

**Non-Disclosure Agreement
("NDA")**

This Non-Disclosure Agreement is executed on [dd/mm/yyyy] (the "EFFECTIVE DATE") at [place of execution] by and between

Name of Parties	Full Address, Location, Country:	
thyssenkrupp rothe erde Germany GmbH	Tremoniastr. 5-11, 44137 Dortmund, Germany	"PARTY A"
[Name of Counterparty/- parties]	[Address of Counterparty/-parties]	"PARTY B"

- hereinafter also individually referred to as "PARTY" and collectively the "PARTIES".

Preamble

The PARTIES intend to [description of envisaged cooperation] (the "BUSINESS RELATIONSHIP" or "PROJECT"). With regard to the evaluation and execution of the PROJECT, it is necessary that the PARTIES exchange industrial and trade secrets as well as other confidential information. To allow for the unhindered exchange of such confidential information and for the protection of their proprietary rights and interests, the PARTIES hereby conclude as follows:

1. This NDA shall apply to any and all of the following which has been and will be provided by one PARTY (the "DISCLOSING PARTY") to the respective other PARTY (the "RECEIVING PARTY"), or of which the other PARTY has or will have become aware of in connection with the PROJECT:
 - a) documents/information that are/is marked as 'internal'/'confidential'/'strictly confidential information' or other such similar marking,
 - b) sensitive information, as for example key information of significant projects (e.g. sensitive know-how), inventions pre IPR-filing, construction plans, design drafts, research plans, customer/supplier or personnel data, business strategies and business plans, trade secrets, accounts, costs, administrative or financial or sales-related activities or related information, IT assets, operating methods/procedures, personalized data (e.g. contracts, contract data), sample contracts, drafts, forms, concepts, statistics of anonymized personalized data, formulae, CAD-Files, technical drawings, commercial bases of calculation and offers,
 - c) any information or documents that is either as a whole or in the precise arrangement and composition of their constituent parts not public knowledge or readily accessible to persons in the circles which normally handle this type of information, and whose confidentiality results from (i) its nature or (ii) the circumstances of its disclosure (e.g. the information is protected against third-party access through locked storage; encryption; restricted access) regardless whether or not the information is explicitly marked as 'internal'/'confidential'/'strictly confidential' or in a similar way,

in any case irrespective of its nature and format (verbal, in writing, in text form or in any other form) and whether the information is linked to other non-confidential information (all documents and information according to the aforementioned subparagraphs hereinafter called "DISCLOSED INFORMATION").

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Management Board: Dr.-Ing. Elisabeth Marianne P. Jacobs (Chairwoman),
Dipl.-Ing. (EMBA) Armin Necker, Dipl.-Btw. (MBA) Lisa Marie Denoyelle
Company domicile: Dortmund; Commercial court: Local Court Dortmund, HRB 10591
VAT-ID-No.: DE811460194 Tax No.: 112/5795/0833

Bank account:
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FV-BS-10479en Rev. 11

2. The PARTIES shall strictly comply with all applicable laws and regulations, including but not limited to export and import control laws, competition regulations, antitrust laws and data protection regulations in their up-to-date version. To this end, the PARTIES will only exchange information that is related to the PROJECT and that is necessary for its successful completion.
3. The PARTIES hereby undertake to keep strictly confidential any and all DISCLOSED INFORMATION they receive or have received from the respective other PARTY – either directly or indirectly – in connection with the PROJECT, whether received orally or in writing or in any other form. Such DISCLOSED INFORMATION must not be disclosed without the prior written consent of the DISCLOSING PARTY in any way whatsoever, in whole or in part, to a third party. Neither the content nor the existence of this NDA (including the fact that the PARTIES are engaged in discussions or transactions hereunder) shall be disclosed to a third party nor announced to the public without prior written consent of the other PARTY.

AFFILIATES as defined hereinafter are not regarded as third parties for the purposes of this NDA if they are also bound by confidentiality obligations which correspond to the confidentiality requirements laid out in this NDA. AFFILIATES is defined as either (aa) such companies which are affiliated to one of the PARTIES within the meaning of Sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz, AktG*) or similar national laws and regulations, or (bb) any company, now existing and future, directly or indirectly (via one or more subsidiaries) (i) controls one of the PARTIES, (ii) is controlled by one of the PARTIES, or (iii) is controlled by the same parent company as one of the PARTIES, with “control” being understood as holding at least fifty percent (50%) or more voting rights of the respective PARTY (the “**AFFILIATES**”).

The PARTIES further undertake to use the DISCLOSED INFORMATION solely within the scope and for the purposes of the PROJECT and particularly not to use, directly or indirectly, the DISCLOSED INFORMATION for its own industrial purposes or for the industrial purposes of any third person or party, except to accomplish the purposes of the PROJECT or unless such use has been contractually agreed upon. In particular, the PARTIES may not study, disassemble or test a received product or object by means of reverse engineering insofar as such actions are not exceptionally permitted by a contract between the PARTIES or compulsory applicable law. Information and findings obtained through reverse engineering are in any case subject to confidentiality in accordance with this NDA.

The PARTIES shall take any and all necessary and reasonable measures (e.g. by organizational, physical or technical means such as storage in locked rooms or cabinets, locking electronic devices, electronic access control or by using standard encryption techniques, confidentiality agreements) to comply with their respective confidentiality obligations under this NDA and to protect the DISCLOSED INFORMATION from unauthorized access. Each PARTY shall ensure that its personal leaving shall have any and all access rights terminated, thus ensuring that there is no unauthorized access to DISCLOSED INFORMATION.

The RECEIVING PARTY (and its RECIPIENT REPRESENTATIVES as per clause 4) shall not use in any way, shape, or form the DISCLOSING PARTY’s DISCLOSED INFORMATION using AI systems unless explicitly agreed in writing by the PARTIES or the AI system and associated data – including but not limited to its model, as well as any input, output, and modified data – are exclusively hosted in a secure manner by and is accessible only to the RECEIVING PARTY and/or its AFFILIATES.

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For the purpose of this clause “AI system” shall mean: a machine-based system designed to operate with varying degrees of autonomy and demonstrate adaptability after implementation, and that, for explicit or implicit objectives, derives from the inputs it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Such AI system may have, for example, machine learning or deep learning capabilities and may include generative AI tools (like Open AI’s Chat GPT).

4. The DISCLOSED INFORMATION shall only be disclosed to those of the RECEIVING PARTY’s (or its AFFILIATES’) directors, officers/organs, employees, agents, representatives or professional advisors (including attorneys, accountants and financial advisors/consultants) (together the “**RECIPIENT REPRESENTATIVES**”) who need to know and/or analyze the DISCLOSED INFORMATION in order to perform tasks for the benefit of the PROJECT.

The PARTIES shall ensure that prior to receipt of DISCLOSED INFORMATION their respective RECIPIENT REPRESENTATIVES (i) are informed about the obligations under this NDA and (ii) submit to the confidentiality obligations required by the RECEIVING PARTY under this NDA in writing as if it were a party thereto, unless they are subject to confidentiality obligations arising from similar agreements or provisions, e.g. by virtue of applicable professional rules or under their respective employment agreement on terms no less strict than those of this NDA.

5. The confidentiality obligations shall not apply to information, which
 - a) was known to the RECEIVING PARTY on a non-confidential basis prior to its disclosure by the DISCLOSING PARTY; or
 - b) was generally available in the public domain at the time of disclosure or, after disclosure, becomes publicly known or available, not as a result of a breach of this NDA; or
 - c) becomes available to either PARTY on a non-confidential basis from a third party, entitled to disclose the information; or
 - d) has been developed by the RECEIVING PARTY independently from the DISCLOSED INFORMATION.The burden of proof regarding the fulfilment of any of the exceptions mentioned in the aforementioned subparagraphs lies with the PARTY claiming to rely on such exception.
6. If the RECEIVING PARTY or any RECIPIENT REPRESENTATIVE is required to disclose DISCLOSED INFORMATION – in whole or in part – by applicable law/statutory regulation (such as mandatory antitrust laws), court order or order of a public authority or pursuant to any other official regulations or stock exchange rules, the RECEIVING PARTY or RECIPIENT REPRESENTATIVE is permitted to disclose the DISCLOSED INFORMATION, provided however, that the RECEIVING PARTY shall (and shall ensure that the RECIPIENT REPRESENTATIVE respectively),
 - immediately inform the DISCLOSING PARTY at least in text form about the existence and scope of such an obligation and the precise circumstances (in particular, DISCLOSED INFORMATION to be disclosed, the relevant recipient, and the legal grounds for such disclosure);
 - consult with the DISCLOSING PARTY on possible legal steps to avoid or restrict the disclosure (e.g. by injunction or other suitable protective measures), and to take steps to limit any disadvantages for the DISCLOSING PARTY and/or any of its AFFILIATES;

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- disclose only that portion of DISCLOSED INFORMATION the disclosure of which is required by applicable law/statutory regulation, court order or order of a public authority or pursuant to any other official regulations or stock exchange rules and ensure, to the extent possible, its confidential treatment by the relevant recipient.

7. To the extent that the RECEIVING PARTY or any RECIPIENT REPRESENTATIVE is not permitted to fulfil any of the obligations under clause 6 prior to the disclosure of DISCLOSED INFORMATION to the relevant public authority or court, the RECEIVING PARTY shall (and shall cause the relevant RECIPIENT REPRESENTATIVE respectively to) immediately inform the DISCLOSING PARTY on all details of the disclosure.

8. This NDA shall enter into force once it has been duly signed by both PARTIES on the EFFECTIVE DATE and shall end either upon completion of this BUSINESS RELATIONSHIP/PROJECT or five (5) years after the EFFECTIVE DATE, whichever event occurs later, whereas any confidentiality obligation under this NDA remains valid for a further term of five (5) years after expiration or termination of this NDA. Ordinary termination of this NDA by the Parties is excluded. Should any DISCLOSED INFORMATION contain trade secrets, such information shall be protected as long as and to the extent such information remain a trade secret as per applicable law.

9. Upon first demand by the DISCLOSING PARTY or following an expiration or a termination of this NDA, the RECEIVING PARTY shall immediately return or securely and definitely destroy any and all DISCLOSED INFORMATION received in writing and any other material received in whatever form, including any and all copies made unless the RECEIVING PARTY is legally obligated to a longer retention period or must keep copies for evidence purposes. Such copies shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein and shall be deleted after expiration of the designated time period. DISCLOSED INFORMATION that is contained in routinely saved electronic data e.g. data processing systems (backups) shall be deleted within the following regular deletion process or at least blocked if a deletion is not feasible. The RECEIVING PARTY is obliged to confirm the destruction or the final deletion/blocking of all DISCLOSED INFORMATION received upon request of the DISCLOSING PARTY at least in text form.

10. The PARTIES (or its subcontractors or suppliers, as the case may be) shall remain proprietors of any and all DISCLOSED INFORMATION made available to the respective other PARTY, including any associated intellectual property rights. The PARTIES acknowledge that the disclosure and making available of DISCLOSED INFORMATION does not constitute a transfer of any interest or grant of any license or else – especially, but not limited to, any rights of use, exploitation or filing of registrations – in any intellectual property rights. The disclosure of any DISCLOSED INFORMATION that contains protectable inventions does neither constitute a prior publication nor a right of prior use for the purposes of patent or utility model laws. Before the PARTIES start any project-related activities the PARTIES will convene without undue delay to conclude a project-related agreement, which shall also regulate allocation and exploitation of (joint) work results.

11. There are no side agreements to this NDA. Any amendments or additions to this NDA must be made in writing and thus signed by duly authorized representatives to become effective. This also applies to a waiver of the written form requirement.

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12. Each PARTY warrants it has the right to disclose the information actually disclosed; however, this NDA does not obligate any of the PARTIES hereto to disclose any information to the other PARTY. The conclusion and execution of this NDA does not entitle either PARTY to act in any way for the other PARTY and do not create any payment obligations or other commitments that go beyond the subject matter of this NDA, in particular to enter into any future contractual relationship with the other PARTY.

DISCLAIMER:

DISCLOSED INFORMATION is provided within the framework of this NDA “as is” with no warranty or representation as to its accuracy, correctness or completeness. The PARTIES do not assume any liability towards each other or any third person or party resulting from the use of any DISCLOSED INFORMATION.

13. This NDA may not be assigned or transferred (in whole or in part, and whether limited to rights or benefits only) or novated to any third party without obtaining the prior written consent of the other PARTY which consent shall not be unreasonably withheld or delayed, however, no such consent shall be required in case of assignment/transfer to any of a PARTY'S AFFILIATES (whether existing or established in the future).
14. If one or more provisions of this NDA shall be or become invalid or unenforceable, in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. Unless agreed within reasonable period of time by the PARTIES to the contrary in the specific case the invalid or unenforceable provision shall be replaced by the applicable statutory rule or, lacking a statutory regulation, by a valid and enforceable provision whose contents comes as close as possible to what the PARTIES would reasonably have agreed upon had they known of the invalidity or unenforceability of the respective provision when entering into this NDA. The same shall apply if the NDA contains a gap.
15. Due to the proprietary and competitively-sensitive nature of the DISCLOSED INFORMATION, a breach of this NDA by the RECEIVING PARTY may cause irreparable harm or damage to the DISCLOSING PARTY, which injury will be inadequately compensable in damages. Without prejudice to any other relief to which it may be entitled to, the DISCLOSING PARTY shall be entitled, without the requirement of posting a bond or other security, to the remedies of preliminary or permanent injunction in respect of any actual breach or threatened breach of the provision of this NDA by the RECEIVING PARTY.
16. The RECEIVING PARTY shall notify the DISCLOSING PARTY in writing promptly, but no later than two (2) working days, upon the occurrence of any unauthorized release of DISCLOSED INFORMATION or breach of this NDA of which it becomes aware, this shall however not release the RECEIVING PARTY of its obligations under this NDA.

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17. To the exclusion of the provisions of international private law, this NDA shall be governed exclusively by and interpreted according to the substantive law of the Federal Republic of Germany. Any and all disputes arising out of or in connection with this NDA or its validity shall be finally settled – without recourse to the ordinary courts of law – in accordance with the Arbitration Rules of the German Institution for Arbitration e.V. (DIS). The seat of arbitration shall be Dortmund, Germany. The arbitral tribunal consists of three arbitrators appointed in accordance with aforementioned rules. Unless agreed to the contrary, the arbitration proceedings shall be conducted in English. The arbitration shall be in lieu of any other remedy and the award shall be final, binding and enforceable by any court having jurisdiction for that purpose.

For PARTY A	
Signature:	Signature:
Name in print letters:	Name in print letters:
Title/Function:	Title/Function:

For PARTY B	
Signature:	Signature:
Name in print letters:	Name in print letters:
Title/Function:	Title/Function:

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