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## **MINAS DE BENGA LDA, MOZAMBIQUE**

### **GLOBAL TENDER FOR SALE OF THERMAL COAL**

#### **PART – I OF BIDDING DOCUMENTS**

Minas de Benga Lda (MBL) invites bids for the sale of 200,000 (Two Hundred Thousand) Metric Tonne  $\pm$  10% (including shipping tolerance) i.e. 6 shipments of 33,000 Metric Tonne  $\pm$  10% (including shipping tolerance) of Thermal Coal (size 0–50mm) to be shipped during July to 31st August 2017.

MBL is a subsidiary of International Coal Ventures Pvt. Ltd. (ICVL) group of companies. ICVL is a JV with M/s Steel Authority of India Ltd (SAIL), M/s Coal India Ltd (CIL) , M/s NTPC Ltd (NTPC), M/s Rashtriya Ispat Nigam Ltd (RINL) and NMDC Ltd. (NMDC) as its promoters.

1. **DEADLINE FOR SUBMISSION OF BIDS: 1200 HRS MT ON 22nd June, 2017.**
2. **DATE AND TIME FOR OPENING OF BIDS : IMMEDIATELY AFTER EXPIRY OF THE DEADLINE FOR SUBMISSION OF BIDS i.e.1200 HRS MOZAMBIQUE STANDARD TIME ON 22nd of June, 2017.**
3. **OFFERS TO BE VALID UPTO 10<sup>th</sup> of July, 2017.**
4. **TECHNICAL SPECIFICATIONS OF THERMAL COAL(SIZE 0 – 50 mm) :**

<b>Characteristics</b>	<b>Basis</b>	<b>Typical</b>
<b>Nett Calorific Value kcal/kg</b>	<b>AR</b>	<b>5500-5800</b>
<b>Total Moisture %</b>	<b>AR</b>	<b>5</b>
<b>Total Sulphur %</b>	<b>AD</b>	<b>0.9</b>
<b>Ash %</b>	<b>AD</b>	<b>28</b>
<b>Volatile Matter %</b>	<b>AD</b>	<b>19</b>
<b>Hardgrove Grindability Index</b>		<b>70</b>



**PART – II OF BIDDING DOCUMENTS**  
**GLOBAL TENDER NO. MBL/TC/2017-18/1 dated 12th June, 2017**

**INSTRUCTIONS TO BIDDERS**

**1. Cost of Bidding**

The Bidder shall bear all costs associated with the preparation and submission of its bid, and Minas de Benga Lda., hereinafter referred to as "The SELLER," will, in no case, be responsible or liable or accountable for those costs, regardless of the conduct or outcome of the bidding process.

**B. The Bidding Documents**

**2. Content of Bidding Documents**

**2.1** The detailed specifications of the goods, bidding procedures and contract terms are prescribed in the Bidding Documents. The Bidding Documents include:

<b>Part – I</b>	Introduction and Specifications of Thermal Coal
<b>Part – II</b>	Instructions to Bidders
<b>Part – III</b>	Proforma for Price Bid
<b>Part – IV</b>	Draft of Agreement alongwith :
Annxure – I	General Conditions of Agreement
Annxure – II	Technical Specifications
Annexure – IIA	Bonus and Penalties
Annxure – III	Terms & Conditions for delivery on the basis of FOB(Trimmed) Named Port(s) of Loading
Annxure – IV	Proforma of Bank Guarantee for Performance Guarantee (PG) Bond

**2.2** The Bidder is expected to examine all instructions, forms, terms and specifications in the Bidding Documents. Failure to furnish all information and documents required by the Bidding Documents in every respect will be at the Bidder's risk and may result in the rejection of its Bid.

**3. Clarification of Bidding Documents**

A prospective Bidder requiring any clarification of the Bidding Documents may notify the SELLER in writing or by email to [thermal.coal.clarification@icvl.co.mz](mailto:thermal.coal.clarification@icvl.co.mz). The SELLER will respond in writing or by email to any request for clarification of the Bidding Documents which it receives no later than five (5) days prior to the deadline for the submission of bids prescribed by the SELLER. The SELLER's response (including an explanation of the query, but without identifying the source of inquiry) will be posted on ICVL website



i.e. [www.icvl.in](http://www.icvl.in). BIDDERS ARE THEREFORE ADVISED TO VISIT THE WEBSITE FOR CLARIFICATIONS AND UPDATES ON A REGULAR BASIS.

#### **4. Amendment of Bidding Documents**

**4.1** At any time prior to the deadline for submission of bids, the SELLER may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by issuing an amendment.

**4.2** The amendment will be put in the same website i.e. [www.icvl.in](http://www.icvl.in) and will form part of the tender document. BIDDERS ARE THEREFORE ADVISED TO VISIT THE WEBSITE AT REGULAR INTERVALS.

**4.3** Where the SELLER issues an amendment within three (3) days prior to deadline for submission of bids, in order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bids, the SELLER will simultaneously extend the deadline for the submission of bids by three (3) or more working days.

#### **C. Preparation of Bids**

#### **5. Language of Bid**

**5.1** The Bid prepared by the Bidder and all correspondence and documents relating to the bid exchanged by the Bidder and the SELLER, shall be written only in the English language.

#### **6. Documents comprising the Bid**

The Bid prepared by the Bidder shall comprise the following components:

- a)** A Techno-Commercial Bid (Part 1) and a Price Bid (Part 2) completed in accordance with Instructions to Bidders stated in Part – II of Bidding Documents;
  - b)** Documentary evidence to be established in accordance with Para 10 that the Bidder is capable to perform the Contract if its Bid is accepted;
  - c)** Earnest Money furnished in accordance with Para 11
- 7. Bid Form**

The Bidder shall submit his Bid complete in all respects alongwith the Price Bid and all details as desired in the Bidding Documents including quantity etc.

#### **8. Submission of Bids**

**8.1** The price of Thermal Coal should be quoted using the format enclosed as Part – III of Bidding Documents, on the basis of FOB (Trimmed) Beira port.

**8.2 Firm Price:** Prices quoted by the Bidder shall be firm during the performance of the Contract and shall not be subject to variation on any account.



**8.3 Minimum Bid Quantity:** Bidder must quote for a minimum quantity of 1 (one) shipment i.e. about **33000 (Thirty three thousand) Metric Tonne ± 10%**.

## **9. Currency and unit of Weight**

The Unit of Measurement (UOM) will be Metric Tonne and the price should be quoted in US Dollars.

## **10. Documents Establishing Bidder's capability**

10.1 Pursuant to para 6, the bidder in Part-I of the bid, shall furnish details of coal purchased/traded in the last three years, up to the last date of submission of bid.

10.2 Bidders shall furnish detailed information of Company/ Individual alongwith the last three years published Annual Accounts and Annual Report if available. These documents should clearly show the exact nature of ownership.

## **11. Earnest Money**

**11.1** Each bid should be accompanied by proof of transfer (SWIFT etc.) of the Earnest Money of US \$ 10,000 (United States Dollar Ten Thousand only) to the bank account of MBL given below:

Bank Name : Standard Bank (Mauritius) Limited,  
Account Name : Minas De Benga, Limitada  
Account Number : 0140052016801  
BIC (SWIFT) : SBICMUMU  
Currency : USD  
Account type : Current Account

**11.2** The Earnest Money is required to protect the SELLER against the risk of Bidder's conduct which would warrant the security's forfeiture pursuant to Para 11.6. The Earnest Money shall not bear any interest.

**11.3** A Bid which is not accompanied by Earnest Money of requisite value shall be rejected by the SELLER.

**11.4** An unsuccessful Bidder's Earnest Money will be returned to the Bidder.

**11.5** The successful Bidder's Earnest Money will be adjusted alongwith the payment for the last shipment.

**11.6** The Earnest Money shall be forfeited:

- a) if a Bidder withdraws or modifies its Bid during the period of Bid validity specified by the Seller;
- b) in the case of a successful Bidder, if the Bidder fails:
  - (i) to sign the Contract in accordance with Para 29; or
  - (ii) to furnish Performance Guarantee Bond or deposit USD 50,000 (US Dollar Fifty Thousand) in accordance with Para 30.



11.7 Bidders should provide their bank details alongwith their bid.

## 12. Validity of the offer

12.1 Each Bidder shall keep his **offer firm** and **valid** for acceptance by MBL upto 30.06.2017.

12.2 In exceptional circumstances, prior to expiry of the original Bid validity period, the SELLER may solicit the Bidder's consent to an extension of the period of Bid validity. The request and the responses thereto shall be made in writing or by email. In such a case the validity of the Bid Bond provided under Para 12 shall also be suitably extended. A Bidder may refuse the request without forfeiting its Bid Money. A Bidder granting the request will not be required nor permitted to modify its Bid.

## 13. Format for the Bid

13.1 The Bidder shall prepare two (2) copies of the Bid (i.e. Part 1 – Techno-Commercial Bid and Part 2 – Price Bid), clearly marking each "Original Bid" and "Copy of Bid," as appropriate.

13.2 Each page will be numbered consecutively, referring to the total number of pages comprising the entire part, at the top right hand corner of each page.

13.3 Each page of the offer should be signed and stamped by the authorised officer(s) of the Bidder.

14 Each Bidder should ensure that the aforesaid conditions for submission of Bids are duly complied with.

## 15. Complaints

15.1 The Bidder, if feel aggrieved, may raise complaint / pass on information, if any, to :

- (i) The Competent Authority / Operating Authority of the Tender / Contract or
- (ii) MD & CEO, MBL
- (iii) Chairman, ICVL

## D. Submission of Bids

### 16. Bids can be submitted on paper or electronically

#### A: Bids submitted on paper (hard copy)

16.1 The detailed offer together with its enclosures should be submitted with a copy clearly marking them as 'original' and 'copy', in two (2) parts:

PART 1: TECHNO-COMMERCIAL BID ALONGWITH BID BOND and  
PART 2: PRICE BID,in two (2) separate sealed envelopes.

**Part 1:** Should contain the proof of submitting the Earnest Money, blank price bid duly signed & stamped with quantity and other information/data and documents etc. required to be furnished with Part 1 of the Bid.



**Part 2:** Only duly filled in Price Bid should be submitted as per the prescribed proforma enclosed as Part – III of the Bidding documents. Price bid proforma should not contain any conditions, otherwise the Bid will be rejected and EMD will be forfeited.

**16.2** Each part of the offer together with its enclosures, **in duplicate**, should be placed in separate envelopes which should bear, in block capital letters the superscription "**OFFER IN RESPONSE TO GLOBAL TENDER NO. MBL/TC/2017 – 18/1 DATED 12th June, 2017**" and should also bear superscription:

PART 1: TECHNO-COMMERCIAL BID, or,  
PART 2: PRICE BID, as the case may be.

The two (2) envelopes should be sealed separately.

**16.3** The envelopes referred to in Para 16.1 above should be placed in another envelope which should be addressed to the

**Deputy General Manager (Procurement)**  
**ICVL Training Centre**  
**Bairro Comunal de Matundo Parcela No 1049**  
**Estrada Nacional No 103**  
**Tete, Moçambique**

and should bear, in Block Capital Letters, the superscription "**OFFER IN RESPONSE TO GLOBAL TENDER NO. MBL/TC/2017 – 18/1 DATED 12<sup>th</sup> June, 2017**" This envelope should also be sealed. The name & address of the Bidder should be mentioned on this envelope as well as on the envelopes containing Part 1 and Part 2.

**16.4** If the outer envelope is not sealed and marked as required by Para 16.3, the SELLER will assume no responsibility for the Bid's misplacement or premature opening.

**16.5** Copies of the Bid should not be sent to any other officer of MBL.

#### **B: Bids to be submitted electronically**

**16.7** The detailed offer as mentioned above, together with its enclosures should be submitted in two (2) parts to [coalsale.tender@icvl.co.mz](mailto:coalsale.tender@icvl.co.mz)

PART 1: TECHNO-COMMERCIAL BID ALONGWITH EARNEST MONEY and  
PART 2: PRICE BID,

**in two (2) separate mails.**

**16.8** If the documents are submitted electronically then the tenderer shall submit Techno commercial & Price Bid in separate e-mails with the subject clearly mentioning about "TECHNO COMMERCIAL BID (Part-1)" or "PRICE BID (Part-2)" so as to avoid opening of Price Bid before Techno commercial scrutiny.



On the e-mail containing Techno Commercial bid the tenderer will write "**TECHNO COMMERCIAL BID (PART-1) "OFFER IN RESPONSE TO GLOBAL TENDER NO. MBL/TC/2017 – 18/1'Bidder's Short Name' DATED 12<sup>TH</sup> of June, 2017"** and on the e-mail containing price bid the Tenderer shall write "**PRICE BID (PART-2) "OFFER IN RESPONSE TO GLOBAL TENDER NO. MBL/TC/2017 – 18/1 DATED 12<sup>TH</sup> June, 2017" 'Bidder's Short Name'**". The price bid shall be sent in password protected PDF file. The password shall only be provided when MBL asks for the same from the Bidder at the time of opening of the price bid.

If the file size of the Techno Commercial Bid exceeds 10 MB the bid can be submitted in parts. e.g. Techno Commercial Bid Part 1 1 of 6; 2 of 6, so on and so forth.

## **17. Deadline for Submission of Bids**

**17.1** Bids must be received by the SELLER at the mailing address/electronic mail address specified above **no later than 1200 HRS (Mozambique Standard Time) on 22nd June , 2017.**

## **18. Late Bids**

Any bid received by the SELLER after the deadline for submission of Bids will be rejected.

## **19. Modification and Withdrawal of Bids**

**19.1** The Bidder may modify or withdraw its Bid after the Bid's submission, prior to the deadline prescribed for submission of Bids, provided that written notice of the modification or withdrawal is received by the SELLER.

**19.2** A withdrawal notice may be sent by email and received before the deadline for submission of Bids.

**19.3** No Bid may be modified subsequent to the deadline for submission of Bids.

**19.4** No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Bid Form. Withdrawal of a Bid during this interval shall result in the forfeiture of EMD.

**19.5** In case of multiple bids by the same bidder, the latest one shall only be considered.

## **E. Bid Opening and Evaluation**

### **20. Opening of Bids by SELLER**

**20.1** The SELLER will open Techno-Commercial Bid (Part 1) immediately after expiry of the deadline for submission of the Bid as specified hereinabove. Bidder's representatives may attend the tender opening.

### **21. Clarification of Bids**





The SELLER may, at its discretion, ask the Bidder for a clarification of its Bid.

## **22. Preliminary Examination of Bids**

**22.1** The SELLER will examine the Bids to determine whether they are complete, whether required sureties have been furnished and whether the Bids are generally in order.

**22.2** The SELLER may waive any minor infirmity or non-conformity or irregularity in a Bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.

## **23. Evaluation and Comparison of Bids**

**23.1** The Bids shall be compared on the basis of FOB(T) price.

**23.2** Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail.

## **24. Contacting the SELLER**

**24.1** Any effort by a Bidder to influence the SELLER in the SELLER's Bid evaluation, Bid comparison or contract award decision may result in the rejection of the Bidder's Bid.

## **F. Award of Contract**

### **25. Award Criteria**

The SELLER will award the contract to the successful Bidder whose Bid has been determined as the highest Bid. In case the highest Bidder offers to purchase quantity less than six shipments, the balance shipment quantity shall be offered to the next highest bidder subject to accepting the highest Bidder's price and so on & so forth.

### **26. SELLER's right to vary quantities at time of Award**

The SELLER reserves the right to award a quantity more or less than the offered quantity, for the purpose of completion of shipment, without any change in unit prices or other terms & conditions.

### **27. SELLER's Right to Accept Any Bid and to Reject Any or All Bids**

The SELLER reserves the right to accept any Bid in full or in part.

### **28. Notification of Award**

**28.1** The notification of award will constitute the formation of the Contract.

### **29. Signing of Contract**





**29.1** Within 2 (two) days from the date of receipt of the Notification of Award from MBL, the successful Bidder will send the signed and accepted scanned copy of the Contract through email, followed by the original through hand delivery or through secured mail.

### **30. Performance Guarantee Bond**

**30.1** Within 5 (five) days from the date of the Agreement, the successful Bidder should furnish Performance Guarantee (PG) Bond in the form of a bank guarantee as per proforma vide Annexure – IV to Part – IV of this Document, for an amount of USD 50,000 (Fifty Thousand US dollars), valid for a period of 6 (six) months. No change in the prescribed proforma of the bank guarantee for PG Bond is acceptable. The PG Bond should be established in favour of MBL through the specified banks and should be received in the office of MBL within 5 (Five) days of the date of Agreement.

**30.2** As an alternative to the above PG Bond, the bidder may submit Security Deposit of USD 50,000 (Fifty Thousand United States Dollars) in the bank account mentioned 11.1 above.

**30.3** In the event of the failure of the Bidder to furnish PG Bond in the prescribed form or Security Deposit within the stipulated time or MBL shall have the right to forfeit the Bid Bond furnished by the Bidder, without prejudice to further recourse for breach of the Agreement.

### **31. Action for misrepresentation/ submission of false documents**

All the information/ documents furnished with the bid are liable for verification and in case of misrepresentation/ fraud noticed at any stage, the SELLER shall take action such as non-consideration of bid/ termination of order along with forfeiture of bid bond. SELLER shall also be entitled to proceed for banning/ suspend business dealings as per rule/ norm. Decision of the SELLER in such case shall be final and binding.



**PART – III OF BIDDING DOCUMENTS**

**GLOBAL TENDER NO. *MBL/TC/2017 – 18/1 DATED 12th June, 2017***

**PROFORMA FOR PRICE BID**

1. Name of the Bidder :  
.....
2. Address :  
.....  
.....
3. Thermal Coal from Benga Mine, Mozambique
4. Price quoted per Metric Tonne  
a) FOB(Trimmed) Beira port : US \$.....  
(in figures as well as in words)  
:
5. Quantity offered: : .....Metric Tonne  
(**Minimum Bid Quantity of 33,000 Metric Tonne ± 10% to be offered**)  
***Shipment schedule to be indicated for the quantity offered***
6. Total value of the Quantity offered  
on FOB(T) basis : US \$ .....  
(in figures as well as in words)

**NAME & SIGNATURE OF  
THE AUTHORISED SIGNATORY OF THE BIDDER**

**(NAME OF THE BIDDER)**

**Note:** No conditions are required to be mentioned in this Format. Any qualification will make the offer liable for rejection and forfeiture of EMD.



**PART – IV OF BIDDING DOCUMENTS**

**GLOBAL TENDER NO. MBL/TC/2017 – 18/1 DATED 12<sup>th</sup> June, 2017**

**DRAFT AGREEMENT FOR THE SUPPLY OF THERMAL COAL ON  
FOB (TRIMMED) BEIRA PORT OF LOADING BASIS**

**AGREEMENT NO.**

\_\_\_/\_\_\_/\_\_\_

**DATED:**

**AGREEMENT FOR SALE AND PURCHASE OF THERMAL COAL**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and Seventeen between M/s. \_\_\_\_\_, a Company incorporated in \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_, hereinafter called the "PURCHASER" (which term or expression unless excluded by or repugnant to the context shall include its successors and permitted assigns) of the FIRST PART and **Minas de Benga Limitada**, a Company incorporated in **Mozambique** under the **Laws of Mozambique**, having its registered office at **Av 24 de Julho, 4 Piso, No 1123, Bairro Da Polana, Cimento B, Maputo, Mozambique**, hereinafter called the "SELLER", (which term or expression unless excluded by or repugnant to the context shall include its successors and permitted assigns) of the SECOND PART.

WHEREAS acting on such representation of the PURCHASER and other commercial consideration, the PURCHASER has agreed to buy Thermal Coal from the SELLER and the SELLER has agreed to supply the said Thermal Coal on the price and other terms & conditions contained herein in this Agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

**CLAUSE 1 : MATERIALS, QUANTITY, QUALITY AND DELIVERY PERIOD**

**1.1** The SELLER shall sell and the PURCHASER shall buy a total quantity of ..... (.....) Metric Tonne (of one thousand kilograms each), subject to a tolerance of plus or minus 10 % (Ten percent) at PURCHASER's option including shipping tolerance, of Thermal Coal, hereinafter referred to as the MATERIALS, in conformity with the Technical Specifications incorporated in Annexure – II to this Agreement and which shall constitute an integral part of this Agreement.

**1.4** For the purpose of this Agreement, the delivery period shall be reckoned as from **July 2017 to 31s August 2017**. The SELLER reserves the right to postpone the deliveries upto **September 2017** without any additional financial liability to the SELLER.

**CLAUSE 2 : PRICE**



2.1 The price of the MATERIALS shall be US \$ \_\_\_\_\_(United States Dollar \_\_\_\_\_ and Cents \_\_\_\_\_ only) per Metric Tonne (of one thousand kilograms each) Free on Board (Trimmed). Port of Loading will be Beira.

2.2 The price shall be firm and shall not be subject to any escalation for any reason, whatsoever, until the completion of delivery of the entire AGREEMENT quantity within the agreed delivery period with such extensions as might be mutually agreed upon between the SELLER and the PURCHASER.

2.3 The payment of the price of the MATERIALS delivered by the SELLER under this Agreement shall be made by the PURCHASER in United States Dollar by means of an Irrevocable Without Recourse to Drawer revolving Letter of Credit towards payment of the full Invoice value of the materials at sight on presentation of the documents mentioned in Para 5.2 of Annexure – I to the Agreement. To facilitate processing of the documents, the SELLER shall email the documents mentioned in Para 5.2.1 to 5.2.7 of Annexure – I of the Agreement to the PURCHASER.

The documents referred to hereinabove should be delivered by *e-mail* at the following address:

\_\_\_\_\_

All bank charges at the PURCHASER'S end shall be borne and paid for by the PURCHASER. All bank charges at the SELLER'S end shall be borne and paid for by the SELLER.

### **CLAUSE 3: GENERAL CONDITIONS OF AGREEMENT (GCA)**

This Agreement is subject to the terms & conditions contained in the General Conditions of Agreement (hereinafter referred to as "GCA") annexed to this Agreement (Annexure–I) which shall form an integral part of this Agreement. In case of any conflict between GCA and any provision hereinabove, the provision contained hereinabove shall prevail over "GCA".

### **CLAUSE 4 : PERFORMANCE GUARANTEE BOND/ SECURITY DEPOSIT**

4.1 The PURCHASER shall establish a Performance Guarantee Bond in the prescribed proforma (Annexure – IV to the Agreement), to be received in the office of the SELLER within 5 (five) days of the date of this Agreement, for an amount of USD 50,000 (Fifty Thousand United States Dollars) in favour of the SELLER.

4.2 The aforesaid PG Bond established by the PURCHASER in favour of the SELLER for the due, timely and satisfactory performance and fulfilment of all the SELLER'S obligations under this Agreement in all respects, shall remain in full force and effect during the entire period required for satisfactory performance and fulfilment of the Agreement by the SELLER in all respects and shall continue to be in full force and effect for a period of six (6) months.

OR

4.3 The PURCHASER shall deposit USD 50,000 (Fifty Thousand United States Dollars) as Security deposit in SELLER's Bank Account:

Bank Name : Standard Bank (Mauritius) Limited,



Account Name : Minas De Benga, Limitada  
Account Number : 0140052016801  
BIC (SWIFT) : SBICMUMU  
Currency : USD  
Account type : Current Account

4.4. After the last shipment, the Security Deposit amount will be refunded to the Buyer after adjustment if any required.

4.5 The Performance Bond/ Security Deposit shall be forfeited in case of breach of any conditions of the Agreement.

#### **CLAUSE 5 : COMPLIANCE TO ISPS CODE**

The SELLER has agreed to comply with the International Ship and Port Facility Security (ISPS) Code stipulated by the International Maritime Organisation, which has come into effect w.e.f. 1<sup>st</sup> July 2004. Failure on the part of the SELLER to comply with the ISPS Code's requirements and/ or the Loadport not conforming with the ISPS Code and any delays caused by such failures shall be to SELLER'S account.

#### **CLAUSE 6: LEGAL ADDRESS OF PARTIES**

##### **REGISTERED OFFICE**

##### **THE PURCHASER**

##### **THE SELLER**

**Minas de Benga Limitada,  
Av 24 de Julho,  
4 Piso, No 1123,  
Bairro Da Polana,  
Cimento B, Maputo  
Moçambique.**

##### **ADDRESS FOR CORRESPONDENCE**

1.

**THE PURCHASER**

2. **Minas de Benga Limitada  
Deputy General Manager (Procurement)  
ICVL Training Centre  
Bairro Comunal de Matundo Parcela No 1049  
Estrada Nacional No 103  
Tete, Moçambique**

**THE SELLER**

**ANNEXURE – I GENERAL CONDITIONS OF AGREEMENT (GCA)**

**ANNEXURE – II TECHNICAL SPECIFICATIONS**

**ANNEXURE – IIA BONUS AND PENALTIES**

**ANNEXURE – III TERMS & CONDITIONS FOR DELIVERY OF THE**



**MATERIALS ON THE BASIS OF FOB (TRIMMED) PORT(S)  
OF LOADING**

**ANNEXURE – IV PROFORMA OF BANK GUARANTEE FOR PERFORMANCE  
GUARANTEE BOND**

IN WITNESS WHEREOF the **parties** hereto have executed these presents at \_\_\_\_\_  
on the day, month and year first above written:

**FOR AND ON BEHALF OF  
THE SELLER**

Signature:  
Name:  
Designation:  
Company: Minas de Benga Lda  
Place: Maputo, Mozambique

**IN THE PRESENCE OF:**

1. Signature:  
Name:  
Designation:  
Company : Minas de Benga Lda  
Place : Maputo, Mozambique
2. Signature:  
Name:  
Designation:  
Company: Minas de Benga Lda  
Place : Maputo, Mozambique

**FOR AND ON BEHALF OF  
THE PURCHASER**

Signature:  
Name:  
Designation:  
Company:  
Place :

**IN THE PRESENCE OF:**

Signature:  
Name:  
Designation:  
Company:  
Place :

**ANNEXURE – I**



TO

AGREEMENT No \_\_\_\_\_ DATED \_\_\_\_\_

### GENERAL CONDITIONS OF AGREEMENT (GCA)

#### PARA 1.: SAMPLING AND ANALYSIS

**1.1** The SELLER shall, at his own expense, arrange to carry out loadport sampling and analysis of the MATERIALS delivered in each consignment, in accordance with the relevant Specifications of the International Organisation for Standardisation (ISO Specifications), through an Independent Inspection Agency. SELLER shall employ Bureau Veritas, who are the only reputed independent Agency providing such services, based at Beira. The PURCHASER may, at his option and at his own expense, depute his representative(s) to witness the sampling and analysis by inspection agency at loadport. The SELLER shall provide necessary assistance in this regard to the PURCHASER'S representative(s).

**1.2** The SELLER shall furnish to the PURCHASER the Certificate of Sampling and Analysis issued by the independent inspection agency at the loadport indicating :

#### LOADPORT ANALYSIS:

- (a) Total Moisture
- (b) Ash
- (c) Volatile Matter
- (d) Total Sulphur
- (e) Net Calorific Value on as received basis in kcal/kg.
- (f) HGI

**Note:** i) The Certificate of Sampling and Analysis shall be got prepared in 10 (Ten) copies, of which 6 (six) copies shall be air mailed by the SELLER to the PURCHASER within 7(seven) days from the date of Bill of Lading in respect of the consignment and 2 (Two) copies shall be submitted by the SELLER alongwith other shipping documents for drawing payment.

ii) The Certificate shall clearly specify that the coal loaded on the vessel, sample of which was analysed by the Independent Inspection Agency at Loadport is Thermal Coal from Benga mine in Mozambique.

**1.3** For the purpose of this Agreement, the results of analysis of the MATERIALS carried out by the approved independent inspection agency at loadport, shall be final and shall form the basis of the SELLER'S invoice.

**1.4** The supplies of the MATERIALS will be as per the specifications specified in Annexure – II to the Agreement. However, for any deviations in exceptional cases, in the Certificate of Sampling and Analysis at the Loadport, referred to in Para 1.2 hereinabove, from the quality specifications laid down in Annexure – II to this Agreement, the SELLER shall allow rebate(s)/diminution in price in the invoice covering the delivery of the MATERIALS in the consignment where such deviations are noticed, as specified in Annexure IIA.





## **PARA 2.: CHARGEABLE WEIGHT**

**2.1** THE SELLER shall, at his cost, determine the weight of the MATERIALS delivered at the port of loading by means of draught survey which shall be conducted by the independent inspection agency at the loadport, appointed by the SELLER (through approved licensed marine surveyors) who shall issue the Certificate of Loadport Draught Survey Weight. Where the Total Moisture (on "As received" basis) in the MATERIALS as disclosed in the Certificate of Sampling and Analysis at Loadport is in excess of 6%, the Loadport Draught Survey Weight shall be subject to adjustment for the purpose of invoicing i.e. the invoice weight shall be reduced by the excess percentage of Total Moisture over 6% @ 1.3% for every 1% increase over 6% (fractions pro-rata).

## **PARA 3. : QUALITY AND WEIGHT VARIATIONS MATERIAL DIFFERENCES**

**3.1** Results certified by the Independent Inspection Agency shall form the basis of payment which will be considered as final and binding on both the parties.

**Note:** Name and Address of the Independent Inspection Agency at loadport is

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## **PARA 4. : INSURANCE**

**4.1** The PURCHASER shall, at his own expense, arrange for suitable marine insurance cover for the MATERIALS delivered by the SELLER. For this purpose, the SELLER shall, if required, on completion of loading intimate to the PURCHASER by FAX/EMAIL at Nos. \_\_\_\_\_ or by **e-mail** at \_\_\_\_\_, the Agreement number, the port of loading, the name of the vessel, the quantity of the MATERIALS loaded on board the vessel as per Loadport Draught Survey Weight and Approximate value thereof, the Bill of Lading number and date, the date of sailing of the vessel, the name of the destination port and the expected date of arrival of the vessel at the destination port. In case the intimation is sent by FAX/EMAIL, the SELLER shall FAX/EMAIL the message twice to ensure clear receipt of the message by the PURCHASER.

## **PARA 5. : TERMS OF PAYMENT**

**5.1** The PURCHASER shall establish an irrevocable without recourse to drawer revolving Letter of Credit covering fully the approximate value of each shipment. Such Letter of Credit shall be established within 7 days of issue of letter of award and should remain valid for a period of 75 days from the date of opening, for shipment and negotiation.

**5.2** The Letter of Credit established by the Purchaser in favour of the Seller under this Agreement shall provide for the full payment of the value of the shipment on presentation of the documents indicated in Paras 5.2.1 to 5.2.7 herein below by the Seller to the negotiating bank at sight. The negotiating bank of the seller is BCI (Banco Comercial de Investimentos sarl, Maputo -Swift CGDIMZMA).

**5.2.1** 2/3 sets of original clean on Board Bill(s) of Lading made out to order and blank endorsed marked Notify \_\_\_\_\_. The Bill of Lading must be issued in 'CONGENBILL FORM' only.



**Note :** Charter Party Bill(s) of Lading marked “Freight payable as per Charter Party” will be acceptable.

**5.2.2** Signed Commercial Invoices – in quadruplicate.

**5.2.3** Certificate of Sampling and Analysis issued by the independent inspection agency at loadport clearly specifying that the sampling and analysis pertains to Thermal Coal loaded on the vessel – in duplicate.

**5.2.4** Certificate of Origin issued by Chamber of Commerce or a similar authorised agency – in duplicate.

**5.2.5** Loadport Draught Survey Weight Certificate issued by the independent inspection agency at loadport – in triplicate.

**5.2.6** SELLER'S Certificate – in quadruplicate, confirming that (a) 1 (one) negotiable copy of the Bill of Lading alongwith 4 (four) non-negotiable copies of Bill of Lading (b) 2 (two) non-negotiable copies of Commercial Invoice(c) 6 (six) copies of the Certificate of Sampling and Analysis at loadport (d) 2 (two) copies of Certificate of Origin (e) 2 (two) copies of Loadport Draught Survey Weight Certificate and (f) copy of SELLER'S FAX/EMAIL advice of shipment to the PURCHASER referred to in Para 4.1 hereinabove, have been sent through Courier Service direct to the PURCHASER at \_\_\_\_\_ within 7 (seven) days from the date of Bill(s) of Lading.

**5.2.7** Copy of SELLER'S FAX/EMAIL advice of shipment to the PURCHASER referred to in Para 4.1 and 5.4 – in quadruplicate.

**5.3** Within 7 (seven) days from the date of Bill of Lading in respect of each consignment, the SELLER shall send through Courier Service, direct to the PURCHASER at \_\_\_\_\_, the following documents in respect of each shipment:

- (a) One (1) negotiable copy of Bill of Lading alongwith four non-negotiable copies.
- (b) Two (2) non-negotiable copies of Commercial Invoice.
- (c) Six (6) copies of the Certificate of Sampling and Analysis at loadport.
- (d) Two (2) copies of Certificate of Origin.
- (e) Two (2) copies of Loadport Draught Survey Weight Certificate.
- (f) Copy of SELLER'S FAX/ EMAIL advice of shipment to the SELLER referred to in 4.1 hereinabove.

**5.4** The SELLER shall FAX/EMAIL copies of signed Bills of Lading, Commercial Invoice, Certificate of Sampling and Analysis, Certificate of Origin and Loadport Draft Survey Certificate, Seller's certificate stated at Para 5.2.6 hereinabove and PURCHASERS's advice to shipment stated at Para 5.2.7 hereinabove to the PURCHASER by FAX/EMAIL at Nos.: \_\_\_\_\_ or by **e-mail** at \_\_\_\_\_ with the scanned documents within 5 (five) working days after the Bill of Lading Date.

**5.5.** As an alternate, the buyer may deposit 100% Payment in Advance before placement of vessel to MBL bank account (Banco Comercial e de Investimentos, SARL, Mozambique )



5.6 Any additional Tests, Certificates, documents, etc, required by the PURCHASER, may be directly obtained from the concerned agency, in consultation with the SELLER. Any additional charges/Fees that need to be paid on this account, has to be paid directly by the PURCHASER to such agency.

## **PARA 6 : DELIVERY**

**6.1** SELLER will deliver the MATERIALS in Handymax vessels in shipments of about 33,000 Metric Tonne +/- 10% each, at about 1 shipment every 10-15 days.

**6.2** The date of the Bill of Lading shall be the date of delivery in respect of the shipment. Immediately after signing of this Agreement and submission of the PG Bond as per Clause No. 4 of the Agreement, the PURCHASER shall arrange for chartering suitable vessels for taking delivery of the MATERIALS on the basis of FOB (Trimmed) Port of Loading. The PURCHASER shall endeavour to place the vessel at the loadport to start taking delivery of the consignment of the MATERIALS within 20 days from the date of the Agreement.

**6.3** The SELLER shall take necessary steps to ensure that sufficient quantity of the MATERIALS is ready for delivery at the loadport before the nomination of vessels.

**6.3.1** To facilitate smooth nomination of vessels, the SELLER may indicate stem availability with proposed laydays and quantity, at least 2 (two) weeks in advance. The PURCHASER shall endeavour to nominate vessels accordingly. The SELLER may, however, accept vessels with minor changes in laydays and quantities.

**6.4** The terms of delivery of the MATERIALS shall be as per Annexure – III, which shall constitute an integral part of this Agreement.

**6.5** The shipment will be subject to the condition that the SELLER is in possession of the Letter of Credit complete in all respects and subject to acceptance by the SELLER of vessel nominated by the PURCHASER and subject to the arrival of such vessel(s) at the load port within the agreed lay can with such extensions as may be mutually agreed upon in writing (in which event the validity of the Letter of Credit for shipment and negotiation shall be promptly extended by the PURCHASER), the Seller shall deliver the materials on FOB(T) basis.

**6.6** The PURCHASER shall lift the full contracted quantity by 20<sup>th</sup> August 2017, failing which the Performance Bank Guarantee shall be encashed and the contract terminated.

## **PARA 7. : TERMINATION**

If the SELLER/PURCHASER commit breach of any provisions of this Agreement, the SELLER/PURCHASER shall notify the SELLER/PURCHASER to remedy such breach within a reasonable period. If breach continues to occur, the SELLER/PURCHASER shall have the right to terminate this Agreement.

## **PARA 8. : RESPONSIBILITY**



The SELLER on the one hand and the PURCHASER on the other hand shall be responsible for the performance of all their respective obligations under this Agreement.

#### **PARA 9. : TRANSFER AND SUB-LETTING**

**9.1** The SELLER shall not sublet, transfer, assign or otherwise part with the Agreement or any part thereof, either directly or indirectly, without the prior written permission of the PURCHASER.

**9.2** The SELLER shall be entirely responsible for the execution of the Agreement by the subcontractor, if any, permitted by the PURCHASER. For this purpose, the SELLER shall at his own cost ensure adequate inspection of the subcontractor's works by an inspection organisation acceptable to the PURCHASER.

#### **PARA 10. : EXPORT LICENCE**

It shall be the responsibility of the SELLER to obtain the requisite Export Licence and comply with other relevant laws of his country for export of the MATERIALS and he shall keep the PURCHASER indemnified for any losses which may accrue to the PURCHASER because of any defect therein.

#### **PARA 11. : TAXES AND DUTIES**

The PURCHASER shall be entirely responsible for all taxes, stamp duties, Licence fees and other such levies imposed outside the SELLER's country.

#### **.PARA 12. : COMPLETENESS OF THE AGREEMENT AND MODIFICATION**

This Agreement cancels all previous negotiations between the parties hereto. There are no understandings or agreement between the PURCHASER and the SELLER which are not fully expressed herein and no statement or agreement, oral or written, made prior to or at the signing hereof shall affect or modify the terms hereof or otherwise be binding on the parties hereto. No change in respect of the terms covered by this Agreement shall be valid unless the same is agreed to in writing by the parties hereto specifically stating the same as an amendment to this Agreement.

#### **PARA 13 : WAIVER**

Failure to enforce any condition herein contained shall not operate as a waiver of the condition itself or any subsequent breach thereof.

#### **PARA 14. : FORCE MAJEURE**

**14.1** If the SELLER be prevented from discharging its or their obligation under this Agreement by reason of an unforeseeable and unavoidable event beyond its reasonable control inter alia including arrests or restraints by Government or people, war, blockade, revolution, insurrection, mob violence, strikes, terrorist activities, civil commotions, civil, political or social unrest, Acts of God, plague or other epidemics, destruction of the MATERIALS by fire or flood or other natural calamity, incidents and issues interfering with the production, transportation, loading then the time for delivery shall be extended by the time or times, during which production, transportation or loading is prevented by any such causes as hereinabove mentioned. The party invoking protection under this



clause shall put the other party on notice and shall likewise intimate/notify the cessation of such causes. The delivery shall be resumed by the Party/Parties within 15 (fifteen) days from the cessation of the *Force Majeure* causes.

**14.2** Should there be any interruptions in the delivery of the MATERIALS due to *Force Majeure* circumstances, the period of offtake of the MATERIALS by the PURCHASER/ period of loading of the MATERIALS by the SELLER shall automatically stand extended, equal to the actual duration of the causes interrupting the delivery of the MATERIALS by the SELLER PLUS a period of 2 (two) weeks to enable the affected party to make suitable arrangements for normalization of shipments.

14.3 Notwithstanding the above, once a vessel is nominated by the PURCHASER and has been accepted by the SELLER, Force Majeure event relating to the transportation of Material to the port shall not apply and Force Majeure event can be invoked by the SELLER for extension of delivery period only. However, any Force Majeure condition relating to the Port and related facilities, which prevent the loading of the vessel, will prevail .

#### **PARA 15. : ARBITRATION**

All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris by the Sole Arbitrator appointed in accordance with the said Rules and the Award made in pursuance thereof shall be binding on the parties. The Arbitrator shall give a reasoned award. The venue and seat of arbitration shall be New Delhi, India.

#### **PARA 16. : LEGAL INTERPRETATIONS**

**16.1** This Agreement shall be governed by and construed according to the laws of Mozambique for the time being in force.

**16.2** To interpret all the commercial terms and abbreviations used herein which have not been otherwise defined, the rules of "INCOTERMS 2000" shall be applied.

**FOR AND ON BEHALF OF THE  
PURCHASER**

**FOR AND ON BEHALF OF THE  
SELLER**



**ANNEXURE – II**

**TO**

**AGREEMENT NO. \_\_\_\_\_ DATED \_\_\_\_\_**

**TECHNICAL SPECIFICATION OF THERMAL COAL**

Parameters	Basis	Value	Rejection Limit
Nett Calorific Value kcal/kg	Ar	5500	Less than 5300
Total Sulphur % (ISO 19579)	Ad	1 max	More than 1.2
Ash % (ISO 1171)	Ad	28 max	More than 31
Total Moisture % (ISO 589)	Ar	6 max	
Volatile Matter % (ISO 562)	Ad	17 min	
Hardgrove Grindability Index		65-75	
Size (ISO 1953)	Mm	0-50	



## ANNEXURE – IIA

AGREEMENT NO. \_\_\_\_\_ DATED \_\_\_\_\_

### BONUS & PENALTIES

S. N.	Technical Parameters	Basis for application of Bonus/ Penalty in price	Penalty in US \$ per Metric Tonne
(1)	(2)	(3)	(4)
1.	Net Calorific Value	Penalty for NCV less than the 5500 kcal/kg upto 5300 kcal/kg and Bonus for NCV more than the specification of 5500 kcal/kg	FOB Price to be reduced/ increased by the percentage of NCV less/ more than 5500
2.	Ash	Penalty for every increase of 1% (fractions pro-rata) in Ash content in excess of the specification of 29% Max upto 31%	1.2% of the FOB Price
3.	Sulphur	Penalty for every increase of 0.1% (fractions pro-rata) in Sulphur content in excess of 1% upto 1.2%	1% of the FOB Price
4.	Total Moisture	If the Total Moisture (on "As received" basis) in the MATERIALS as disclosed in the Certificate of Sampling and Analysis at Loadport is in excess of 6%, the Loadport Draught Survey Weight shall be subject to adjustment for the purpose of invoicing i.e. the invoice weight shall be reduced by the excess percentage of Total Moisture over 6% @ 1.3% for every 1% increase over 6% (fractions pro-rata).	





## ANNEXURE – III

AGREEMENT NO. \_\_\_\_\_ DATED \_\_\_\_\_

### TERMS & CONDITIONS FOR DELIVERY OF THE MATERIALS ON THE BASIS OF FOB (TRIMMED) PORT OF LOADING

1. The PURCHASER shall charter vessels required for carriage of the MATERIALS under this Agreement upon the terms of the AMERICANISED WELSH COAL CHARTER PARTY with such variations or deletions therein or additions thereto as are necessary to make it conform to the provisions of this Agreement and as further elaborated herein below.
2. The PURCHASER shall charter single-decker vessels with maximum 5 hatches suitable for loading of 33,000 Metric Tonne (Handymax Vessel) with a tolerance of  $\pm$  10% (Ten percent) per voyage, at ship owner's or Charterer's (i.e. PURCHASER'S) option. In case vessels of other size are available for meeting the requirements, the PURCHASER shall have the option of chartering and nominating such vessels also. While chartering the vessels, the PURCHASER shall take into account the details furnished by the SELLER to the PURCHASER regarding the coal loading facilities, acceptable dimensions of the vessels, clearance dimensions of the coal loading gantries and sailing draught at the loadport(s).
  - 2.1 Keeping in view the limitations at the BEIRA port, the PURCHASER shall ensure that the vessels engaged by them for shipment of the MATERIALS under this Agreement have (a) 5 hatches and LOA not exceeding 199 MTR (b) stern of vessel uptill the centreline of Hatch #3 should not be more than 120 meter (c) minimum debalasting capacity of 1800 tph (d) the notified draft alongside quay no. 8, the coal loading berth is 9.5 m and vessels are regularly loaded to this draft (e) loading on NAABSA basis. Due to river flowing through the port there is soft mud buildup against the quay wall which is regularly touched by vessels without any damage reported by vessels.
  - 2.2 The vessel nominated by the PURCHASER shall be classed highest Lloyds or equivalent, be in thoroughly seaworthy condition, comply in every respect with all International and Local regulations, comply with all regulations governing the carriage by sea of coal in bulk and shall be maintained as such for the duration of the voyage.
3. The Charter Party/ Parties between the Ship-owner(s) and the PURCHASER in respect of the vessel(s) fixed by the PURCHASER for carriage of the MATERIALS under this Agreement shall, *inter-alia*, provide for the following.
  - 3.1 The Ship-owner shall bear and pay all port dues (except port loading charges), tonnage dues, light dues and all other taxes, assessments and charges which are customarily payable at the loadport(s) on or with respect to the vessel(s).



**3.2** The Master of the vessel shall give FAX/EMAIL / *e-mail* advice(s) at the intervals of 7 days, 72 hours and 24 hours to the SELLER regarding the ETA of the vessel and the quantity required to be loaded into the vessel at the loadport to\_\_\_\_\_

**3.3** The Master of the vessel shall provide free use of light on board the vessel as may be required for working the vessel at the loadport(s) and in each case free of expense to the SELLER.

**3.4** The Master of the vessel shall allow on board the vessel the authorised representative(s) of the Independent Inspection Agency/ Marine Surveyors at the loadport(s) to witness/ inspect and supervise the loading of the MATERIALS into the hatches of the vessel as well as to carry out draught surveys.

**3.5** Bills of Lading shall be prepared on the basis of the Draught Survey Weight determined by the Independent Inspection Agency through approved Marine Surveyors at the loadport and such Bill(s) of Lading shall be endorsed by the Master of the vessel or the agents of the Ship owner at the loadport within 24 hours after completion of loading. The Bill(s) of Lading must be issued in "CONGENBILL FORM" only.

**3.6** The Master of the vessel or the agents of the Shipowner at the loadport shall release Bill(s) of Lading marked "Freight payable as per Charter Party" immediately after completion of loading.

**4.** Based on the delivery schedule agreed upon between the PURCHASER and the SELLER, the PURCHASER shall nominate vessel about two weeks prior to effecting of the shipment. The SELLER shall confirm to the PURCHASER by EMAIL at \_\_\_\_\_, the acceptance of such vessel(s) within 1(one) working days of the nomination thereof. The laydays for each vessel shall be narrowed down to 6 ( six) days, in advance of the ETA of the vessel at the loadport.

**5.** Upon the fixture of any vessel by the PURCHASER for carriage of the MATERIALS under this Agreement, the PURCHASER shall intimate to the SELLER relevant particulars of such vessel. The PURCHASER reserves the right to appoint his own agent(s) at the loadport(s).

**6.** The SELLER shall arrange to deliver/ load the MATERIALS FOB (TRIMMED) into the vessel(s) nominated by the PURCHASER and accepted by the SELLER at the port of loading.

**7.** The SELLER shall arrange for a safe loading berth for the vessel at the notified loading port.

**8.** The SELLER shall guarantee to deliver/ load the MATERIALS into the vessel(s) (FOB Trimmed), at the following rate :

Guaranteed rate of loading per Weather Working Day (WWD) of twenty four (24) consecutive hours, Saturday, Sundays, Holidays Included, (SSHINC) except for 25<sup>th</sup> December and 1<sup>st</sup> January unless used.

**18000 Metric Tonne**



**8.1** If any overtime work is performed by the crew of the vessel at the port of loading at the instance of the SELLER, crew's overtime shall be borne and paid for by the SELLER.

**9.** Upon arrival of the vessel at the outer anchorage or at the pilot station of the loadport, whether the vessel is in free pratique or not and in berth or not, Master of the vessel shall serve on the SELLER the Notice of Readiness of the vessel to load cargo (MASTER'S N/R).

**10.** If the vessel, whether in free pratique or not, is found by the SELLER not to be ready in any other respect to load after its berthing, the specific grounds on which the vessel is found not to be ready to load, shall be recorded by the SELLER in the STATEMENT OF FACTS which is also to be accepted and signed by the Master/ Agent of the vessel at the loadport. In such an event, the laytime shall not be deemed to have commenced until the vessel is in fact ready to load in all respects. In the Statement of Facts there should be proper notation as to the delays attributable to shoreside or to the Vessel. Statement of Facts should be signed by all concerned.

**11.** Laytime (i.e loading time) shall commence 24 hours after the time at which MASTER'S N/R is served, whether the vessel is in berth or not and in free pratique or not, unless the loading of the MATERIALS sooner commenced, in which event laytime shall count from the actual time of commencement of loading. Any time lost by the vessel in waiting for berth shall also count as loading time. If the vessel arrives and commences loading before the agreed laycan, then the laytime shall commence from the time of commencement of loading.

### **Excepted periods**

If, after berthing, the vessel is found by the Port Authorities/ SELLER not ready in all respects to loading, laytime will not commence until the vessel is in fact ready in all respects to loading.

Loading interruptions that occur as a result of any act of the PURCHASER, due to the vessel's requirements (which includes a draft survey and draft check time), even if the vessel is already on demurrage.

Time lost by reason of any or all of the following causes preventing loading of the cargo shall not be computed as Laytime even if the vessel is already on demurrage:

War, rebellion, Tumult, Political disturbances, Insurrection.

Lockouts, Strikes, Riots, Civil Commotion, Terrorist activities.

Epidemics, Quarantine, Landslips, Floods, Frost or Snow, bore tides, bad weather.

Stoppage of work, whether partial or general, by Workmen, Longshoremen, Tug-boat men or other hands essential to the working of the vessel or loading of cargo from the vessel.

Accidents at the wharf.



Intervention of Sanitary, Customs and/or other constituted authorities.

Any other cause beyond the control of the SELLER.

**12.** The SELLER shall arrange to deliver/load the MATERIALS into the vessel and to trim the MATERIALS inside the hatches of the vessel by mechanical or manual means at the option of the SELLER in accordance with the instructions of and to the satisfaction of the Master or the Chief Officer of the vessel free of risk and all expenses either to the vessel or to the PURCHASER. Claims for damage caused to the vessel by stevedores, if any, are to be settled between the SELLER and the Ship owners.

The Master/ Agent of the vessel at the loadport should notify in writing of any alleged damage to the vessel by the stevedores and failure to so notify shall bar any claim therefor. In any event, any such claim shall be barred if not made prior to the departure of the vessel from the loadport where damage is alleged to have occurred.

**13.** Should the SELLER fail to deliver/ load the MATERIALS into the vessel(s) in full or in part for reasons other than *Force Majeure* the SELLER shall be liable to the PURCHASER for all payment or expenses which the PURCHASER may incur by reason of such non-delivery including dead freight or extra freight, demurrage to the vessel and/ or any other charges and expenses of whatsoever nature which may be incurred by the PURCHASER.

**14.** Immediately on completion of loading of the MATERIALS into the vessel, the SELLER shall give regular loading updates to the PURCHASER. Immediately on completion of loading of the MATERIALS into the vessel, the SELLER shall furnish the following details by FAX/EMAIL at Nos.: \_\_\_\_\_ or by **e-mail** at \_\_\_\_\_ to the PURCHASER to enable the PURCHASER to take necessary marine insurance cover, (i) Name of the vessel (ii) Quantity loaded as per Loadport Draught Survey Weight and approximate value thereof (iii) Name of the loadport, (iv) Date and time of commencement and completion of loading and (v) Date and time of sailing of the vessel from the loadport (vi) No. and date of Bill of Lading.

**15.** Immediately on completion of loading, the SELLER shall obtain from the Master of the vessel or the Agents of the vessel at the loadport 'CLEAN ON BOARD' shipped Bill(s) of Lading.

**16.** Immediately after completion of loading, a STATEMENT OF FACTS shall be made out at the loadport duly signed by the Master of the vessel /Agents of the vessel at the loadport and the SELLER or their Agents at the loadport. Before the sailing of the vessel from the loadport, copies of the Statement of Facts shall be handed over to the Master of the vessel/ Agents of the vessel at the loading port.

**17.** In the TIME SHEET based on the aforesaid STATEMENT OF FACTS, the computation of laytime allowed and laytime used shall be based on the terms & conditions contained in Para 8, 8.1, 9, 10 and 11 hereinabove. Despatch, if any, shall be calculated on the basis of "working time saved". The rate of demurrage/ despatch shall be as stipulated in Charter Party relating to the vessel. In the case of demurrage, the SELLER shall remit the agreed amount of demurrage to the PURCHASER. In the case of despatch, the PURCHASER shall remit the agreed amount of despatch to the SELLER. The final settlement of the account of demurrage/ despatch in respect of each



vessel shall be effected directly between the SELLER and the PURCHASER on the above basis, within 90 days from the date of receipt of claim with supporting documents. Laytime calculation to be forwarded by SELLER within 30 days from the date of sailing of the vessel from the Loadport on vessel to vessel basis

**18.** The SELLER has agreed to comply with the International Ship and Port Facility Security (ISPS) Code stipulated by the International Maritime Organisation, which has come into effect w.e.f. 1<sup>st</sup> July 2004. Failure on the part of the SELLER to comply with the ISPS code's requirements and/ or the Loadport not conforming with the ISPS Code and any delays caused by such failures shall be to the SELLER's account who shall be fully responsible for all the consequences arising out of it.

**Note :**

1. Name, Address, FAX/EMAIL / *e-mail* and telephones numbers for serving Notice regarding ETA of the vessel and Notice of Readiness of the vessel to the SELLER at the Loadport as per Para 3.2 and 9 hereinabove :

Minas de Benga Limitada,  
Prédio dos CFM,  
Bairro Chaimite,  
Rua do Príncipe, 5<sup>o</sup> A/E,  
Beira – Moçambique,  
e-mail : [Ircilio.Godinho@icvl.co.mz](mailto:Ircilio.Godinho@icvl.co.mz)  
Ph: + 258 825122170.

2. *(i) Parcel size has been indicated in Clause 2 as per MBL's requirement. However, alternate parcel size, due to loadport restrictions, if any, can be considered by MBL.*  
  
*(ii) Clause 8 indicates Guaranteed Rate of Loading as per MBL's requirement. However, alternate Guaranteed Rate of Loading to suit loadport requirements/ restrictions can be considered by MBL.*

**FOR AND ON BEHALF OF THE  
PURCHASER**

**FOR AND ON BEHALF OF THE  
SELLER**



## ANNEXURE – IV

AGREEMENT NO. \_\_\_\_\_ DATED \_\_\_\_\_

### PROFORMA OF BANK GUARANTEE FOR PERFORMANCE GUARANTEE BOND

TO

MINAS DE BENGA LIMITADA.  
Av. 24 de Julho, nº 1123, 4º Piso  
Maputo – Moçambique

Bank Guarantee No. \_\_\_\_\_ Dated \_\_\_\_/\_\_\_\_/\_\_\_\_\_

### LETTER OF GUARANTEE

WHEREAS MESSRS **Minas de Benga Limitada, Moçambique** (hereinafter referred to as the SELLER) and MESSRS. \_\_\_\_\_ (hereinafter referred to as the PURCHASER) have entered into an agreement vide Agreement No. \_\_\_\_\_ Dated \_\_\_\_\_ (hereinafter called the said AGREEMENT) for the supply of \_\_\_\_\_ (\_\_\_\_\_) Metric Tonne of Thermal Coal (hereinafter referred to as the MATERIALS) on the terms & conditions mentioned therein.

2. WE, \_\_\_\_\_ at the request of the PURCHASER, do hereby undertake and indemnify and keep indemnified the SELLER to the extent of US\$ \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) against any loss or damage that may be caused to or suffered by the SELLER, by reason of any breach by the PURCHASER of any of the terms & conditions of the said AGREEMENT and/or in the performance of the said AGREEMENT by the PURCHASER. We agree that the decision of the SELLER as to whether any breach of any of the terms & conditions of the said AGREEMENT or in the performance thereof has been committed by the PURCHASER and the amount of loss or damage that has been caused to or suffered by the SELLER shall be final and binding on us and the amount of the said loss or damage shall be paid by us forthwith to the SELLER on demand and without protest or demur.

3. WE, \_\_\_\_\_, hereby further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for satisfactory performance and fulfilment in all respects of the said AGREEMENT and that it shall continue to be enforceable for (a) six months after the date of Bill of Lading of the last consignment of the MATERIALS under the said AGREEMENT or (b) in the event of any dispute(s) between the PURCHASER and the SELLER, until such period(s) the dispute is settled fully, whichever date is later, and that if any claim accrues or arises against us, \_\_\_\_\_, by virtue of this Guarantee before the dates referred to at (a) and (b) herein above, the same shall be enforceable against us, \_\_\_\_\_, notwithstanding the fact that the same is enforced after the dates referred to at (a) or (b) hereinabove, whichever date is later, provided that notice of any such claim has been given by the SELLER before the dates referred to at (a), or (b) hereinabove, as the case may be. Payments under this





LETTER OF GUARANTEE shall be made promptly upon our receiving the notice to that effect from the SELLER on demand and without protest or demur.

4. It is fully understood that this Guarantee shall become effective from the date of the said AGREEMENT and that WE, \_\_\_\_\_, undertake not to revoke this Guarantee during its currency without the prior written consent of the SELLER.

5. WE, \_\_\_\_\_, hereby further agree that the SELLER shall have the fullest liberty, without affecting in any manner our obligations hereunder, to vary any of the terms & conditions of the said AGREEMENT or to extend the time of performance of the said AGREEMENT by the SELLER from time to time or to postpone for any time or from time to time any of the powers exercisable by the SELLER against the SELLER and to forbear or to enforce any of the terms & conditions relating to the said AGREEMENT and WE, \_\_\_\_\_ shall not be released from our liability under this Guarantee by reason of any such variation or extension being granted to the SELLER or any forbearance and/or omission on the part of the SELLER or any indulgence by the SELLER or by any other matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so releasing us from our liability under this Guarantee.

6. WE, \_\_\_\_\_, hereby further agree that the Guarantee herein contained is initially valid upto \_\_\_\_\_ and that the same shall be extended further according to the provisions contained hereinabove.

7. WE, \_\_\_\_\_, hereby further agree that the Guarantee herein contained shall not be affected by any change in the constitution of the SELLER and/or the SELLER.

FOR AND ON BEHALF OF

Signature:

Name: \_\_\_\_\_

DULY CONSTITUTED ATTORNEY  
& AUTHORISED SIGNATORY

Designation: \_\_\_\_\_

Place.....

dated:

The Performance Bank guarantees should be established in favour of Minas de Benga, Lda. through any Mozambique Bank (Preferrably Standard Bank or BCI) or through a branch of a reputed Foreign Bank having high safety for credit rating.

Ashok Kumar Mishra  
Deputy General Manager (Procurement)