

**Record of Negotiations
for Construction Services**
Status 08/2013

Date: _____

Place: _____

Negotiators: **Messrs** _____

thyssenkrupp Rothe Erde GmbH

Object: _____

Inquiry no.: _____

dated: _____

Quotation: _____

dated: _____

**Scope of supply
and services** _____

Quoted price(s): _____

EURO _____

EURO _____

EURO _____

EURO _____

EURO _____

**Agreed
total price(s):** _____

EURO _____

EURO _____

EURO _____

plus statutory VAT

on behalf of

on behalf of **thyssenkrupp Rothe Erde GmbH**

2. Site of works

You herewith expressly declare that you have carried out an on-the-spot inspection and are therefore adequately informed as to the type, scope and difficulties relating to the work forming the object of this contract, for which reason you will not be able to assert any additional claims on grounds of unawareness.

3. Interruptions of and hindrances to work

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

4. Daily construction record

A daily construction record must be kept and updated on the project site as from commencement of the construction work.

5. Services and materials to be provided by us

We shall provide the following, free of charge:

- electricity and water from the available tapping points,
- hoisting gear at the place of installation, maximum capacity load _____ t, (operating personnel not included) in all cases within the framework of our operational possibilities and options. You shall be liable for any damage you might cause by operating this equipment.

Other materials/services to be provided by us

6. Price/order value

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

6.1 Settlement of account

Settlement of account shall take place on the basis of a joint quantity survey.

6.2 Quantity survey/limitation of value

This order shall be limited to a maximum value of EURO _____. Any overstepping of the order value due to changes in volume will only be acknowledged and accepted to a maximum level of _____ % of said order value.

If it should become evident during the execution of the contract that the order value will be overstepped, you shall accordingly contact and notify Corporate Materials Management (*Zentralabteilung Materialwirtschaft*), Essen, and consult upon the further course of action to be taken. You will not be able to plead unawareness in this connection since you are contractually obligated to monitoring the deployment of materials and to continuous measurement of quantities.

Our local construction supervision staff have no entitlement to order work which goes beyond the aforementioned scope. We shall not remunerate claims which go beyond the maximum order value limit.

7. Work at hourly rates

Work at hourly rates may only be performed subject to specific written agreement on the part of our construction supervision staff. Settlement thereof shall take place as per time sheet.

7.1 Time sheets

The hours worked must be certified daily on the time sheet by our respectively responsible office but not later than on the following working day. The information on said time sheet must be such that the work performed during the certified hourly outlay is clear and comprehensible.

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

Any terms and conditions of business printed on your time sheets will not have legal validity.

7.2 Hourly charge rate/limitation of value

According to agreement the charge rate for work to be done which goes beyond the contractual scope shall be EURO _____/hour.

The above hourly charge rate includes any and all incidental costs such as accommodation allowance, expenses, fares, travel time, provision of small implements, etc.

The remuneration for work done at hourly rates within the framework of this order shall be limited to a maximum amount of EURO _____. You shall notify us accordingly before reaching said maximum amount. We will not accept invoices in excess of this amount.

8. Pricing

The aforementioned price(s) shall apply as fixed price(s) until definitive completion of the contractual work in its entirety.

The unit and/or all-inclusive price(s) stated in our specification and schedule of prices shall apply as fixed price(s) until definitive completion of the contractual work in its entirety.

The price/prices includes/include insurance, holding out and provision of all necessary vehicles, equipment, tools and lifting gear, scaffolding, construction site facilities, EC Declaration of Conformity and CE marking and/or manufacturer's declaration for incomplete machines/systems, etc., material deliveries free site of works, unloaded, including any packaging and the disposal thereof.

You shall bear sole responsibility for ensuring the safe and secure storage of your materials, equipment and implements; this shall also apply outside the hours of work.

9. Documentation

You shall provide us with the following documents/drawings in duplicate within the framework of this contract:

EC Declaration of Conformity

on acceptance

or

EC Manufacturers Declaration

on acceptance

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

Instruction manuals with safety instructions in line with DIN 8418

by _____

Noise data sheet

by _____

10. Execution deadlines

- 10.1** Acceptance of order – within one week as from issue of order –
- 10.2** Commencement of the work by _____
- 10.3** _____ by _____
- 10.4** _____ by _____
- 10.5** **Readiness for preliminary acceptance as per to Section 17** by _____

This/these completion deadline(s) shall be extended accordingly by the duration of downtimes confirmed in writing by our construction supervision staff.

11. Penalties for delay

Your culpable 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.

12. Delay in performance

Notwithstanding the content of Section 11 above, delay in performance shall be subject to the relevant legal stipulations.

13. Terms and conditions of payment

_____ % of the order value shall be paid by us in payments on account on submission of the unconditional order confirmation and submission of the declaration of indemnification in the ordinary course of business for the contractually compliant execution of the contractual work as certified by our construction supervision staff.

We shall not make payments on account of less than EURO _____. This limitation will not apply for the final payment on account; payment within _____workdays.

_____ % of the order value 4 weeks after definitive completion and preliminary acceptance of the contractual work; subject to presentation of the final account and of the settlement documents.

_____ % of the order value on expiry of the period of limitation for claims arising from defects, redeemable with the acceptance-related installment against an irrevocable, indefinite and directly enforceable surety on the part of a major German bank to be furnished to us on the attached form, made out to

The contract of suretyship for the above payment must contain the respective statutory VAT.

All payments are to be requested by you in writing 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.

13.1 Declaration of indemnification

To the extent that when effecting the settlement of accounts we should not make any deductions pursuant to Federal Tax Gazette (*BStBl.*) I 2001.602 relating to the Law for the Control of Illegal Work in the Construction Sector (*Gesetz zur Eindämmung illegaler Betätigung im Baugewerbe*), we shall expect of you that you submit to us, together with the confirmation of order, the necessary declaration of indemnification of the tax office responsible for your tax affairs.

14. Performance bond

On your acceptance of this order you shall, in respect of the proper and punctual execution of this order, 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 EURO _____ 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 our acceptance of the contractual works.

15. Limitation of claims arising from defects

The period of limitation for claims arising from defects shall be 60 months as from the time of the written confirmation of acceptance of the contractual works.

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

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 contractually agreed period of limitation.

You shall effect and complete the contractual work in such a way that it exhibits the contractually assured properties and characteristics and is free of defects which might cancel or diminish the value or suitability thereof for customary or contractually specified usage. Within the period of limitation you shall bear any and all costs incurred thereby, in particular in respect of examinations, transport, removal and installation, as well as any and all labor and material costs at the place of destination. The period of limitation for claims arising from defects shall not apply in respect of the legal claims arising from product liability.

15.1 Completeness

You herewith guarantee that the scope of work commissioned by us includes all necessary supplies and services in line with the state of the art. This also means inclusive of any and all such parts and components which are neither specified in detail in the inquiry nor in the drawing or this Record of Negotiations but which fall within the sense and purpose of this contract as per customary interpretation and the contractual object's functional requirements. Any lacking supplies which are necessary towards ensuring full construction of the contractual object shall be delivered and installed without entailing any extra costs for us.

If, in the course of the construction of the contractual object, 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 technical documentation and information as to the effect on price and delivery time so that we can decide on the advisability of necessary changes/extensions.

15.2 Assurance of quality and durability

You herewith give your assurance that you will execute and complete the contractual work in such a way that it corresponds to the specification and bill of quantities on which this contract is based and that it is free of defects which might cancel or diminish the value or suitability thereof for customary or contractually specified usage.

16. Claims arising from defects

The existence of a defect or the non-attainment of contractually agreed characteristics shall be subject to the relevant legal provisions.

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.

17. Preliminary acceptance

You shall give the aforementioned department at the recipient plant written notification of readiness for preliminary acceptance.

The validation of the rendered supplies and services will be performed by the relevantly responsible _____ department of our _____ plant, with the cooperation of the environmental officer and safety expert. The services of a neutral institution will be called upon in the case of dispute in this respect.

The prerequisite in this respect is that you have fulfilled your contractual obligations in their entirety. In addition, all documentation must be available in complete and flawless form.

In the event that it is not possible for the preliminary acceptance procedure to take place for reasons for which we are not responsible, we will grant you the opportunity to rectify the respective defect/shortcoming without delay within _____ workdays at your expense.

Should the results of the first acceptance test not be satisfactory and you have to rectify the respective defect/shortcoming and a renewed preliminary acceptance procedure has to take place, the costs for this and further acceptance tests shall be borne by you to their full extent. We shall then have entitlement to carry out the necessary measures ourselves at your expense or have this done by third parties, likewise at your expense, without this making for any restriction of your obligations to fulfill the period of limitation for claims arising from defects.

17.1 Recording

Following successful validation of all the contractual supplies and services, 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 17.2.

17.2 Acceptance/transfer of risk

On the basis of the record of fault-free execution of the contractual construction work, our Procurement & Supply Management 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 in respect of the contractual construction project in its entirety shall take place at the time of the preliminary acceptance procedure. The sole entitlement to pronounce acceptance shall rest with our Procurement & Supply Management; other employees, in particular those on the site of works, are not empowered to do so.

18. Official and statutory regulations

You herewith give your assurance that you will fulfill all official and statutory regulations to their full extent, and that any and all costs arising therefrom are included in the contractually agreed price(s). In addition, you shall observe and comply with all relevant DIN standards and regulations, VDE provisions as well as all other principles of good engineering practice and all relevant instructions, guidelines and safety regulations. Any and all damage and costs arising to us as result of your noncompliance with such standards, regulations and guidelines shall be for your account to their full extent.

The noise/sound pressure level of _____ dB(A) shall not be exceeded under operating conditions.

The determination of this value is subject to DIN 45 635, Part 1, and account is to be taken of the 3rd GPSGV [Equipment and Product Safety Act], Article 1 (2) in other respects. The noise data sheet as per Section 9 is to be provided along with the other contractually specified documents.

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

- EC Machinery Directive 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 means that:

- the CE mark has to be affixed to the machine / system,
- a declaration of conformity has to be issued in the German language as per Appendix II Section A, EC Machinery Directive and must be included with the delivery,
- an operating manual as per Appendix IV EC Machinery Directive in the language of the country of destination must be included with the delivery.

In the absence of harmonized European 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.

Machines/systems which are non ready-to- use and sub-machines/systems shall be accompanied by the following documents:

- manufacturer's declaration in the German language as per Appendix II B EC Machine Directive,
- the technical documentation in its entirety,
- operating manual as per Appendix I EC Machinery Directive in the German language

Any and all safety devices required as per the EC Machinery Directive towards fulfillment of the safety regulations shall be included in the delivery and covered by the contract 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 respective legal requirements in terms of environmental protection and any dispositions which might be made in this respect.

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.

19. Energy efficiency

If this construction work includes delivery of goods, technical devices or equipment that are relevant with regard to energy consumption, then the highest performance level of energy efficiency shall be preferred, and the highest energy efficiency class, in line with the Regulation on Energy Consumption Labelling.

The client provides specific information about energy consumption for the technical equipment that is used.

Energy consumption of the main energy consumers (loads):

Device	Energy efficiency class	Consumption kWh
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Heat transfer coefficient of insulating structure (roof or wall):

20. Subcontractors

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

21. Industrial safety regulations

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

In the event that the respective Labor Inspectorate (*Staatliche Gewerbeaufsichtsamt*) establishes 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.

22. 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.

Any additional work must first be agreed to by us in writing and shall be subject to the same terms and conditions as for this order.

In the event that the concept and form of execution on which this order is based should change and necessitate changes to the premises of the specification/bill of quantities, the contractual work may only then be commenced when thyssenkrupp Rothe Erde's Procurement & Supply Management has given its written consent.

Only to the extent that no comparable values are available, you shall in such situation submit a quote on the basis of this agreement to thyssenkrupp Rothe Erde's Procurement & Supply Management for clearance on the part of the latter before commencement of the contractual work.

23. 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.

24. Insurance

A builder's risk insurance policy will be taken out by _____ .
The insurance premium will be prorated to the executing companies at ___ o/oo / o/o and deducted from the final account.

25. 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 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.

26. 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 special 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.

27. **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.

28. **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 installation/works
- 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.

29. 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.

30. 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 EN ISO50001(energy).

31. Dispatch

31.1 Dispatch address

31.2 Place of installation / site of works

32. Correspondence

Please address your correspondence as follows:

32.1 thyssenkrupp Rothe Erde GmbH
Department _____
For attention of _____
P.O. box _____

32.2 Commercial matters

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

33. 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 32.1 and 32.2.

34. 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.

35. Other provisions

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

35.1 the terms and conditions specified in the order letter,

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

35.3 the terms and conditions specified in the specification/bill of quantities, including the preliminary remarks and inquiry conditions with which you have been provided,

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

36. 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.

37. 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.

38. 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