

**Record of Negotiations
for Investments**

Status 08/2013

Date: _____

Place: _____

Negotiators:

Messrs _____

thyssenkrupp Rothe Erde GmbH

Object:

Inquiry no.:

dated: _____

Quotation:

dated: _____

**Scope of supply
and services**

Manufacture, supply, assembly/installation and commissioning of a complete,
ready-for-operation

Quoted price(s):

EURO _____

EURO _____

EURO _____

EURO _____

EURO _____

Agreed

total price(s):

EURO _____

EURO _____

EURO _____

plus statutory VAT

_____ on behalf of

_____ **thyssenkrupp Rothe Erde GmbH**

In the event that we should also require personnel from you in addition to the above scope of services, this will be remunerated as per Section 2.1.

Technical details are to be consulted upon and coordinated with our relevantly responsible department (see Section 41.1).

1.2 Assembly/installation

Complete, ready-for-operation installation. This in particular includes:

- Provision of appropriately qualified supervisory personnel and the necessary skilled workers and assistants,
- provision of all necessary vehicles, equipment, tools and lifting gear,
- proper setting up and subsequent clearing of the installation site,
- provision of the necessary consumables and working materials,
- taking out of adequate insurance coverage in respect of transport, assembly/installation and commissioning,
- any and all attendant costs.

In the case of heavy parts which are subject to wear and have to be replaced more often, preference should be given to appliances which enable uncomplicated mounting of lifting gear. You shall be responsible for taking all measurements yourself on the spot.

You shall bear full responsibility for ensuring the adaptation of your designs and sub-deliveries to the respective local conditions.

The contractual work is to be executed in such a way as to prevent any hindrance of the production operations and, where applicable, of third parties.

Interruptions of or hindrances to work will not entitle to additional claims.

You and your vicarious agents will be obligated to comply in full with any and all special plant regulations that might be in force at the recipient plant or place of assembly/installation in respect of the deployment of external personnel, the delivery of materials, the assembly/installation aids, the storage thereof and the execution of the assembly/installation work.

1.3 Commissioning and trial operation

of the complete, ready-for-operation contractual object right through to full functional and production readiness.

1.4 Familiarization training for operating staff

You shall make the respectively necessary personnel available for a period of approx. ____ workdays for the purposes of providing familiarization training for our operating staff and our maintenance and repairs personnel.

In addition, you shall take responsibility for the training of our personnel in the operation, programming and maintenance of the contractual object, such training to be for ____ employees for a period of ____ days. We shall bear our personnel's personal costs, while the material costs and your personal costs shall be for your account. The time at which this training is to take place is to be arranged by mutual agreement.

1.5 Materials to be provided at the place of assembly/installation

We shall provide the following free of charge:

For the implementation of the contractual work:

- the necessary foundations and any necessary masonry and breaking work as per your binding particulars, foundation plans with load data and calculation bases,
- the necessary cable ducts as per your binding particulars,
- the necessary pit covering as per your binding working drawings and our load data with all connection dimensions for the covering,
- the main current supply line to the control cabinet (the latter to be supplied by you) as per your binding particulars; the control cabinet is to be set up around _____ m from the center of the system,
- the compressed air supply line to the main stop slide valve (the latter to be supplied by you) in the vicinity of the system,

- the water supply line and drainage up until the main stop slide valves (the latter to be supplied by you) in the vicinity of the system,
- the gas supply line up until the main stop slide valves (the latter to be supplied by you) in the vicinity of the system as per your binding piping plans.

For the assembly/installation

- electricity and water from the available tapping points,
- hoisting gear at the place of installation, maximum capacity load _____ t, (operating personnel not included), with account being taken of our operational needs. You shall be liable for any damage you might cause by operating this equipment.

For the commissioning

- Energy, personnel

For den validation of performance

- Energy, personnel

Other materials/equipment to be provided by us

Other supply limits/interfaces

You shall supply us with binding drawings/documents in the interests of optimal technical and economic execution and on the basis of which we will provide the aforementioned services and/or, where applicable, manufacture the equipment as referred to above.

In the event that changes or additions to the foundation or the power connections prove necessary in deviation from the binding drawings you provide us with, you shall bear all costs resulting therefrom to the extent that you can be held responsible for having made such changes or additions necessary.

Any and all materials and equipment provided by us must be accepted by you following their manufacture. Tacit taking over of such materials and equipment shall be regarded as acceptance. With said acceptance you acknowledge that the execution of said materials and equipment is in accordance with the information and drawings you provided us with.

1.6 Paintwork specifications

Surface preparation:

- Derusting by sandblasting as per SA. _____ and DIN 55928, part 4
- ___ x primary coat, thickness _____ my, quality _____
- ___ x top coat, thickness _____ my, quality _____
- Shade RAL _____

1.7 Rules on appliances and product brands

2. Price

Offer value	EUR _____
minus rebate (_____ %)	EUR _____
= total price for the aforementioned scope of supply and services	EUR _____ plus statutory VAT
(in words: EUR _____)	_____)

2.1 Remuneration for supervisory staff/qualification

(e.g. technical engineers, assembly foreman, commissioning engineer, electrician, fitter, etc.)

The above hourly rate/fixed daily rate for 10 hours of working time applies solely to the above-mentioned qualification of _____.
Said cost rates shall be accordingly adjusted in the event that, having consulted with us and received our written consent, you should deploy personnel who are less qualified.

The above cost rates include any and all incidental costs such as accommodation allowance, fares and pro-rata overtime premium, etc.

2.2 Hours worked/limit of remuneration

The personnel in question must have their respective working hours certified by our site supervisor daily but on no account later than on the following working day, complete with details of the work done.

You shall have no entitlement to remuneration in respect of time sheets submitted after the aforementioned time limit.

The remuneration for work done at hourly rates within the framework of this order shall be limited to a maximum amount of

EUR _____

We will not accept invoices in excess of this amount.

3. Pricing

The aforementioned price shall apply as a fixed, all-inclusive price until definitive completion of the order in its entirety, and covers:

- documentation,
 - packaging,
 - inspection and testing at the manufacturer's plant,
 - carriage free assembly/erection site at the _____ plant,
 - unloading and transportation to the foundation / to the place of assembly/installation,
 - (transport insurance cover arranged by us),
 - ready-for-operation assembly/installation,
 - insurance cover in respect of assembly/installation and commissioning,
 - commissioning and trial operation,
 - familiarization training of operating personnel,
 - validation of performance / function,
 - EC conformity declaration and CE mark,
 - declaration of incorporation for incomplete machines / systems,
 - technical documentation
-
-

4. Documentation deadlines

The most important design drawings must be made available to us for information purposes in such good time as to ensure that the actual production will not be hindered by any requests we might have for changes/modifications. Such requests shall not cause any additional costs for us. Our comments on the design drawings shall in no way restrict your obligations and responsibility.

Foundation and erection plan with load data and details of power supply lines, and anchoring plan by _____

Circuit and schematic diagrams by _____

Piping and hydraulics plans by _____

Assembly/installation schedule by _____

Instruction manuals with safety instructions in line with DIN 8418 by _____

Maintenance instructions, lubrication schedules by _____

Spare-parts and wearing-parts lists and offers (for parts which have to be available up until commissioning) by _____

All other documentation by _____

where necessary on data carriers/DP file format _____

_____ by _____

_____ by _____

Equipment lists by _____

Thermic calculation by _____

Water and steam diagram by _____

Measuring and control diagram by _____

Crane inspection/test logbook, hook and cable certificates by _____

You shall provide us with the documents in triplicate,

in bound form, printable and in DP file format
 Otherwise as per separate appendix ____

Declaration of incorporation as per EC Machinery Directive

on delivery

or

EC Declaration of Conformity

on acceptance

The following applies for both declarations:

To be handed over with technical documentation as well as the complete documents which are binding constituent parts of the machine/ system.

5. Execution deadlines

5.1 Acceptance of order by _____

5.2 Commencement of supply and assembly/installation by _____

5.3 Completion of assembly/installation by _____

5.4 Commissioning/start-up/trial operation by _____

5.5 Handing-over of contractual object, ready for operation by _____

5.6 **Readiness for validation of performance**
Section 11 =Readiness for production/prel. acceptance by _____

6. Monthly progress report

For the purposes of deadline monitoring you are to provide us at the beginning of each month, commencing on _____, with a written report on the progress of the contractual work/services, containing detailed information on the status of all of the contract's deadline-decisive components. Each such report is to be sent to the recipient plant and an identical version thereof to the Procurement & Supply Management at thyssenkrupp Rothe Erde.

7. Inspection and testing at the manufacturer's premises

We reserve the right to put the contractual objects or accessories through interim and final inspections at any time during the customary hours of work at your premises or at those of the manufacturer.

The execution of such inspections will not release you from your obligation to carry out controls which, for whatever reason, are to be customarily performed by you.

It will be your obligation to rectify without delay any and all defects or shortcomings discovered during such inspections. If it is not possible to remedy such defects or shortcomings during an inspection, we reserve the right to carry out a renewed inspection at your expense.

8. Order completion report

At latest 2 weeks before delivery and completion of the contractual object or service, you shall provide us with a written report to the effect that the contractual object or service is now ready and available to us for a preliminary acceptance inspection or quality control inspection which we have requested. This report is to be sent to _____ and an identical version thereof to the Procurement & Supply Management at thyssenkrupp Rothe Erde.
See Section 40 for the corresponding addresses.

9. Shipping notification

At latest 8 days before shipment you shall give us written notification as to when the contractual object will be delivered; this notification is to be sent to _____ and an identical version thereof to the Procurement & Supply Management at thyssenkrupp Rothe Erde.
(See Section 40 for the corresponding addresses).

10. Trial operation

The phase of trial operation shall be for a duration of _____ and take place under your responsibility. Should this trial operation be interrupted as result of a malfunction/disruption, it shall then be started anew (i.e. from the beginning) after the end of the interruption.

The commencement of the trial operation must be notified to and confirmed by us in writing. Until this has taken place, the trial operation will be deemed not to have been commenced yet.

We shall provide you, free of charge, with the operating materials which are necessary for the trial operation.

In the event of any interruption during the trial operation as result of a disruption/malfunction for which you can be held responsible, you shall bear any and all personnel and material costs arising to us and possibly to subcontractors for the duration of such interruption.

Should we request an extension of the trial operation, you shall make the services of an engineering specialist available to us at a fixed daily rate of EUR _____, inclusive of all incidental costs.

11. Validation of performance/acceptance

The validation of performance will be audited by the responsible department _____ of our _ plant, with the cooperation of the environmental officer and safety staff. The services of a neutral institution will be called upon in the case of dispute in this respect.

11.1 Validation of performance at the manufacturer's plant

11.2 Validation of performance /preliminary acceptance

You shall give the aforementioned department at the recipient plant written notification of readiness for validation of performance.

The prerequisite in this respect is that you have fulfilled your contractual obligations in their entirety and the contractual object has been successfully commissioned and is unrestrictedly ready for production operation. In addition, all documentation, operating rules, operating manuals, quality certification and test certificates must be available in complete and flawless form.

All performance data must be validated over a continuous period with a duration of _ with the contractual object in trouble-free operation. The measuring equipment needed for the validation of performance and the setting up and removal thereof form part of your scope of supply and services.

In the event that it is not possible to complete the acceptance procedure because of defects, you shall rectify these without delay. We may set a reasonable deadline for the rectification of such defects or for the purposes of attaining the contractually assured properties and characteristics.

The contractual object shall be deemed to be operating fault-free if no single failure of > _____ hours occurs during the period in which it is under observation. In the event of a single failure > _____ hours, the period during which the contractual object's fault-free operation is to be verified shall be started anew.

Your failure to have rectified defects as referred to above by the deadline which we have set you shall – independently of the legal claims to which we are entitled in such instance – entitle us to remedy such defects ourselves and demand compensation for the outlay required; this shall not, however, restrict your obligations within the period of limitation for claims arising from defects.

No parts or components may be replaced solely for the acceptance inspection. You shall bear any and all additional costs for such additional validation of performance.

11.3 Recording

Following successful validation of performance, an “Acceptance record” shall then be drawn up. The factual findings to be recorded therein will become legally valid on completion of acceptance as per Section 11.4.

11.4 Acceptance/transfer of risk

On provision of the record of positive validation of performance, our Procurement & Supply Management department will then pronounce acceptance of the contractual object. At the same time, the installment linked with the acceptance of the contractual object shall fall due and the agreed period of limitation for claims arising from defects shall commence. The transfer of risk shall also take place at this time. The sole entitlement to pronounce acceptance shall rest with our Procurement & Supply Management; other employees, in particular those on the building site and in the plants, are not empowered to do so.

11.5 Repetition of the performance validation procedure

You shall provided renewed verification that the performance data as per Section 1.1. are still being met; this performance validation procedure shall take place approximately one month before expiry of the period of limitation for claims arising from defects.

12. Penalties for delay

Your failure to meet the agreed deadline for providing us with the foundation and erection plans with load data shall incur a one-off penalty of EUR _____.

Your culpable failure to meet the deadline(s) _____ and /or _____ shall entitle us in each case as from _____ to subtract _____ %, however no more than an overall maximum _____ %, from the total contract value for each calendar day of delay.

We reserve the right to assert claims for further damages.

You shall notify us in writing accordingly and without delay on the occurrence of circumstances which in your opinion necessitate an extension of a deadline which is subject to a penalty for delay. You may subsequently refer only to such circumstances which we have agreed to accept.

13. Delay in performance

Notwithstanding the content of Section 12 above, delay in performance shall be subject to the relevant legal stipulations.

14. Terms and conditions of payment

- _____ % Advance payment on receipt of the unconditional order acceptance and the documentation which is due at this point in time
- _____ % on completion of half of the contractually agreed time for execution and our receipt of the documentation which is due at this point in time
- _____ % on complete delivery of the contractual object and commencement of the assembly/installation thereof
- _____ % on completion of assembly/installation
- _____ % following our Procurement & Supply Management pronouncement of acceptance as per Section 11.4
- _____ % on expiry of the period of limitation for claims arising from defects, redeemable via furnishing of a bank guarantee as described in Section 15.2, at the earliest on payment of the installment due on acceptance of the contractual object.

All the above payments are based on the total contract value and are to be requested by you from our responsible accounts office with account being taken of the statutory regulations on the issuing of invoices.

Our payments will have no effect on the rights to which we are entitled. We shall make said payments within _____ days of the presentation of each respective invoice.

15. Sureties

15.1 Advance payment guarantees

An irrevocable, indefinite and directly enforceable bank guarantee on the part of a major German bank is to be furnished to us on the attached form in respect of each of the following payments, made out to

in respect of the following items. The guarantee amount shall be paid at first written request.

15.1.1 First installment

This guarantee shall be returned at your written request on acceptance.

15.1.2 **Second installment**

Return hereof as above.

The contracts of suretyship must contain the respective statutory VAT.

15.2 **Surety for claims arising from defects**

In respect of the paying off of the final installment, a bank guarantee on the part of a major German bank and which is irrevocable, indefinite, directly enforceable and payable on written demand is to be furnished to us on the attached form, made out to

This surety shall be returned at your written request on expiry of the period of limitation for claims arising from defects.

The contract of suretyship must contain the respective statutory VAT.

15.3 **Performance bond**

On your order acceptance you shall furnish us with an indefinite performance bond on the part of a major German bank as per the attached sample text, made out to

to the amount of EUR _ which covers all of the contractor's obligations under the terms and conditions of this order.

The contract of suretyship must contain the respective statutory VAT.

This surety shall be returned at your written request on acceptance.

16. Limitation of claims arising from defects

The period of limitation for claims arising from defects shall be 24 months subject to continuous operation and calculated as from the time of the written confirmation of the contractual object's acceptance.

Said period shall in each case start anew for reworked parts or replaced parts.

The period of limitation shall be accordingly extended by the duration of interruptions about which we give you written notification and which are the result of defects in the ordered performances/equipment for which you are responsible. Claims in respect of defects complained about within the period of limitation shall not be expire by limitation before expiry of a period which equates to the said period of limitation.

The period of limitation shall be 60 months in the event that the contractual object is, for its intended purpose, used for a building/structure and it causes the defectiveness of such building/structure.

17. Completeness

You herewith give your assurance that the contractual object is complete in its entirety, constitutes a functional unit and is state-of-the-art, irrespective of whether the supplies and services which are necessary towards achieving this have been determined in detail or not. You furthermore give your assurance that your supplies and services will take place as contractually agreed and that the contractual object operates in accordance with the contractually agreed conditions and that the contractual object operates as contractually specified and agreed.

Any missing parts which are necessary towards ensuring that the contractual object operates as contractually specified and agreed shall be delivered and installed without entailing any extra costs for us.

If, in the course of the manufacturing process, you should learn of any possible improvements and/or technical innovations, you shall notify us thereof and send us a free-of-charge proposal with exhaustive technical documentation and information as to the effect on price and delivery time so that we can decide on the advisability of necessary changes.

18. Assurance of quality and durability

You herewith give your assurance that the contractual object is in full and fault-free working order and corresponds in full with the specifications on which the contract is based, and that the values as at acceptance will be kept to during the period of limitation as per Section 16.

It must be possible for the precision of the contractual object to be maintained throughout the entire duration by means of adjustment capabilities.

19. Noise and vibrations

19.1 Noise emission – 9th GPSGV (German Equipment and Product Safety Act)

Neither when the machine/system is running in idle mode nor when it is in regular operating state may its generated noise/sound pressure level given in dB(A) for equivalent long-term sound pressure levels and/or dB(Cpeak) for peak levels exceed a value of _____ dB(A) / _____ dB(Cpeak) at any of the workplaces and operator stations or at a distance of 1 m from the machine/system at the loudest point.

Unless it is necessary to make the machine/system subject to other device or machine-specific norms, the determination of this value shall be carried out in accordance with DIN EN ISO 3740 ff. and DIN EN ISO 11200 ff.

19.2 Noise emission and vibrations – LärmVibrationsArbSchV (ordinance on protection at the workplace against noise and vibrations)

Without having to be asked, you shall provide any and all details which are necessary towards performing a risk assessment in respect of noise and vibrations at the workplace.

20. Energy efficiency

Components with the highest available energy efficiency shall be used in each case. Furthermore, the particular energy source with the best efficiency shall be preferred.

The maximum gas consumption (only for furnace/oven systems) at full load is (kWh):

The maximum electricity consumption (other machinery and systems) at full load is (kWh):

21. Service within the period of limitation for claims arising from defects

You herewith give your assurance that, if and when required, you will make available the services of appropriately qualified service personnel within _____ hours of our request (except for Saturdays, Sundays and public holidays), and that you have replacement wearing parts in stock. You shall reimburse us in full for any and all costs and damage arising to us as result of your failure to adhere to this assurance.

22. Performance guarantees

(As per Appendix _____)

23. Penalties for non-performance

(As per Appendix __)

We reserve the right to assert claims for further damages.

24. Guarantee of availability

You herewith give us your guarantee that, after an initial period of 3 months, the technical failure rate will be less than _____ %.

The failure rate will be monitored during the period commencing as from the 4th month after the acceptance of the contractual object until the expiry of the period of limitation for claims arising from defects of _____ months.

Should the failure rate exceed _____ % in the period between the 4th and _____ month as from the acceptance of the contractual object (in other words a period of _____ months), we shall then review the level of difficulty of the problem in question and decide on whether the machine and/or control systems or parts thereof are to be reworked or replaced. Furthermore, we expressly reserve the right to our legal claims.

Furthermore, the period of limitation for claims arising from defects shall in such instance be extended by a further 6 months to a total of _____ months.

The definitions of the failure rates as modeled on VDI Guidelines 3423 shall serve as basis for the calculation of the failure rate.

The calculation of the technical failure rate requires that a utilization log is kept and regularly updated.

We will submit a monthly report on any failures and malfunctions which might occur.

25. Penalty for non-availability

(as per Appendix __)

We reserve the right to assert claims for further damages.

26. Claims arising from defects

Notwithstanding the provisions of Sections _____ and _____ (penalties), the existence of a defect or the non-attainment of agreed characteristics shall be subject to the relevant legal provisions. The same shall apply if the values stipulated in Sections _____ and _____ are not achieved or are overstepped.

If you should be in default in respect of rectifying a defect, we shall, besides the respective legal claims, have entitlement to carry out repair work ourselves at your expense or have this done by third parties, likewise at your expense, without this making for any restriction of your obligations during the period of limitation for claims arising from defects.

You shall bear any and all costs of packaging, freight, etc. entailed in the event that you should demand that we send damaged parts back to you for examination.

27. EC directives / harmonized standards / official regulations and requirements

The contractual object must meet in full the relevant legal regulations and requirements, in particular

- EC Machinery Directive 2006/42/EC and the Equipment and Product Safety Act in the most recent version including the associated ordinances,
- other applicable EU Community Guidelines,
- all harmonized European standards to which the ordered machine is subject.

This obligation generally includes the following binding requirements for ready-for-operation machines/systems:

- The CE mark is affixed to the machine / system.
- A declaration of conformity has been issued in the German language and that of the user as per Appendix II Part 1 Section A, EC Machinery Directive and is included with the delivery.

- The technical data as per Appendix VII Part A, EC Machinery Directive (2006/42/EC) in the German language and/or that of the user are included in the delivery.
- Both the risk assessment performed by the contractor (Principles for Risk Assessment EN ISO 14121-1) as well as the risk assessment as per Article 3 of the Operational Safety Regulation (*Betriebssicherheitsverordnung*) as well as the Technical Regulations for Safety in the Workplace (*TRBS*) are handed out at latest on transfer of the contractual object in ready-for-operation state.

In the absence of harmonized standards for the ordered machine/system, you herewith – on having accepted the order and with account being taken of your obligation to comply with the basic safety requirements as per Appendix I, EC Machinery Directive – undertake to apply the current state of the art or the Machinery Directory (9th GPSGV [Equipment and Product Safety Act], Section 2).

Incomplete machines/systems are to be accompanied by the following documents:

- Declaration of incorporation in the German language and in that of the users as per Appendix II Part 1, Section B, EC Machinery Directive (2006/42/EC).
- All technical documents as per Appendix VII Part B, EC Machinery Directive (2006/42/EC).
- Assembly/installation instructions as per Appendix VI, EC Machinery Directive (2006/42/EC) in the German language and/or that of the user.
- A risk assessment in the German language and/or that of the users if this is possible on the basis of the scope of supply and services.

All safety devices/facilities required as per the EC Machinery Directive for the purposes of meeting the respective safety regulations shall be delivered with the contractual object and included in the contractual price.

General requirements

You are obligated to draw attention to possible hazards and harmful consequences from the contractual object, doing so before conclusion of contract, and provide information as to disposal in accordance with the relevant legal regulations. You shall be liable for any and all damages arising from your violation of this obligation to provide information.

Furthermore, the contractual object must meet the legal requirements in terms of environmental protection and any dispositions which might be made.

The contract shall be deemed not to have been fulfilled in the event that the contractual object does not meet the aforementioned regulations. In such instance you shall bear any and all legal consequences of non-compliance with said regulations.

28. Subcontractors

You herewith undertake not to employ the services of any subcontractor within the framework of this contract without first having obtained our written consent.

Any violation of this provision on the use of subcontractors will entitle us to impose a contractual penalty to the amount of _____ % of the contract value plus statutory VAT and deduct this from your claims. In such instance we shall also be entitled to terminate the contract without notice.

We reserve the right to assert claims for further damages.

29. industrial safety regulations

Infringements of the industrial safety regulations will entitle us to deduct any and all costs arising from such situation from your claims. In such instance we shall also be entitled to terminate the contract without notice.

In the event that the supervisory authorities establish that the industrial safety regulations have been infringed, the personnel thereof shall then be released from their obligation to maintain secrecy pursuant to Article 139 b (1) of the German Industrial Code (*Gewerbeordnung*) within the framework of the execution of this contract. They shall be entitled to notify us of infringements of the industrial safety regulations.

30. Replacement and wearing parts

You shall provide us with a detailed list in triplicate of replacement and wearing parts and an offer thereof with individual prices and delivery deadlines, doing so by the deadline specified in Section 4 above. Said list shall also contain details as to type and manufacturers of outsourced parts.

You herewith undertake to supply us with replacement and spare parts for the contractual object at fair market prices for a period of at least 10 years as from its commissioning.

You shall provide us with the offer in terms of replacement parts in MS Excel format. It is compulsory that said offer contains the following data: article number, article description, size of packaging, packaging unit, ordering unit, price unit, net price and delivery period. You herewith undertake to regularly send us up-to-date replacement part lists with the aforementioned data.

31. Changes, extensions, supplements

In the event that the agreed scope of supply or of services is to be deviated from, you shall only then have entitlement to additional claims or changes to deadlines if such deviations have been duly notified and agreed with us in writing before their implementation.

In other respects, additional services – for which our prior written agreement must be obtained – shall be subject to the same conditions as for the main order.

32. Requests for changes

Costs entailed in requested changes of a more minor nature shall be included to a reasonable extent in the contract price but to a maximum amount of EUR _____.

33. thyssenkrupp supply program

As agreed, you shall take account of the products on offer from the member companies of the thyssenkrupp Group when covering your requirements in terms of materials for the execution of this order. We therefore expect you to submit corresponding inquiries to such companies.

Should difficulties arise for reasons of price, quality or time, we kindly request you to contact the sales management of the Group member company in question.

Your overall responsibility for the proper execution of the order shall remain unaffected hereby.

34. Liability

You shall be liable within the framework of the respective legal provisions for any and all personal injury, material damage and financial loss caused by you and/or your vicarious agents arising from or in the execution of deliveries, services and performances, in particular also for damage arising from assurances, warranties and guarantees which have not been adhered to.

You shall release us from and compensate us to the full extent in respect of any and all claims raised against us by third parties on the basis of your deliveries, services and performances, including court and extra-judicial costs.

35. **Withdrawal, suspension**

Notwithstanding our rights in the event of breaches of the contract on your part, we shall have entitlement to withdraw in whole or in part from the contract without statement of reasons at any time up until acceptance and handing over of the contractual object. In such instance you will be entitled to the rights provided for by Article 649 of the German Civil Code (*BGB*). You herewith undertake to make available to us any and all relevant data and documents which are necessary within the framework of the calculations of said Article 649 of the German Civil Code which you might have or to which you might have access.

In the event that the institution of insolvency proceedings is applied for in respect of your assets, we shall then have entitlement to terminate this contract for good cause without being obliged to compensation. However, in such case we shall have entitlement to take over materials and/or semi-finished goods, including any type-specific tooling and operating media, subject to reasonable conditions. Any further claims shall be excluded.

We may at any time demand a temporary suspension of the services/performances without entitling you to charge separate costs. A limitation of such suspension may be agreed at your request.

36. **Obligation to maintain secrecy**

The obligation to maintain secrecy shall cover all documents relating to the order as well as any and all operating methods, figures, drawings, sketches and similar documents of which you gain knowledge in the execution of the order. You shall likewise obligate all of your vicarious agents and personnel working on the site likewise.

Unless we have given our consent thereto beforehand, such documents may neither be published nor duplicated, made available to third parties nor used for any purpose other than the one originally provided for.

You shall be liable for any and all damage arising from your violation of this provision, also if caused by your vicarious agents and personnel.

The obligation to maintain secrecy shall not apply for information which is already in the public domain and/or already verifiably known to you before we provided you therewith or which was or might be legitimately provided to you by third parties without any obligation to maintain secrecy. It shall be up to you to provide the proof in the event that you base any argument or claim on the aforementioned grounds.

37. Safety-related organization on the part of the contractor

The contractor shall provide thyssenkrupp Rothe Erde with details of the safety-related organization as follows:

- Name of the installation/site supervisor
- Name of the safety expert
- Confirmation that at least one first-aider will be available at the place of assembly/installation
- Submission of a valid hazard and risk assessment for the activities in question

The rules of conduct applied at the respective plant Dortmund/Lippstadt/Eberswalde in respect of employees of external companies

(http://www.thyssenkrupp-rotheerde.com/D/beschaffung_download.aspx) must without exception be observed and complied with.

38. Compliance with guidelines

We herewith draw attention to the fact that it is mandatory that the manufacturing and work relating to this contract must be carried out in compliance with the guidelines ISO9001 (quality), ISO14001/EMAS (environment) and and EN ISO50001(energy).

39. Compliance with the regulations of the Minimum Wage Law (MiLoG) and the Law on Secondment of Workers (AEntG)

- a) The contractor undertakes to comply with the regulations of the Minimum Wage Law (MiLoG) in relation to its own employees, and to impose this obligation on any subcontractors / temporary employment agencies accordingly.
In particular, this means paying the minimum wage at the relevant statutory level as of 01.01.2015 as well as complying with the required documentation obligations. The transitional regulation in Article 24 of the Minimum Wage Law retains precedence in the context of your application area. The contractor undertakes not to bypass the minimum wage regulations.
- b) The contractor undertakes - as far as applicable - to comply with the regulations of the Law on Secondment of Workers (AEntG) in relation to its own employees, and to impose this obligation on any subcontractors /temporary employment agencies accordingly. In particular, this means complying with the general working conditions as defined in Article 2 AEntG as well as the collective-bargaining working conditions according to Article 3 AEntG. The contractor undertakes not to bypass the regulations.

- c) The contractor shall exempt the client in full from all claims by third parties, and from liabilities towards third parties, which are asserted against or imposed on the client due to a violation of the aforementioned statutory provisions by the contractor or its subcontractors / temporary employment agencies. Also, at its own discretion, the client may demand payment of a corresponding monetary sum as an alternative.
- d) The contractor is obliged on request by the client to verify compliance with the MiLoG and the AEntG - including by any subcontractors / temporary employment agencies - in writing without delay.
- e) In addition to other reasons that entitle the client to terminate the contract, one or more of the following events represents an important reason in the client's favor for termination of the contract without consideration of a notice period or provides grounds for immediate withdrawal from the contract without entitlement of the contractor to receive compensation:
 - The employees of the contractor or the employees of its subcontractors / temporary employment agencies are not paid compensation for their labor in the amount at least corresponding to the minimum wage as defined in Article 1 MiLoG or the regulations applicable under AEntG, not only in good time but also in full, in which case strong suspicion based on concrete facts shall be regarded as sufficient, or
 - Claims are asserted against the client by third parties in connection with the payment of the minimum wage to employees of the contractor or to employees of its subcontractors / temporary employment agencies, in particular according to Article 13 MiLoG in connection with Article 14 AEntG or Article 14 AEntG, without the contractor being able to verify without delay and with sound evidence that the claim is unjustified. The claim by organizations of social insurance or the tax authorities is regarded between the parties as justifiably undertaken or
 - there is evidence or strong suspicion based on concrete facts of a violation by the contractor or its subcontractors / temporary employment agencies against the Act to Combat Clandestine Employment or significant infringements of the Working Time Act.

40. Dispatch

40.1 Dispatch address

40.2 Place of installation

41. Correspondence

Please address your correspondence as follows:

41.1 Technical matters

thyssenkrupp Rothe Erde GmbH

Department _____

For attention of _____

P.O. box _____

41.2 Commercial matters

thyssenkrupp Rothe Erde GmbH
Procurement & Supply Management
Postfach 10 50 25
D-44047 Dortmund

42. Minutes of meetings

You shall draw up consecutively numbered minutes of meetings held with you, copies of which we shall receive within 8 workdays of each respective meeting, sent in parallel to the addresses as per Sections 41.1 and 41.2.

43. Place of jurisdiction, German law

Place of jurisdiction shall be Dortmund, or, at our discretion, the general place of jurisdiction to which the service provider is subject. All business relations between us and the service provider shall, to the exclusion of German law relating to foreign and international matters, be governed solely by the law prevailing at our principal place of business in terms of the legal relationship of domestic parties.

44. Other provisions

The following shall apply in the following sequence in the case of award of order:

44.1 the terms and conditions specified in the order letter,

44.2 the terms and conditions specified in the mutually signed Record of Negotiations dated _____,

44.3 Dispatch/shipping regulations,

44.4 our General Terms and Conditions of Purchase and our additional conditions for transport, outer and sales packaging

45. Separability clause

Should one or more provisions in this Record of Negotiations be or become void or unenforceable, the validity of the remaining provisions hereof shall in no way be affected.

46. Written form

Changes or supplements to this Record of Negotiations must be made in writing in order to be legally valid. This shall also apply to any waiver of the written form.

47. Time of adjudication

Agreement in respect of the above contractual conditions shall not constitute an award of order. The agreements reached shall be binding in the case of an award decision up until _____.

on behalf of thyssenkrupp Rothe Erde GmbH

Acknowledgement

Messrs _____
herewith acknowledge that the terms and conditions contained above in this Record of Negotiations were made available to them for detailed study before the negotiations. All sections hereof were discussed in detail in the course of the negotiations. Agreed changes have been incorporated in handwritten form and initialed by both parties.

on behalf of