

## Capital Equipment Meeting Minutes

**Date:** \_\_\_\_\_

**Place:** \_\_\_\_\_

**Present:**

.....	<b>Rotek Incorporated</b>
.....	On behalf and for account of:
.....	.....
_____	_____
_____	_____
_____	_____
_____	_____

**Project:** \_\_\_\_\_

**Inquiry:** \_\_\_\_\_ dated: \_\_\_\_\_

**Offer:** \_\_\_\_\_ dated: \_\_\_\_\_

**Specification and services** **Manufacturing, supply, erection, commissioning and services ready to operate** .....

.....

**Price(s) quoted in the offer** \_\_\_\_\_ USD \_\_\_\_\_

\_\_\_\_\_ USD \_\_\_\_\_

	_____	USD	_____
	_____	USD	_____
<b>Total price(s) agreed: (see § 2)</b>	_____	USD	_____
	_____	USD	_____
	_____	USD	_____
		This result in a reduction of:	% _____
<b>Ready for acceptance test (see § 5.6)</b>	_____		_____

..... **Rotek Incorporated** .....

**1. Scope of supplies and services**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**1.1 Technical data / Specification of supplies**

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Should we require personnel exceeding the scope of services, remuneration shall be effected as per §§ 2.1 and 2.2.

Technical details have to be agreed upon with the respective technical department (see § 29.1).

## 1.2 Erection / Installation

Complete erection / installation ready for operation including, for e. g.:

- provision of qualified superintendents together with the necessary skilled and auxiliary labour,
- furnishing and provision of all vehicles, appliances, erection devices, tools and hoists required,
- proper setting up and clearing of the erection site,
- provision of the necessary fuels and auxiliary materials,
- taking out a sufficient transport, erection and commissioning insurance,
- all other contingencies.

Heavy parts which are subject to wear and tear and have to be replaced frequently shall be provided with appropriate devices permitting ready fastening of lifting gear. All measurements must be taken by you on the site.

You shall be wholly responsible for the adaptation of your structures and supplies to the local conditions.

The work shall be carried out in such a way that it will not interfere with the operation of production facilities, works railway and third parties, if any.

Interruptions and/or impediment of work shall not result in the right to

claim extra charges.

In case special internal instructions for the employment of outside personnel, the delivery and storage of materials and erection appliances, and the performance of the erection work have been implemented in the receiving works or on the erection site, you and your agents shall be under the obligation to comply with such instruction to the full extent.

### **1.3 Commissioning and trial operation**

of the complete operative plant up to its full readiness for function / production is a part of this contract.

### **1.4 Instruction and training of the operation personnel**

For the training of the operating personnel and the instruction of the maintenance and servicing personnel you will provide the necessary staff for a period of approx. .... working days.

In addition, you undertake to train our personnel in the operation, programming and maintenance of the plant for a period of .... days and with .... staff members.

The personal expenses of our personnel will be borne by us, whereas the material costs and your personal costs will be for your account.

The date for the commencement of such training will be mutually agreed upon.

## **1.5 Performance / acceptance test**

Details as stipulated in § 10.

## **1.6 Documentation**

1 transparent/printable copy and 3 blueprints/copies respectively as data-sheet formatted comprising the following:

- as specified in the enclosed checklist-no. ....
- as defined in § 4.
- as data processing file

## **1.7 Supplies on the part of Rotek Incorporated**

The following will be provided by us free of charge:

### **for erection / installation in general:**

- the foundations required and the necessary bricklaying and mortise work, if any, according to your definite specifications, foundation layout plans with load ratings, and bases for calculation,

- the cable ducts required according to your definite specifications,
- the pit covering according to your definite working drawings and our load ratings with all connection dimensions for the covering,
  - the main electric power supply up to but not including the switch cabinet (which is to be supplied by you), according to your definite specifications. The switch cabinet will be positioned at a distance of approx. .... m from the plant center,
  - the compressed air supply up to but not including the main gate valve (which is to be supplied by you) and installation in the vicinity of the machinery,
- the water supply and discharge up to and from the main gate valves (which are to be supplied by you) and installation in the vicinity of the machinery,
- the gas supply up to but not including the main gate valves (which are to be supplied by you) and installation in the vicinity of the machinery, according to your definite piping drawings.

#### **for erection works:**

- electric power, water from the existing tap points,
- hoists, load-bearing capacity ... tons on site, including operation personnel taking into account our operational requirements. In case of

self-service you shall be kept liable for any damage caused by you.

**for commissioning:**

- energy, personnel

- .....

**for the performance check / trial operation**

- energy, personnel

- .....

**other supply and services on the part of Rothe Erde**

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**other battery limits / interface points**

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You will provide us with final drawings/specifications which will enable us to technically perform said supplies and services as economically as possible.

If the foundations or connections for utilities require changes or modifications as against the final drawings furnished by you, all resulting costs shall be borne by you provided that such changes and modifications are due to reasons which you are responsible for.

Any and all supplies and services performed by us shall be accepted by you upon completion following successful inspection. A use of such supplies and services for the installation shall be considered as acceptance. By such acceptance it is acknowledged that the supplies and services have been performed in accordance with the specifications and drawings furnished by you.

## 1.8 Painting specifications

Surface preparation:

- Dust removal by sandblasting according to SA ..... and DIN 55928, Part 4
  - ..... x prime coats, thickness ..... my, quality .....
- ..... x finishing coats, thickness ..... my, quality .....

Colour shade RAL .....

**1.9 Requirements for equipment and makes**

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**2. Price / Contract value**

Total price of the offer is EURO/USD.....  
discount reduction (... %) EURO/USD.....

= Total price for the  
supplies and services  
as specified above  
EURO/USD.....  
=====

(say: .....EURO/USD)

**2.1 Remuneration for supervision personnel/qualification**

(e.g. technician, senior assembly fitter, commissioning engineer, electrician, locksmith, etc.)

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The afore-mentioned calculation value per hour/lump sum daily allowance for 10-hours working time shall be valid exclusively for the qualification of the ..... mentioned above.

In case you employ less skilled personnel after consulting us, the calculation basis/daily allowance shall be rectified.

The a.m. calculation bases include all auxiliary costs such as redemption, travel allowance and proportional allowance for overtime hours etc.

**2.2 Hours run/limitation of value**

Hours run are to be confirmed daily, but at the latest on the subsequent working day by our site manager indicating the work effected. If work hour records are submitted late, you are not entitled to remuneration.

Work performed under this order and paid per hour shall be limited to a maximum amount of EURO/USD \_\_\_\_\_

We shall not accept any invoices exceeding this amount.

**3. Pricing**

The price / contract value referred to above shall be considered as fixed lump sum price covering the full completion of the contract and includes - without limitation- items such as:

- documentation
- packaging
- freight prepaid for delivery to the erection site in the ..... works
- unloading and transport onto the foundation/to the erection site
- transport insurance
- erection / installation ready for operation
  - erection / installation and commissioning insurance
  - commissioning and trial operation
- instruction and training of the operation personnel
- function / performance test

**4. Schedule for the furnishing of the documentation**

The major design drawings shall be submitted early for our approval so that any modifications suggested by Rotek would not have an effect on production. This will not cause any extra costs to us. By our approving of the design drawings, you will not be relieved from your obligations in any way.

Foundation and installation drawings with load ratings and indication of the energy supply lines as well as anchoring plan

by .....

Wiring and circuit diagrams	by .....
Piping and hydraulic circuit diagrams	by .....
Erection / Installation schedule	by .....
Operating instructions including safety specifications according to DIN 8418	by .....
Maintenance instructions, lubrication charts	by .....
Spare and wearing part lists and offer	by .....
Equipment list	by .....
Thermal calculation	by .....
Water and steam circuit	by .....
Measuring and control circuit	by .....
Crane test book, hook and rope certificates	by .....

All other documentation by .....

\_\_\_\_\_ by .....

\_\_\_\_\_ by .....

EG manufacturer statement **at the time of delivery**

EG conformity statement **at the time of acceptance test**

**5. Schedule für execution**

**5.1** P.O. acknowledgement two weeks after P.O.

**5.2** Commencement of delivery and erection / installation by .....

**5.3** Completion of erection / installation by .....

**5.4** Commissioning / start of trial operation by .....

**5.5** Handing over ready for operation by .....

**5.6.** Readiness for acceptance test according § 10.2 = readiness for function / production by .....

**6. Monthly report on progress of work**

To enable us to follow-up the agreed completion dates, you will submit to us at the beginning of each month, starting on the ....., a progress report with information on the state of the contract completion.

**7. Inspection and Testing at Supplier's works**

We reserve the right to undertake intermediary or final inspections of the services or equipment ordered on your premises or in your factory at any time within the regular business hours.

Carrying out such inspections does not free you from your obligation to make the usual controls you have to carry out for whatever reason.

Our client and/or third parties contracted by the client shall be entitled to attend at such inspections.

Any faults found during inspection are to be rectified immediately. If the faults cannot be eliminated during the inspection then we reserve the right to carry out a further inspection at your cost.

## **8. Notification of completion**

Not later than 2 weeks before shipment of the goods or completion of the services contracted with you, you shall inform us in writing that such goods or services are available for preliminary acceptance or quality control if such preliminary acceptance or quality control has been requested by us in the contract documents.

This notification shall be addressed in two identical copies to Rotek Incorporated Purchasing Department and to the requester.

## **9. Shipping advice**

Not later than 8 days prior to any shipment you will inform us in writing when the consignment will arrive in the receiving plant. One copy each should be addressed to the receiving plant, another to our Purchasing Department.

## **10. Acceptance/Tests**

Any performance tests will be witnessed by..... of our ..... department with the assistance of our safety expert in charge. In case of any dispute the matter shall be referred to a neutral body.

**10.1 Testing in the manufacturing plant**

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**10.2 Acceptance after trial operation**

Readiness for the provisional acceptance shall be notified in writing to the above department of the receiving plant after successful trial operation. This requires that all your obligations have been fully complied with and that at the end of the trial operation the plant is ready for production without any restriction. In addition, all documentations required must have been received without exception.

After troublefree operation has been reached all performance data shall be checked by you for a continuous period of ..... The measuring equipment required for the trial operation as well as its installation and removal shall be provided by you. If the results obtained during the trial operation are inferior to the figures specified in the contract, you will have the right to carry out improvements within a period of ... weeks during which 2 more trial runs can be performed.

Items of the plant may not be replaced solely for the purpose of the trial operation.

All costs for such additional trial runs shall be entirely for your account.



**10.3 Test protocol**

Following a successful trial operation, a "protocol on the provisional acceptance" will be drawn up and signed by both parties.

**10.4 Acceptance**

Based on the protocol of the successful trial operation, the Purchasing Department of Rotek Incorporated will confirm the acceptance. At the same time the instalment due upon acceptance becomes payable and the contractual warranty period commences.

**10.5 Repeat of the performance test**

Approx. one month prior to the expiration of the warranty period, you will check the performance data according to § 10.2.

**11. Penalty for delay**

In case the delivery date agreed for the supply of the foundation and arrangement plan including load data shall be delayed, a penalty in the amount of USD ..... shall be due.

If the stipulated date(s) of = .....and/or....., should be delayed for reasons we are not liable for, we shall be entitled to impose, for each day a penalty in the amount of ... % of the total order value, but limited to a maximum of ...% . Enforcement of the penalty may be reserved by us until final payment.

Any circumstances which in your opinion require postponement of the

date(s) guaranteed by the above penalty, shall be communicated to our notice in writing not later than 5 working days after their occurrence. Only such circumstances that have been our approval in writing may cause a postponement of the stipulated date.

If the penalty becomes payable without the work having been completed, we shall be entitled, without giving any further notice, to perform the remaining work ourselves or to have it performed by third parties at your expense without your liabilities under the warranty becoming affected thereby in any way.

## **12. Terms of payment**

.....% down payment upon receipt of your unconditional acceptance of the order,

..... % upon the first half of the contractual completion and after receipt of the documentation as due by this time

..... % upon complete delivery and start of erection / installation

..... % upon completion of erection / installation

..... % after the successful acceptance test according to § 10.4, certified by our Central Purchasing Department

..... % upon expiration of the warranty period, or against provision of a bank guarantee as described under 13.3, but not earlier than 4 weeks after the successful acceptance test according to § 10.2, certified by our Purchasing Department.

All payments refer to the total contract value and shall be requested by you in writing from our invoice auditing department. The fact that payment is made by us shall not affect our warranty right or other rights.

Payments will be made with in .... days after receipt of your respective invoices.

**13. Bank guarantees**

As a security for the payments listed below, you will provide us prior to the respective payments with an irrevocable bank guarantee without validity date which is payable on demand, issued by a major U.S. bank or international bank with an affiliate in the United States or ..... The bank's name has to be provided to ThyssenKrupp in advance for approval. The wording of the guarantee has to be in accordance with the enclosed form otherwise the guarantee will be rejected. Beneficiary of the guarantee is:

Rotek Incorporated.....

These bank guarantees shall be issue for:

**13.1 for the first instalment**

This bank guarantee will be returned upon your written request after acceptance test.

**13.2 for the second instalment**

To be returned as described under 13.1.

**13.3 for the ..... instalment**

This bank guarantee will be returned upon your written request after expiration of the warranty period.

**13.4 Performance Bond (for proper execution)**

For the proper and timely correct execution of this order you have to provide with your order confirmation a performance bond according to the a. m. prerequisites in favour of

Rotek Incorporated.....

amounting to EURO/ USD \_\_\_\_\_

This guarantees will be returned to you or your bankers after fulfilment of your obligations at your written request.

**14. Warranty**

The period of warranty shall be 24 months of continuous operation from the date of the written notification of acceptance.

For repaired or replaced parts the warranty period shall be renewed.

Any interruption of operation for which you are responsible and of which you have been informed by us in writing shall extend the warranty period accordingly.

Claims for defects notified within the period of warranty shall not become barred by the statute of limitations before expiry of a period equal to the agreed period of warranty.

**15. Guarantees**

**15.1 Guarantee of Completeness**

You herewith guarantee that the plant as a whole is complete and forms a functional unit that it represents the latest state of the art irrespective of whether or not the supplies or services required therefore have been

specified in detail.

You herewith guarantee that your supplies and services will be performed in accordance with the contract, and that the plant will operate according to the specified requirements.

If any components required for operation in accordance with the specified requirements are missing, such components shall be supplied and installed by you without any extra costs for us.

If at any time during the execution of the contract you come to know of any advance improvement and/or new technical developments, you will inform us of such improvement or developments and submit to us, free of charge, a proposal with full technical documentation and their effect on price and delivery dates to enable us to decide on the usefulness of any changes required.

**15.2 Function and performance guarantee**

Furthermore you herewith guarantee that the plant is fully fit for purpose and that the contractual performance data and quality as well as the parameters required for acceptance will be achieved during the warranty period 100% without any tolerance.

The accuracy of plant performance is to be maintained during the full service life by appropriate adjusting facilities.

In particular, you assure the following:

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**15.3** Noise emission

The maximum noise level produced at the workplace and the sound intensity level of the measuring surface measured at a distance of 1 m must not exceed ..... dB(A). Measuring and evaluation of tests shall be governed by DIN 45 635, part 1.

**15.4** Service guarantee

You guarantee that if required skilled service personnel will be available within ..... hours (except for Saturdays, Sundays and holidays) after you have been notified accordingly.

Wearing parts will be maintained in your store for early delivery. Accruing costs owing to your failing to comply with this guarantee shall be fully borne by you.

**15.5** Availability guarantee

Availability rate for the complete above mention machine with all functions are ... %.

The supplier guarantees a technical failure rate as below ... % for the time period beginning with the 4<sup>th</sup> month until the end of the warranty period.

The failure rate has to be monitored by the customer over the a.m. mentioned time period. The customer has to be provided a monthly report of machine availability performance with description of actual downtime events.

In case that the average failure rate exceeds ... % over the agreed time period it is up to the customer to evaluate the severity of the failures to determine if equipment or parts should be reworked or replaced by the supplier. In this case the warranty period will be extended without any further notification to ... month.

The failure rate has to be calculated according to VDI-Guidelines 3423.

**15.6** Penalties for lack of performance  
(in accordance with annex .....)

**15.7** Penalty for lack of availability  
(in accordance with annex .....)

**16. Trial operation**

The trial operation shall cover ..... days and shall be carried out under your full responsibility. If the trial operation is interrupted due to any problems, the trial operation shall recommence after the interruption. However, if only minor deficiencies have to be removed which have no significant impact on the operation, this shall not be considered as an interruption and shall not cause an extension of the trial operation.

You shall notify us in writing of the commencement of the trial operation which shall then be confirmed by us. As long as this has not been done the trial operation shall be deemed not to have been started.

The fuels and materials required for the trial operation will be made available by us free of charge.

Should any deficiencies occur during the trial operation for which you are responsible, you shall bear the labour cost incurred by us and our subcontractors, if any during the time such deficiencies exist. If we request the trial operation to be extended, you shall make available to us a competent engineer at a daily flat rate of EURO/USD ..... include any and all incidental expenses.

**17. Remedy of defects**

If any defects are found, you undertake to remove them free of charge without delay including costs of transport, packing, dismantling and re-

assembly.

If you fail to remove such defects within a reasonably short time, we shall have the right to remove them ourselves or to have them removed by third parties for your account without your obligations under the warranty becoming affected thereby.

If you request defective parts to be returned to you for inspection, all respective costs incurred, e. g. for packing, freight, etc. shall be borne by you.

**18. Claims under the warranty**

For elimination of a default and/or in case the ensured features are not achieved as per §§ 15.1 and 15.2 we shall have the right to set a deadline to you declaring that we reject any further rectification work after expiry of this deadline.

If this deadline is expired, we may claim rescission, reduction of the price or damages. This applies to both parts or entire contract object.

**19. Governmental requirements**

Governmental Conditions

The contract goods shall comply with the statutory provisions, in particular:

- the EC machinery guidelines and/or the appliance safety decree in their latest version, including the pertinent enactments
- any other applicable common guidelines of the EC, and
- any and all harmonized European standards as applicable to the machine subject matter of the contract.



**20. Subcontractors**

You undertake not to subcontract any part of this contract without our previous written approval.

If you fail to comply with the above provision we shall be entitled to charge and to deduct from your accounts receivable a penalty in the amount of ..... % of the contract valued plus statutory VAT.  
In addition, we shall have the right to terminate the contract forthwith.

**20.1 Labour protection legislation**

If you fail to comply with the rules of the above legislation we shall have the right to deduct from your accounts any and all costs incurred by us because of such failure. In addition, we shall have the right to terminate the contract forthwith.

**21. Spare and wearing parts**

You shall submit to us in triplicate by the date specified under § 4 a detailed spare and wearing part list and offer stating unit prices and delivery dates.

You undertake to supply spare and wearing parts for this plant at market prices for a period of at least 10 years after commissioning of the plant.

**22. Changes, extensions, supplements**

If you intend to make any deviations from the agreed scope of supplies and services, you shall not have the right to claim extra charges or alter delivery dates, unless such deviations are brought to our knowledge and agreed with us in writing prior to their execution. For any additional supplies and services which have to be approved by us in writing, the same terms and conditions as for the main contract shall be applicable.

**23. Requests for changes**

Cost of minor changes requested are included, to a reasonable extent, in the contract price (EURO/USD ..... max.).

**24. ThyssenKrupp range of products**

It has been agreed upon that you will consider the products of the ThyssenKrupp companies when purchasing material required for the execution of this contract. We therefore expect that you will submit enquiries to the respective ThyssenKrupp companies.

Should you meet with difficulties in respect of prices, quality or delivery dates, we would ask you to appeal directly to the sales manager of the ThyssenKrupp Company concerned.

Your total responsibility for the proper execution of the contract shall, however, remain unaffected.

**25. Liability**

You shall be liable, within the scope of the applicable legal provisions, for any bodily injury and/or damage caused by your fault or by the fault of your employees or agents during the execution of your supplies or services.

If in connection with your supplies and services any claims for damage or other claims by third parties should be raised against us, you shall indemnify and save us harmless from and against any and all such claims including legal and non-legal expenses.

**26. Obligation to secrecy**

The obligation to secrecy shall apply to any and all contract documents as well as to any and all operating procedures, data, drawings, sketches, and similar information which have come to your knowledge. You

undertake to impose this obligation also on your workmen and agents involved in the construction.

Without our consent, such documents and information must not be published, copied, made available to third parties, or used for any purpose other than the purpose they have originally been provided for.

You shall be liable for any and all damages arising from the infringement of the above obligation by you or by your workmen and agents.

**27. Shipment address**

.....  
.....  
.....  
.....

**28. Place of erection / installation**

.....  
.....  
.....  
.....

**29. Correspondence**

All correspondence

**29.1 concerning **technical matters** shall be addressed to:**

.....  
.....  
.....

**29.2** concerning **commercial matters** shall be addressed to:

Rotek Incorporated  
Purchasing Department

Aurora, Ohio 44202

**29.3** Minutes of meeting

All meetings held with you, you shall prepare consecutively numbered minutes which shall be submitted to us within 8 working days after the meeting. Of such minutes one copy each shall be sent to the addresses listed under §§ 29.1 and 29.2 above.

**30. Place of jurisdiction, State of Ohio, USA law**

Place of jurisdiction shall be Aurora, Ohio USA.

All legal relations between us and the supplier shall exclusively be governed by the Ohio law.

**31. Other terms and conditions**

The execution of this contract shall be governed by the following terms and conditions in the order indicated hereafter:

**31.1** the terms and conditions stipulated in the present contract

**31.2** the terms and conditions recorded in the minutes of meeting of the .....and signed by both parties

**31.3** our general terms and conditions of purchase and our supplementary conditions for transport and packaging.

**31.4** our general specification for electrical installations and equipment

31.5 .....

**32. Writing form**

All changes and/or additional of this minutes of meeting must be in writing.

**33. Deadline for contract award**

The agreement of the terms and conditions are stipulated in this minute of meeting shall not be construed as the placement of the contract. The terms and conditions agreed upon shall be binding for a contract placed not later than .....

\_\_\_\_\_  
.....  
.....  
**(authorized signature)**

\_\_\_\_\_  
**Rotek Incorporated**  
.....  
**(authorized signature)**

**Confirmation**

Comp. ....confirmed, to have receive this minutes of meeting for study and information before we have start this negotiation. All changes are by hand writing remark and initial.

For \_\_\_\_\_