candidate list. The supplier shall indicate the individual substances by name and shall re-report as precisely as possible the percentage by mass.
- g. If hazardous substances within the meaning of the Hazardous Substances Ordinance are supplied, or products which may release such substances during use, the supplier must - without request - provide Mühlhäuser with the data required for the safety data sheet.
- h. The supplier is obliged to ensure that the products delivered by him are in compliance with all requirements of Regulation (EC) No. 1272/2008 ("CLP Regulation"). In particular, non-EU suppliers are responsible for ensuring their OR has registered the products supplied in the classification and labeling list according to Sections 39- 42 of the CLP Regulation.
- i. If the products delivered to Mühlhäuser are subject to the Construction Products Regulation (EU) No. 305/2011 (CPR), the supplier shall provide Mühlhäuser with all information required for the preparation of declarations of performance and/or the declarations of performance prepared by the supplier in a suitable and permanent format and apply the CE mark and/or have the CE mark applied on these products in accordance with statutory requirements, including, but not limited to, the CPR and Art. 30 of Regulation (EC) No. 765/2008. With the application of the CE mark, the supplier warrants the product's conformity with the declared performance and the compliance with all applicable legal regulations governing the application of CE marks.
- j. The supplier shall comply with the provisions on conflict minerals contained in section 1502 of the Wall Street Reform and Consumer Protection Act ("Dodd- Frank Act"). In the event conflict minerals are required in the production or the operation of the products delivered by the supplier, their origin shall be disclosed. Upon request, the supplier shall provide Mühlhäuser and Mühlhäuser's associated companies with the documentation required by the Dodd-Frank Act on the use and origin of conflict minerals in full and without delay.
- k. In the event that the supplier is in breach of any of the foregoing obligations, the supplier shall indemnify Mühlhäuser and its customers against any and all costs and claims of third parties for breach of the foregoing provision. However, this shall only apply if the supplier is responsible for this breach of duty. At any time Mühlhäuser is also entitled to immediately cancel the relevant order and to refuse acceptance of the relevant delivery without Mühlhäuser incurring any costs. Any existing damages claims shall remain unaffected.

## 12. Duty to inform

- a. Changes to manufacturing processes, materials and vendor parts, locations, test and inspection processes or other quality assurance measures must be advised to Mühlhäuser without delay, and must not be undertaken without express written confirmation.
- b. Mühlhäuser must be notified in writing of the use of subcontractors, freelance staff, upstream suppliers and other third parties (authorized agents) who are not employees of the supplier. The supplier shall ensure in its contractual relationships with authorized agents that all goods and services are provided fully and in due form, that the due and timely provision of goods and services can be monitored through appropriate documentation as well as regular audits by Mühlhäuser, and that all obligations arising under the contract with Mühlhäuser also apply to the contractual relationship with the authorized agent.
- c. Agents or subcontractors are considered vicarious agents of the supplier. Failures, delays, disorders, poor performance or other errors in the deliveries and services of the agents, irrespective of the reasons for such failures, shall not release the supplier from their service obligation pursuant to the contract concluded with Mühlhäuser.

## 13. Confidentiality, reference and data processing

- a. The supplier shall keep all non-overt commercial and technical details which become known thru a business relationship, regardless of the means of transmission, are strictly confidential and must not be disclosed to third parties. This also includes purchase orders and information of the materials made available through Mühlhäuser. The obligation for confidentiality also applies after conclusion of the business relationship.
- b. The supplier shall oblige his employees, legal representatives and vicarious agents accordingly.
- c. The supplier must neither use the products manufactured for Mühlhäuser for their own purposes nor offer any of the manufactured products to third parties.
- d. If the supplier violates the obligation of confidentiality, Mühlhäuser shall be entitled to claim damages from the supplier for any damage incurred.
- e. The supplier may only advertise his business relationship with Mühlhäuser with prior written consent of Mühlhäuser.

## 14. Jurisdiction, governing law and place of execution/performance/fulfillment

- a. The place of performance for goods and services is Mühlhäuser's place of business, unless any deviating delivery address is stated on the purchase order. Mühlhäuser's place of business shall be the place of performance for payments.
- b. The law of the Federal Republic of Germany shall exclusively apply to all disputes arising from this contract to the exclusion any conflict of laws and the UN Convention on Contracts (CISG) - unless a different agreement has been made.
- c. Court of jurisdiction is the seat of the court of general jurisdiction for Mühlhäuser. Mühlhäuser may, however, also sue the supplier at his court of general jurisdiction.