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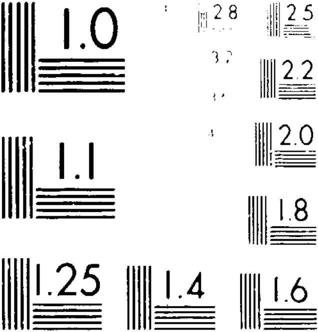
UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
Vienna International Centre, P.O. Box 300, 1400 Vienna, Austria
Tel: (+43-1) 26026-0 · www.unido.org · unido@unido.org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United Nations Industrial Development Organization

Working Group Meeting on the Long-term Contracts for Purchase/Supply of Iron Ore and Coking Coal

Bratislava, Czechoslovakia, 16 - 18 March 1982

REPORT*

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CONTENTS

Annexes

AGREED CONSLUSIONS AND RECOMMENDATIONS

1. Taking into account that inflation and devaluation processes have caused diminished earnings of the iron ore exporting developing countries, UNIDO in collaboration with UNCTAD should undertake a joint study to estimate a magnitude of impact of those processes (factors). The study should be aimed at revealing the relationship between the fluctuations of prices of iron ore, steel products and steel made capital goods.

2. It was found that infrastructure, particularly transportation facilities are becoming a critical factor influencing the availability of iron ore and coking coal. Therefore, for the Third Consultation Meeting on the Iron and Steel Industry an assessment should be made of relevant infrastructure needs in developing and developed countries. In the case of developing countries the assessment should be supplemented by proposals concerning international action. In the case of developed countries a special remark was made regarding the need to include in the document ID/WG.360/2 more information about the existing coal shipping facilities.

3. Document ID/WG.360/1 should be revised and amended in the context of UNCTAD document TD/D/IPC/IRON ORE/13 of 22 December 1981.

4. Chapter VII "Co-operation amongst developing countries" of the document ID/WG.360/1 should be revised and amended on the basis of a review of existing co-operative ventures between neighbouring countries with reference to exploitation of shared iron ore deposits and identification of scope for initiatives by international organizations.

5. Members of the Working Group, before the end of April 1982, will send to UNIDO secretariat their comments, proposals for corrections and additional information concerning the statistical data contained in the both documents ID/WG.360/1 and ID/WG.360/2.

6. In order to strengthen the bargaining position of developing countries the members of the Working Group decided to prepare on the basis of their experiences draft models of long-term contracts for supply/purchase of iron ore and coking coal. The draft model contracts might be regarded as general guidelines for potential buyers and suppliers of iron ore and coking coal, particularly those having little or no experience. The Working Group drafted a preliminary version of some clauses of the model contracts (Annex 4 and

Annex 5). The drafts were made by two informal sub-groups and the texts emerged from their deliberations are attached without editing.

7. The Working Group Meeting recommended UNIDO secretariat to submit the outcome of its work as a contribution to the preparations for the Third Consultation Meeting on the Iron and Steel Industry in Caracas, Venezuela.

INTRODUCTION

8. The Working Group Meeting on the Long-term Contracts for Purchase/Supply of Iron Ore and Coking Coal was convened in order to fulfill the recommendations of the Second Consultation Meeting on the Iron and Steel Industry (New Delhi, India, 15-19 January 1979):

(a) Arrange a Working Group or Seminar composed of representatives of developing and developed countries interested in exporting and importing iron ore to help developing countries towards an understanding of the structure of the market and the nature and content of long-term contracts for the purchase of iron ore.

(b) Identify instances throughout the world for possible co-operation between neighbouring countries in the exploitation of shared ore deposits, and seek to promote constructive discussions.

(c) Assist developing countries towards an understanding of the construction of use of long-term purchase contracts to ensure access to supplies of coking coal in combination with a similar actively proposed above for iron ore and for this purpose organize a working group or seminar for the benefit of buyers in the developing countries.

I. ORGANIZATION OF THE MEETING

Opening of the Meeting

9. The Working Group Meeting was opened by the Deputy Chairman of the UNIDO Task Force on Basic Industries, Mr. B.R. Nijhawan.

10. Mr. I. Imrich, Commercial Director of Kerametal Foreign Trade Co. Ltd. was elected Chairman of the Working Group.

11. The Agenda proposed by the UNIDO secretariat (see Annex I) was adopted.

12. On behalf of the authorities of Czechoslovakia statements were made by Mr. J. Miksa and Mr. V. Novotny.

II. SUMMARY OF DISCUSSIONS

Consideration of factors influencing the availability of the iron ore and coking coal as described in the documents ID/WG.360/1 and ID/WG.360/2.

13. A view was expressed that present level of iron ore prices is not favourable for the further expansion of mining capacities in developing countries. In this context, stockpile arrangements connected with the Common Fund were suggested, but these could only be realized within the context of an international agreement on iron ore. It was considered unlikely that such an agreement would be concluded in the near future.

14. Cancellations and delays in implementation of iron ore mining projects might lead towards temporary shortage of iron ore. The impact of the shortage might be meaningful both for suppliers and buyers if it coincides with other economic phenomena such as recession or fast growth in market economy countries.

15. Capital intensive nature of coal mining projects, and the importance of the coal for prevailing BF-BOF technological route call for involvement of potential buyers in compensatory agreements involving credits for the development of coal mines which is to be repaid by supplies of coking coal.

16. It has been demonstrated by experience that compensation agreements in iron ore or coking coal lead to stable and mutually profitable relationship.

17. Inadequate financing has been regarded as a basic constraint of mining development in developing countries. Lack of trained local manpower has been a factor of secondary importance. In order to cope with the problem UNIDO might undertake some measures jointly with the UN Centre on Natural Resources.

18. It was pointed out that shareholding (partial captive mines) is the decisive factor influencing the United States iron ore imports from Canada and Canadian coking coal and iron ore imports from the United States.

19. A view was expressed that estimated increase of the share of pellets to 30 per cent of overall supply of iron ore in 1985 is not feasible because of energy constraints (ID/WG.360/1, page 5, para 3.2).

Consideration of the long-term contractual arrangements for purchase/supply of iron ore and coking coal (Discussion paper ID/WG.360/3).

20. A representative of UNCITRAL called attention to the need for co-ordination of all activities relating to settlements of legal problems. In the course of preparation of recommended model clauses it is advisable

to take into consideration and results of codification of the international trade law.

21. It has been stressed that the developing countries are interested in concluding with developed partners multipurpose, long-term contracts (agreements) which go beyond traditional commercial exchanges.

22. The multipurpose agreements envisage development of mining capacities and installation of plants for beneficiation of iron ore, credits for supply of equipment, development of transport facilities and related infrastructure.

23. The contents of a multipurpose agreement have been exemplified by Indian iron ore contracts with Japanese companies concerning the mining development of Kiribiru - Bailladilla Iron Ore Deposits. The contracts contain the following basic chapters and these were outlined and presented during the Working Group Meeting:

A. i) Chemical composition and physical characteristics, screen analyses and tolerances permitted of the iron ore.

ii) Premiums and penalties - PRICING clauses in respect of iron and moisture contents and impurities' contents such as of sulphur, phosphorus, alumina and silica, copper and other metals such as lead and zinc but excluding manganese, magnesium and calcium.

iii) Total period of contract, "total tonnages" of iron ore to be shipped out annually over the total period (say 7 years).

iv) The prices of iron ore will be negotiated every FISCAL year based on inflation and currency devaluation/revaluation factors.

v) Loading rate and capacity of the ore carrier to be specified. Indian and foreign shipping to be made use of as agreed upon.

vi) Demurrage charges

vii) Miscellaneous

B. i) Cost of iron ore mine opening and full mine development and of iron ore processing (beneficiation, washing and screening - wet/dry) with maximum use of Indian made equipment and minimum of imported equipment from Japan.

ii) Total costs and the cost to be borne by the Japanese under the long-term credit to India including interest rate and repayment time table specified.

iii) Supply, transport, erection, commissioning and trial of Japanese equipment for (ii) above - details to be covered under this contract. The total operation of Indian and Japanese equipment on an integrated basis to be specified.

C. Port development and channel openings of Vishakapatnam deep sea port - the total cost (foreign exchange and Indian components). These costs to be borne by Japanese and Indian Governments and will be levied in accordance with (B) i, ii, and iii above.

Annex 1

AGENDA

1. Opening of the Meeting

2. Consideration of factors influencing the availability of the iron ore and coking coal - Papers ID/WG.360/1 and ID/WG.360/2.

3. Consideration of the long-term contractual arrangements for purchase/supply of iron ore and coking coal - Discussion paper ID/WG.360/3.

4. Adoption of the report of the Meeting.

Annex 2

LIST OF PARTICIPANTS

BRAZIL

L.F. Sarcinelli Garcia
Director of SAGE and GPC
SAGE Consultoria Tecnica Ltda
Rua Mexico 31, Conj. 304
Rio de Janeiro

CZECHOSLOVAKIA

Viktor Novotny
Federal Ministry of Metallurgy and Heavy Engineering Industry
Na Frantisku 32
Praha 1

Josef Miksa
Director
Federal Ministry of Metallurgy and Heavy Engineering Industry
Na Frantisku 32
Praha 1

Ivan Imrich
Commercial Director
Kerametal Foreign Trade Co. Ltd.
Bratislava

Miroslav Šubrt
Federal Ministry of Metallurgy and Heavy Engineering Industry
Na Frantisku 32
Praha 1

Josef Latal
Chief of Department of Integration
PZO Metalimex
Stepanska 34
Praha

Jaroslav Kalous
TES BRNO
NA'M 25
Unova 11

Zdenek Böhm
Technical Manager
Federalni Ministerstvo Hutnictvi a Tezkeho Strojirenstvi
Na Františku 1039
Praha 1

POLAND

Aleksander Szpilewicz
Adviser to the President of the State Office
of Energy Control
State Office of Energy Control
00-522 Warsaw
Krucza Street 36

U S S R

Igor S. Budarin (Observer)
Senior Engineer
Trade Representative of USSR to CSSR
Zrinského 17
Bratislava
Czechoslovakia

VENEZUELA

Draja M. Decan
Deputy Managing Director, Traffic - Sales
C.V.G. Ferrominera Orinoco
P. Ordaz

Peter Aivars
Managing Director - Ore Sales
C.V.G. International
25 Victoria Street
London SW1

United Nations Organizations

UNCITRAL

Ludvik Kopac
Legal Officer
Vienna Internal Centre
A-1400 Vienna
Austria

U N C T A D

Richard Frank Johnson
Associate Economic Affairs Officer
Palais des Nations
1211 Geneva
Switzerland

Leonarda Marazzi
Economic Affairs Officer
Palais des Nations
1211 Geneva
Switzerland

Annex 3

LIST OF DOCUMENTS

1. Iron ore - its supply, market structure and contractual arrangements (ID/WG.360/1).

2. Metallurgical coal in the 1980's - Facts and prospects (ID/WG.360/2).

3. Discussion paper (ID/WG.360/3).

Conference room documents

4. Long-term contract on iron ore (An example from Czechoslovakia)

5. Long-term contract on coking coal (An example from Czechoslovakia)

6. Long-term contract on iron ore (An example from Brazil)

7. Long-term contract on coking coal (An example from Brazil)

8. Long-term coking coal contracts - structural elements (A note by Dr. A. Szpilewicz).

Annex 4

PRELIMINARY DRAFT OF SOME CLAUSES OF MODEL LONG-TERM CONTRACT FOR SALE OF IRON ORE

This contract made by and between

hereinafter referred to as "Buyer"
and

hereinafter referred to as "Seller"

Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the (type of) Iron Ore of____________ origin upon terms and conditions stated herein.

CLAUSE (1) - QUANTITY

The Seller shall deliver____________metric tonnes per year for ____ years beginning on ____________ with a tolerance of __________ more or less.

CLAUSE (2) - SPECIFICATIONS

(a) Chemical composition on dry basis %

	Limits Min.	Max.
Iron (Fe)		
SiO_2		
Al_2O_3		
Sulphur		
Phosphorus		
Loss on ignition		
on natural basis %		
Moisture		

(b) Physical composition

____________ mm to ____________ mm with a tolerance of __________% below and __________% above.

CLAUSE (3) - PRICE:

(1) (currency - in figures) ________________ (currency in words)
(____)

per natural metric tonne metallic iron unit. Prices are understood (FOB, C and F, CIF) according to Incoterms 1953.

(ii) This price would be valid for the first year of this contract and would be re-negotiated on an annual basis during the last quarter of the previous year.*/ The price stipulated above includes all local taxes, export duty, loading and trimming charges.

CLAUSE (4) - SCALES AND PENALTIES

(a) For excess under-sized or over-sized material

If in any shipment of iron ore, per centages of undersized material exceed the guaranteed percentage as mentioned in clause 2, penalty at the rate of (currency and amount) ________ ________ per metric tonne shall be applied to the quantity of undersized material in excess of the permissible tolerance limit. Similarly, if in any shipment the percentage of oversized material exceeds the stipulated guaranteed percentage, penalty at the rate of (currency and amount) __ __________ shall be applied to the quantity of oversized material in excess of the permissible tolerance limit.

(b) For Fe contents

For Fe contents below the guaranteed minimum stipulated in clause 2, the following penalties are to be applied:

(i) In case Fe content is below the guaranteed minimum, penalty of double scale per unit iron will be applied, fraction of unit pro-rata.

(ii) In case the Fe falls more than 2 units below the guaranteed minimum, the Buyer has the option to reject the consignment or accept it at a re-negotiated price.

(c) Penalty for Silica and Alumina contents

Penalty at the rate of __________ shall be applied for each 1% of silica/alumina in excess of the guaranteed maximum, fractions pro-rata.

CLAUSE (5) - DEVLIVERY PERIOD : SHIPPING SCHEDULE AND PORT OF SHIPMENT

(i) The yearly quantities will be delivered from ________ to __________.

(ii) Monthly shipping schedule will be mutually agreed upon.

---

*/ The parties may wish to agree upon legal consequences if they fail to fix the price for the following year.

(iii) Shipments under this contract will be made from the port of ________________ (or to the port of ________________).

(iv) Transportation terms should be agreed upon by separate negotiations.

CLAUSE (6) - ADJUSTMENTS, WEIGHT, SAMPLING AND ANALYSIS*/

Weight, sampling and moisture of the ore shall be determined at the port of discharge, for each vessel, by an internationally recognized surveyor, to be chosen by mutual agreement between the parties. Its results will be final and binding for both parties.

Sampling and moisture determination will be made during the discharging of the ore and moisture so determined will be binding for both parties.

Four samples to be prepared and sealed by surveyor. One sample each to be delivered to Buyer's and Seller's representatives.

The third sample to be mailed by the surveyor to an internationally recognized laboratory to be chosen by mutual agreement between the parties. The fourth sample will be kept by the surveyor for disposal in case the third sample get lost. The above laboratory will analyse the contents of Fe of the sample, in dry state.

The results will be final and binding for both parties. All costs of weighing, sampling and determination of moisture and chemical analysis shall be borne by Seller and Buyer in equal parts.

CLAUSE (7) - LOSS OF CARGO

In the event of a total or partial loss of cargo after completion of loading on board the vessel and before completion of discharging at the discharging port(s), Buyer shall make final payment to Seller on the basis of the analysis at the loading port and quantity as manifested on the Bills(s) of Lading.

CLAUSE (8) - PAYMENT

(A) LETTER OF CREDIT**/

A commercial letter of credit in _____ currency will be opened by the Buyer in favour of the Seller with the Bank of ________________ at least 30 days prior to the date of commencement of loading of each vessel. The letter of credit will be established covering 100% value

*/ Other methods, such as the one based on arithmetic means of measurements made at the loading and discharging ports, may be used.

**/ Another way of payment can be adopted.

(with a tolerance of 10% more or less) of the goods of each shipment with validity of 90 days (to be extended, if necessary) following the date of opening of the same. The letter of credit would be unrestricted, without recourse to drawer, confirmed, irrevocable, assignable and divisible. Charges attendant to the opening, amending and extending of letter of credit and any other charges levied by the Bank in ________________________________ shall be to the account of the Buyer. All charges levied by the Bank excluding confirmation charges would be to Seller's account.

(B) PROVISIONAL PAYMENT

Payment of 90% of the value of the cargo shall be made against the following documents:

1. A full set of clean on board ocean bills of lading
2. Certificate of origin, in original and four (4) signed copies
3. Seller's signed provisional commercial invoice, in original and four (4) signed copies
4. Certificate of weight, moisture and analysis at the port of loading in original and four copies.

(C) FINAL PAYMENT

Payment for the balance amount due to the Seller calculated on the basis of final weight and analysis, established according to clause 7 hereof shall be made under the Letter of Credit on presentation of the following documents:

1. Seller's final invoice, in original and four (4) signed copies
2. Statement showing final weight and physical and chemical composition as determined under clause 6 hereof supported by copies of relevant loading and discharging port certificates.

<u>CLAUSE (9) - EXEMPTIONS</u> (FORCE MAJEURE)

(i) A party is not liable for failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(ii) If the party's failure is due to the failure as a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if (a) he is exempt under the preceding paragraphs; and (b) the person whom he so engaged would be so exempt if the provisions of that paragraph were applied to him.

(iii) The exemption has effect for the period during which the impediment exists.

(iv) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment he is liable for damages, resulting from such a non-receipt.

(v) Nothing in this provision prevents either party from exercising any right other than to claim damages.

CLAUSE (10) ARBITRATION

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

CLAUSE (11) - USE OF ORE

The material sold/purchased under this contract shall be for consumption in ______________ unless otherwise specifically agreed to between the parties.

CLAUSE (12) - VALIDATION AND ALTERATION

Any change, in or addition to the terms of this contract shall become effective when agreed upon by both Seller and Buyer in writing.

In witness whereof this contract is made in duplicate at __________ and the duly authorized representative of the Seller and the Buyer havi signed this contract on ____________ have retained one copy each.

BUYER SELLER

PRELIMINARY DRAFT MODEL OF SOME CLAUSES OF LONG-TERM CONTRACT
FOR PURCHASE/SUPPLY OF COKING COAL

This contract made by and between

hereinafter referred to as "Buyer"

and

hereinafter referred to as "Seller"

Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the (type of) coking coal of ________ ____origin upon terms and conditions stated herein.*/

ARTICLE I

RECITALS AND DEFINITIONS

Recitals - The coal cold and purchased hereunder shall be produced by Seller from its ____________ reserve located at ____________________.

Definitions - In this contract, the following term shall unless otherwise defined, have the following meanings:

(a) "Dollar" the sign "US$", refer to the lawful money of the United States of America.

(b) "Month" means a calendar month.

(c) "Coal" means free flowing freshly mined metallurgical ___________ volatile coking coal which is produced or supplied from the Seller's property referred to in Section 1.1.

(d) "Metric ton" means 1000 kilograms (one thousand kilograms) equivalent to 1.10231 short ton or 0.9842 long ton.

(e) "Agreement" means the agreement concluded between the Seller and Buyer.

(f) "Trimming" means spout trimming.

(g) "FOBT" means Free on Board Stowed and Trimmed.

(h) "Contract Year" 1982 means the period from January 1, 1982, to March 31, 1983, and the following. Contract years mean the period from April 1, to March 31.

(i) "Incoterms 1953"

The provisions of the Incoterms 1953 are binding for Buyer and Seller in as far as these provisions are not changed by the terms of this contract.

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*/ If one of the parties wants to make special provisions concerning legal successors then another introduction could be applied (for an example see the addendum to the Annex 5).

ARTICLE II

TERM OF AGREEMENT

Subject to the following provisions hereof, this agreement shall have a term of _______________ years commencing ________ _19____ and ending ________19____. Deliveries of (coal) hereunder shall begin on _______ and each succeeding contract year shall begin as mentioned in Article I, Section 1.2, letter (h).

This contract can be extended with the accordance of both parties.

ARTICLE III

Subject to the provisions of this contract, the analysis of the coal to be supplied to Buyer, shall conform to the following specifications at the loading port:

Description

- Coal Mine
- Name(s) and location
- Operating company
- Coal preparation plant:
  - Name and location
  - Operating company

Chemical specifications — Standard

- Total moisture (as received) ....
- Volatile matter (dry basis) ....
- Ash (dry basis) ....
- Sulphur (dry basis)...........................

It might be the case that

Ultimate analysis (dry basis, weight percent)
Carbon, Nitrogen, Oxygen, Sulphur, Hydrogen, Phosphorus could be required.

Physical properties

Free swelling index ....

Other buyers might request specification of the properties

Reflectogram ....

Reflectance index ....

Audibert Arnu or equivalent.......

Maximum fluidity (Gieseler Test)..

Sole Heat Oven ....

Hardigrove Index (HGI)............

Size of coal

Screen analysis:..................

Some buyers might require also

Retained on 2 in

Passing 1/8 in Maximum

Passing No.100 mesh Maximum

Passing No.200 mesh Maximum

All samples and analysis shall be determined pursuant to Article X -, at the loading port, in accordance with the standards agreed upon. For neighbouring countries it might be free on rail. The analysis for total moisture shall be reported on an "as received" basis, and all other analysis, except size, shall be reported on a "dry basis".

Ash and Sulphur variations

Seller shall maintain a maximum average per shipment, within the limits eventually established. Thus, the certificate of analysis for each shipment must show the maximum average obtained for that particular shipment and the standard deviation of the results concerning ash and sulphur as per accepted standard.

In case the % limit as per above is not mentioned for consecutive shipments, the parties shall meet to discuss the matter in order to find an acceptance solution to the problem.

ARTICLE IV

QUANTITIES

Seller shall sell and deliver, on board vessels stowed and trimmed at loading port, to Buyer and Buyer shall purchase according (FOB, C and F, CIF) agreed upon and accept from seller the quantities of coal in metric tons, on an annual basis, as follows:

198.... - ....
198.... - ....
198.... - ....
198.... - ....

Buyer may at its option increase or decrease annual quantities up to ______________________. The annual contract quantity may be increased or decreased for convenience of chartering as far as required to utilize the carrying capacity of the last vessel loaded each year under the present contract.

Such contract deviation shall be fixed by mutual agreement when stemming.

Deliveries of coal sold hereunder shall be made by Seller in accordance with order of Buyer on mutually agreeable Laydays in each contract year.

With respect to last annual cargo, it is accepted that the supplier might refuse to supply, if requested quantity is more than 50 per cent of an average ship cargo.

ARTICLE V

PRICE

For all coal to be delivered in accordance with the agreed terms and detailed in this contract, Buyer shall pay to Seller the price of __________per metric ton, during ______________ year(s) commencing __________19.....

The price mentioned shall be negotiable at each period of ___________years.

The price provided herein for coal for each period of ________ shall be proposed by Seller in the month of ____________. Buyer will have 30 days to notify Seller in writing whether the price proposed by Seller is acceptable. If parties agree upon another price, it shall become the new price. Failure to reach agreement on the price on or before any such period, shall result in suspension of this contract, and Seller shall deliver all coal required to be delivered up to the end of such period at prices then in effect.

Failure to reach an agreement would result in further 6 months period for negotiation on new price during which delivery shall be made at existing price plus escalation formula previously agreed upon. If the agreement is not reached the Buyer shall have the sole and exclusive option to purchase for 6 months at least 50% (fifty per cent) of the tonnage designed for period .... (at the last price formerly accpeted by Buyer.)

ARTICLE VI

PRICE ADJUSTMENT FOR QUALITY

Moisture adjustment

In case total moisture exceeds ______ per cent, as specified in this contract, Seller agrees to pay Buyer an amount equivalent to the same value of the coal corresponding the weight of water loaded in excess. For FOB contracts an additional freight value corresponding to the transportation of the excess moisture will be charged to the Seller.

Penalties

For any variations from the specification as shown under this Agreement for the receipt of coal, the Seller shall pay penalties in accordance with the following:

(a) Ash content (dry basis)

For each __________, per cent, or fraction thereof of ash content over _________ per cent of ash, Seller agrees to pay Buyer a penalty of ________ per cent of the FOB, C and F or CIF coal price per metric ton.

(b) Sulphur content (dry basis)

For each _________, per cent, or fraction thereof of sulphur over ________ per cent of sulphur, Seller agrees to pay Buyer a penalty of________ per cent of the FOB, C and F or CIF coal price per metric ton.

- SELLER shall promptly send to BUYER after the loading of each vessel a telex stating the tonnage loaded and the approximate analysis of such shipment as taken at the loading port.

- In the event any penalties for ash or sulphur are applicable for any shipment of coal hereunder, after mutual agreement a credit shall be issued by SELLER, and payment shall be made to BUYER.

- Limits for Shipment

SELLER shall not deliver coal with a sulphur content over .... per cent and with an ash content over .... per cent.

- Rejection

(a) If the ash content for any shipment exceeds .... per cent, or if the average sulphur content for any shipment exceeds .... per cent, based on the analysis at the loading port according with the .... then BUYER and SELLER shall negotiate a reasonable price deduction for such shipment.

Should the .... ash and/or the sulphur contents on any ...... shipments within any contractual year exceed the above mentioned percentages respectively BUYER shall have the option to suspend acceptance of further deliveries until assured by SELLER to the reasonable satisfaction of BUYER that an adequate program of further remedial measures has been implemented by SELLER.

(b) If the Free Swelling Index and or maximum Fluidity is ....and ....respective or lower on any shipment based on the analysis at loading port, according with the ....BUYER and SELLER shall discuss the problem in order to arrive at reasonable and equitable remedial measures, including operational changes, if necessary.

Should the Free Swelling Index and or Maximum Fluidity on any .... shipments within any Contractual Year be .... and .... respective or lower BUYER shall have the option to suspend acceptance of further deliveries until assured by SELLER to the reasonable satisfaction of BUYER that and adeqaute program of further remedial measures has been implemented by SELLER.

ARTICLE VII

PAYMENT

Form of Payment

(to be established between SELLER and BUYER)

Payment Conditions

Payment shall be ....to SELLER, as established against presentation of following shipping documents (Where and how?):

- Commercial Invoice	(original + ... copies)
- Clear on board, Bill of Lading for FOB	(original + ... copies)
- Certificate of origin	(3 copies)
- Certificate of analysis	(3 copies)
- Certificate of Weight	(3 copies)

Documents

Within 72 hours after vessel's sailing, SELLER shall airmail directly to BUYER, the following non negotiable documents (Where and how?):

- Certificate of Origin
- Certificate of Analysis
- Certificate of Weight
- Commercial Invoice

ARTICLE VIII

DELIVERIES AND SHIPPING

Loading Port

Means the port and terminal facilities operated by .... in ....

Shipping Schedule

A basic tentative quarterly shipping program indicating quantities and grades to be loaded, shall be given by BUYER to SELLER at the latest .... days before the commencement of each quarter. SELLER shall confirm it, up to .... days after receiving the basic tentative quantity program.

Ocean Transportation (for FOB)

(a) The coal to be sold and purchased hereunder shall be lifted in vessels nominated by BUYER with mutually agreeable Laydays BUYER shall supply, nominate and place alongside the loading wharf vessels in sufficient number to load all the coal required to be shipped under this Contract.

Buyer shall present notice to the SELLER each vessel

Chartered and tonnage required at least 10 (ten) days in advance of the first day of the laydays and Seller shall reconfirm the stem 16 (sixteen) working hours after presentation of vessel. Otherwise vessel is considered as accepted.

If Seller does not accept the indicated vessel, Seller must fully justify it, within the abovementioned 16 (sixteen) hours.

In the event Seller does not accept Buyer's indicated vessel, Buyer shall indicate a substitute vessel for loading, using the same stem but extending the laydays if necessary, without the obligation to notify Seller 10 (ten) days in advance of the first day of the laydays of the vessel.

In the event of substitute vessel be nominated within same laydays the previous confirmation given by Seller is still in force.

(b) Vessess to be chartered must be self-trimming bulk carrier (single decker) suitable for loading at the facilities of Seller's coal loading pier at ____________________, where Seller guarantees a draft of ____________________________ feet in (salt, brackish, fresh) water.

(c) The Charter Party shall provide that the vesser gives to the Seller _________ days, ______________ hours, _______________ hours and _______________ hours notice of E.T.A. Such notice shall be given by telegram or telephone to ______________________________________.

Delay by Missing Coal (for FOB)

Once the stem has been established, any delay that may occur by reason of non-existence of coal at the port, on the first day of the layday, or missing coal to complete full cargo of the nominated vessel, will be the exclusive responsibility of Seller who will indemnify Buyer for eventual demurrage or payment of dead freight.

- Notice of Readiness (for FOB)

Notice of Readiness shall be tendered by vessel and accepted by Seller at any time after vesser has arrived at loading port anchoraged or roads free pratique obtained or not.

- Night Loading and Hatch Covers (for FOB)

Buyer shall ensure that vesser is equipped to provide lights if necessary for night loading, and the ship's personnel will remove and replace the hatch covers at no cost to Seller.

- Laytime (FOB)

Laytime shall count 12 (twelve) hours after tender of Notice of Readiness. If vessel commences loading earlier, then, actually used time shall count as laytime. Laytime at __________________ shall be weather working days of 24 (twenty four) consequtive hours, including Saturday, Sunday and local Holidays.

- Loading Rate

Seller guarantees a loading rate of __________________ metric tonnes per ______________________________ consequtive working hours including Saturdays, Sundays and local Holidays. The time in excess of the agreed laytime as specified in this Contract, due to port congestion on delays in loading shall be borne by Seller which will pay to Buyer demurrage specified in Charter Party. If loading is completed prior to expiration of the laytime provided, Buyer shall pay to Seller despatch money calculated at the rate of one half of the demurrage rate. If loading conditions are altered, the parties will meet to arrange new rates.

- Completion of Loading (FOB)

Seller shall immediately advise Buyer by telex of the completion of loading each vessel, giving the weight of the coal loaded and dollar value, for insurance purposes.

- Force Majeure (for FOB)

If Seller due to force majeure, as defined in Article____ is t able to deliver the quantity scheduled for a calendar quarter, the Seller will guarantee equitable and pro-rata recovery conditions to give equal treatment to all buyers.

ARTICLE IX

Sampling, Analysis and Weighing

- Sampling, analysis and inspection shall be conducted at the port of loading FOB or unloading in CIF case according to standard methods and standards by independent surveying company chosen by Seller in agreewith with Buyer. Such analysis and inspection reports shall be final and binding on both, Buyer and Seller.

- Weight

Ocean Bill of Lading weight supported by Railway Weight Certificates shall be acceptable as final and binding on both, Buyer and Seller and shall be the basis of settlement.

ARTICLE X

MOST FAVORITE PURCHASER TREATMENT

Seller agrees that, if after such proposal and acceptance of a base price, it executes a contract to sell ____________________ similar types and propositions and similar contract duration periods covering coal to be used by steel companies outside____________________ at a price which is lower than the current price paid by Buyer, Seller will reduce the price paid by Buyer to such lower price until the effective date of the next price proposal made by Seller.

ARTICLE XI

EXEMPTIONS (FORCE MAJEURE)

(i) A party is not liable for failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided c overcome it or its consequences.

(ii) If the party's failure is due to the failure as a third person whom he has engaged to perform the whole or a part of the contract that party is exempt from liability only if (a) he is exempt under the preceding paragraphs; and (b) the person whom he so engaged would be so exempt if the provisions of that paragraph were applied to him.

(iii) The exemption has effect for the period during which the impediment exists.

(iv) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment he is liable for damages, resulting from such a non-receipt.

(v) Nothing in this provision prevents either party from exercising any right other than to claim damages.

ARTICLE XII

ARBITRATION

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

ARTICLE XIII

ENTIRE AGREEMENT

(i) Avoidance

This contract may be declared avoided in the following cases:

a) in the occurrence of dissolution of a party or its imminent or actual insolvency or bankruptcy.

b) if the Seller, without previous written approval of the Buyer, transfers the rights and obligations of this contract to third parties.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

SELLER BUYER

Addendum to Annex 5

This Contract made as of the ______________ day of ____________ 19___ between one part ____, having its registered Head Office in ____ hereinafter called the Seller, which expression shall unless repugnant to the context mean and include its legal successors unless the other party disagree

and on the other part ___________________________________ having its registered Head Office in ____ hereinafter called the Buyer, which expression shall unless repugnant to the context mean and include its legal successors and assigns unless the other disagree.