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PRINCIPLES AND TOPICS (BASIC CONTENTS) TO BE INCLUDED IN
LONG TERM PURCHASE CONTRACTS FOR COAL*

prepared by
the secretariat of UNIDO

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A. INTRODUCTION

1. The realization of the industrial development goals of developing countries is unlikely to rely solely on the initiative and action of private enterprise. Governments have an important role to play in the promotion of long term arrangements for the purchase of materials supporting the establishment of basic industries, using various forms such as treaties, conventions, declarations, protocols, or letters of intent. Governments in supplying countries also often exercise considerable influence on the formation of contracts. It is therefore advisable to mention in the preamble to a contract the appropriate governmental authority.

2. A contract should begin with a statement of the date, the names and functions of the competent partners, their place of residence, and a statement of the consideration. The latter should comprise a brief description of the object of the contract, period of validity, period of extension by mutual agreement (usually expressed in calendar years) the quantity and type of coal, the unit price initially and the financial arrangements for subsequent years.

B. QUANTITY

3. The quantity of coal to be supplied and received should be fixed by:
- an annual tonnage (first year and subsequent years);
 - a quarterly programme of deliveries over the year (usually except the first year);
 - such deviation in quantity as may be required to utilize in full the carrying capacity of the last vessel loaded in each calendar year;

- a permissible deviation in quantity of the individual types of coal to be mutually agreed upon at the annual fixing of prices;

C. QUALITY

4. The quality of coal to be supplied by the Seller should specify:

- origin of the coal (mining district, name of mine)
- granulometry (usually by the upper size limit)
- analysis according to each specified coal type including:

total moisture content
volatile matter content
fixed carbon
ash and sulphur with an allowance tolerance

- cokingability (usually by the free swelling index until new parameters have been internationally standardized)

The origin of each shipment should be documented.

5. Coal from newly developed pits should be subjected to industrial testing for fixing its position among the family of known metallurgical coals. Testing procedures should be undertaken in accordance with the principles of modern blending control and performed by an independent specialized agency selected by agreement between the contracting parties. The division of the costs of sampling and tests should be agreed between the parties.

6. Penalties for quality differences should apply if the analysis for each shipment at the loading port does not conform to specification. It is desirable to fix specific percentages of the agreed unit price for every percentage point of excess over the allowable content of the impurities (ash, sulphur) and low grade constituents (moisture, volatile matter). The deductions to be made should be determined on a comparable basis i.e. "dry basis" or "dry ash free basis".

D. PRICE

7. Prices can be fixed:

- by reference to the market price of comparable quality coal delivered by a principal international exporter or to the price of an alternative fuel such as standard quality crude oil;
- by other formulae taking into consideration a discount representing part of the remuneration for the assistance provided by the buyer during the prospecting and operating stage of mining activity in the supplying country.

Prices should be negotiated for each year at a fixed time before the end of the preceeding year.

8. A price revision clause should be envisaged to take account of:

- variations of the production costs as a result of legislation or of taxes imposed by State authorities;
- variations in wages of the miners;
- variations in railway tariff rates.

The seller should supply to the buyer acceptable proof that such variations have occurred.

E. MULTIPURPOSE CONTRACTS

9. Long-term multipurpose contracts can combine the supply of equipment, training, and finance for the construction of a mine and its appropriate infrastructure with the delivery of the resulting coal. The supplier of the plant may more readily accept total or partial repayment of the cost of the plant by deliveries of the final product since he is associated with the operational success of the plant and may obtain greater guarantees as to quality,

regularity of supplies and price levels. This consideration is still more valid in a case where multipurpose contracts provide for joint marketing.

10 Cooperation in the development of coal resources presupposes that the relevant contracts are forthcoming as early as the preliminary prospection stage. This is an essential point as regards the relationship of the parties concerned. Quite apart from the technical importance of prospecting it involves investment with no secure guarantee of positive result. Hence a contract which includes co-operation at the prospecting stage should make provision for the distribution of the costs between the parties, the authorization of these costs and the distribution of the loss if the operation proves unsuccessful.

11. The complexity of the various methods of financing to be found in the developed forms of industrial cooperation call for the utmost precision when drawing up the conditions for financing the agreements and the calculations which are to serve for the determination and distribution of the results of the cooperation. It is also useful to attempt to reach agreement on the currency of the contract and the rates of exchange which are to be applied to the financial settlements between the parties.

12 Mention may be made in particular of:

- total or partial repayment of credits granted by one of the parties to the other either in the form of the coal resulting from the cooperation or in financial terms;
- sharing of exploration, development and production costs;
- joint marketing;
- sharing of the financial profits including the accounting methods to be used in determining the profits;

- reinvestment of the profits from multipurpose cooperation in the country in which the mining is carried out.

F. GENERAL

13. The negotiation of export permits should be the exclusive responsibility of the seller. The negotiation of import permits should be the exclusive responsibility of the Buyer.

14. The contract should include a list of exceptional events beyond the control of the parties (e.g. force majeure) the occurrence of which would directly interfere with the performance of the contract. The occurrence of all force majeure events that are intended to serve as the basis of a claim by a contractor should be reported promptly to the other contracting party so that the event and its alleged consequences may be verified.

15. It would be advisable to establish a consultation procedure, to be initiated at the request of either of the parties for resolving issues not specifically covered in the contract.

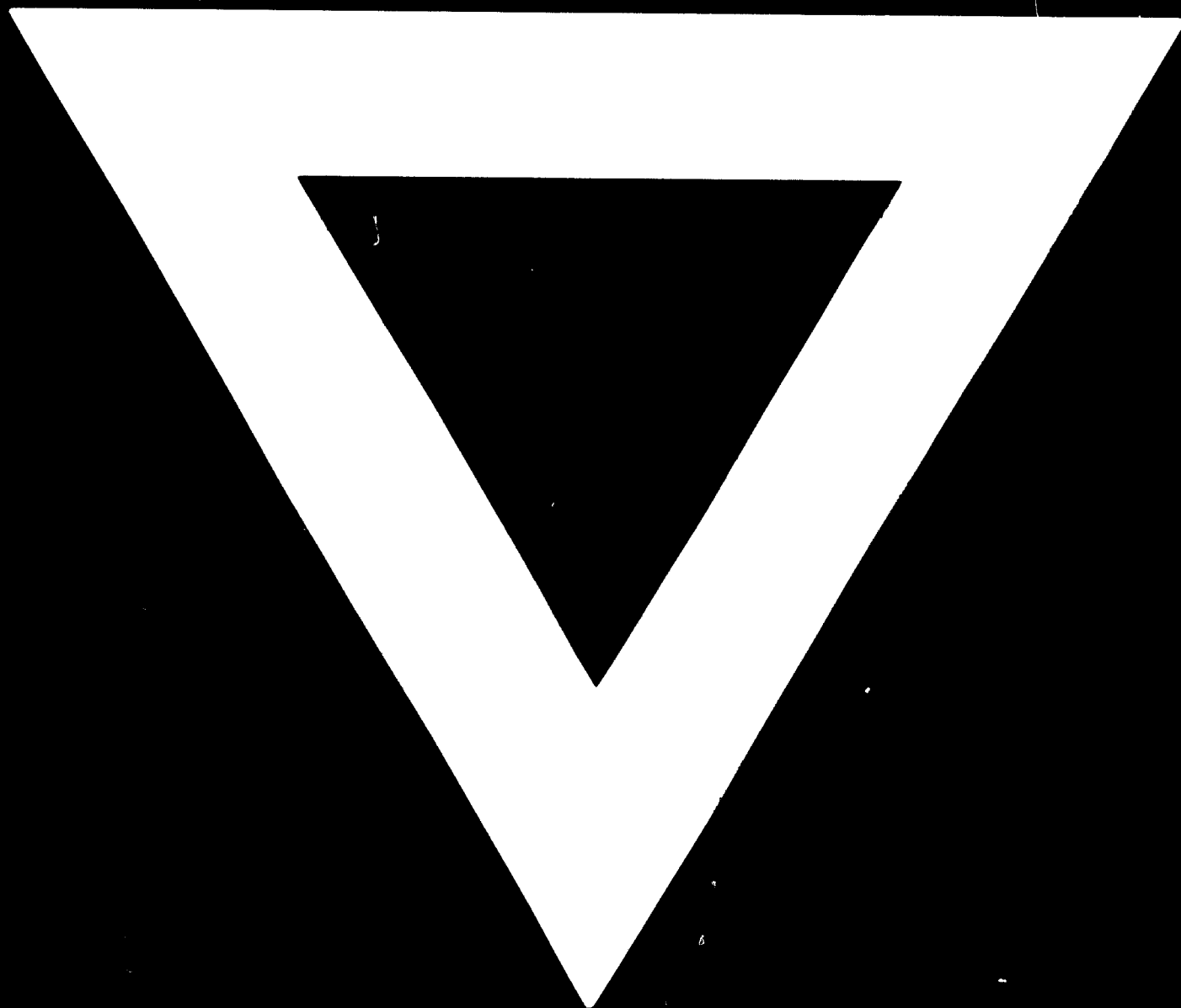
16. The contract should include provisions concerning the consequences of default and the remedies in case either party does not faithfully and fully perform his part of the agreement. These provisions should be followed by others dealing with the settlement of disputes e.g. arbitration or exclusive jurisdiction of the courts of a particular country and with the law governing the contract.

17. The contract should call for some security to ensure performance e.g. performance bonds, bank guarantees, retention money, letters of credit. The contract should end with the signatures of the parties with authority to make the commitments.



18. The parties should indicate in the contract the way in which it is expected to end (expiry, attainment of its object, notice of termination or cancellation) and the conditions under which it can be renewed.

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