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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 (hereinafter “MBL”) invites bids for the sale of 228,000 (two hundred twenty eight thousand tonnes), i.e. 6 (six) shipments of 38,000 Metric Tonne + 2.5 %/-10% (including shipping tolerance) of Thermal Coal (size 0–50mm) to be shipped during September to November 2018. The seller reserves the right to postpone delivery up to December 2018.

The Bidders may quote for higher quantities which may be considered by MBL in the event excess coal is available.

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: 1400 HRS MT MOZAMBIQUE STANDARD TIME ON 22<sup>nd</sup> AUGUST 2018.**
2. **DATE AND TIME FOR OPENING OF BIDS : IMMEDIATELY AFTER EXPIRY OF THE DEADLINE FOR SUBMISSION OF BIDS i.e. 14.30 HRS MOZAMBIQUE STANDARD TIME ON 22<sup>nd</sup> AUGUST 2018.**
3. **OFFERS BY THE BIDDERS TO BE VALID UPTO 15<sup>TH</sup> OF SEPTEMBER 2018 FOR DECIDING AWARD OF TENDER BY MBL.**
4. **TECHNICAL SPECIFICATIONS OF THERMAL COAL (SIZE 0 – 50 mm):**

Characteristics	Basis	Typical Values
Net Calorific Value kcal/kg	AR	5500
Total Moisture %	AR	5
Total Sulphur %	AD	0.9
Ash %	AD	28
Volatile Matter %	AD	19
Hardgrove Grindability Index		70



**PART – II OF BIDDING DOCUMENTS**  
**GLOBAL TENDER NO. MBL/TC/2018-05/ dated 10<sup>th</sup> August 2018**

**INSTRUCTIONS TO BIDDERS**

**A. Cost**

**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 Agreement 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>	Form of Agreement
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	Form of Performance Bank Guarantee ("PG")

**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 may at its own discretion 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 Agreement if its Bid is accepted;
- c) Earnest Money (“EMD”) furnished in accordance with Para 11.

##### **7. Bid Form**

The Bidder shall submit its 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 Discount:** Discount quoted by the Bidder shall be firm during the performance of the Agreement and shall not be subject to variation on any account whatsoever.



**8.3 Minimum Bid Quantity:** Bidder must quote for a minimum quantity of 3 (three) shipments i.e. about 114,000 (One Hundred Fourteen thousand) Metric Tonne +2.5%/-10% %. The bidder has to quote at the rate of 1 (one) shipment per month during the period of September to November 2018. The Bidder may also quote for more than 3 shipments and provide the shipment schedule in the price bid format.

The allotment of quantity over and above three shipments, shall be at the discretion of the seller. Based on the availability of the shipment, in a particular month, this additional quantity can be allotted to the Purchaser by the seller.

Allotment of this additional quantity, over and above , 114,000 MT shall be as under:-

1. The preference shall be given to the bidder who quotes the lowest discount ( H1 bidder) and quotes for this higher quantity over and above three shipments in the original offer.
2. If the H1 bidder does not quote this additional quantity in the original offer to be submitted with this tender, the balance qty shall be offered to H2, H3, H4... at the discount offered by H1.
3. The additional balance qty can be offered to the bidders in the order of H2, H3 ,H4 ..... **at H1 rate** in the month of September, October, November & December 2018, if this additional balance qty is not taken by H1 bidder, in spite of quoting the same with the original offer.
4. If the additional qty is not taken by any of the Purchaser (H2,H3,H4....) then this additional qty shall be offered ( if requirement of sale is there with MBL) to H1 again at the discount offered by H1 bidder.

This offer for additional quantity can be made to the Purchaser during the month of September, October, November & December 2018.

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

The Unit of Measurement (UOM) will be Metric Tonne ("MT") 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 (3) years, up to the last date of submission of bid.

**10.2** Bidders shall furnish detailed information of Company/Individual alongwith the last three (3) years published Annual Accounts and Annual Report. These documents should clearly show the exact nature of ownership.

**10.3** MBL may use documents/information of the bidder available with it from earlier tenders, in case they are found missing in the current bid, at MBL's discretion.

**10.4** MBL may seek additional documents from Bidder, if required, to establish capability.

**10.5** The bidders who were Technocommercially qualified in the last tender MBL/TC/2018-03/Dated 12th April 2018 shall be considered Technocommercially qualified . However, the same will be at the discretion of MBL. The bidders have to submit all the relevant documents in



this tender also for being declared technocommercially qualified as specified in the current tender.

**10.6** MBL will maintain the confidentiality of all information provided by Bidder.

## **11. Earnest Money Deposit**

**11.1** Each bid should be accompanied by proof of transfer (SWIFT, etc.) or deposit of the Earnest Money (hereinafter also referred to as “EMD”) of US \$ 20,000.00 (twenty thousand United States Dollars) to the bank accounts of MBL given below:

Bank Name : Standard Bank (Mauritius) Limited  
Branch Name : Head Office  
Account Holder Name : Minas de Benga, Limitada  
Account Number : 9090000111939  
IBAN Number : MU61SBIC2201900001119390000USD  
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 Agreement in accordance with Para 29; or
  - (ii) to furnish the Performance Bank Guarantee or the deposit of USD 60,000.00 (sixty thousand US Dollars), 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 its **offer firm** and **valid** for acceptance by MBL upto 15<sup>th</sup> September 2018.



**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 EMD provided under Para 12 shall also be suitably extended. A Bidder may refuse the request without forfeiting its EMD. 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 one (1) copy of the Bid (i.e., Part 1 – Techno-Commercial Bid and; Part 2 – Price Bid).

**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

### **D. Submission of Bids**

#### **16. Bids shall be submitted electronically only**

**16.1** The detailed offer shall be submitted in two (2) parts:

##### **PART 1: TECHNO-COMMERCIAL BID ALONGWITH EARNEST MONEY**

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; (To be submitted mandatorily with this bid for consideration)

and

##### **PART 2: PRICE BID**

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. **Price Bid shall be submitted to mjunction only.**

**16.2** The detailed offer together with its enclosures should be submitted to [coalsale.tender@icvl.co.mz](mailto:coalsale.tender@icvl.co.mz)



PART 1: TECHNO-COMMERCIAL BID ALONGWITH EARNEST MONEY (To be submitted to [coalsale.tender@icvl.co.mz](mailto:coalsale.tender@icvl.co.mz)); and

PART 2: PRICE BID. (To be submitted to mjunction)

**16.3** On the e-mail containing TechnoCommercial Bid, the Bidder will write “**TECHNO COMMERCIAL BID (PART-1) "OFFER IN RESPONSE TO GLOBAL TENDER NO. MBL/TC/2018-05 'Bidder's Short Name' DATED 10<sup>TH</sup> AUGUST 2018**” and price bid shall be submitted to mjunction.

The technocommercial bid shall be submitted on the mail id [coalsale.tender@icvl.co.mz](mailto:coalsale.tender@icvl.co.mz)

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

**The price bid shall be submitted to mjunction only** . The details of the same can be obtained from writing the mail to [dwaipayan.roy@mjunction.in](mailto:dwaipayan.roy@mjunction.in) and also contacting on the phone no +918336925984. mjunction will provide necessary training to the bidder.

The process through which bidding will take place is explained and put on the site for reference.

**16.4** Price will be quoted as the Discount over API#4 average price of 2 (two) weeks immediate prior to actual shipment.

**16.5** If the FOB price at Beira port works out to be below USD 65.00 (Sixty Five United States dollars), then also the sale will be done, but the price of the coal shall be USD 65 (Sixty Five United States dollars) per MT FOB .

## **16.6 Pricing Mechanism**

**16.6.1** The bidder shall quote **Discount per Metric Tonne over API#4** in US \$ at Part III of the Bidding document.

**16.6.2** For the purpose of API#4, Argus/McCloskey's Coal price Index Report shall be used.

**16.6.3** The API#4 price considered for reference shall be average of 2 (two) weeks price immediately prior to the week in which Bill of Lading is issued. Hence forth this price shall be called “**Base Price**”. Base Price is rounded to nearest two digits.

**16.6.4** The discount given by the Bidder at Annexure III of the document shall be subtracted from the “**Base Price**”. This price shall be called the “**Derived Price**”.

**16.6.5** The **FOB price** shall be obtained as follows:

$$\text{FOB Price} = (\text{Derived price} \times \text{NCV of the coal despatched}) / 5500$$

FOB Price is rounded to nearest two digits.



**16.6.6** The Penalty, if any, shall be deducted from the above FOB price as per Annexure IIA.

**16.6.7** Monday will be counted as first day of the week

**17. Deadline for Submission of Bids**

**17.1** Bids must be received by the SELLER at the electronic mail address specified above **no later than 1400 HRS (Mozambique Standard Time) on 22<sup>ND</sup> of AUGUST 2018.**

**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** 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 Agreement award decision may result in the rejection of the Bidder's Bid and forfeiture of EMD.

**F. Award of Agreement**

**25. Award Criteria**

From the successful Techno-Commercial Bids, the highest Bidder shall be declared based on the lowest discount quoted. The SELLER will award the Agreement to the successful Techno-Commercial Bidder whose Bid has been determined as the highest Bid. In case the highest Bidder offers to purchase quantity less than the total quantity offered, the balance shipment quantity shall be offered to the next highest Bidder subject to accepting the highest Bidder's discount 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, or to reject any Bid or all Bids.

**28. Notification of Award**

**28.1** The notification of award by e-mail/mail will constitute the formation of the Agreement.



## **29. Signing of Agreement**

**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 Agreement through email, followed by the original through hand delivery or through secured express courier.

## **30. Performance Bank Guarantee**

**30.1** Within 5 (five) days from the date of the Agreement, the successful Bidder shall furnish a Performance Bank Guarantee (hereinafter "PG") in the form of a bank guarantee as per the Form (vide Annexure – IV to Part – IV of this Document), for an amount of USD 60,000.00 (Sixty Thousand United States Dollars), valid for a period of 6 (six) months after the date of Bill of Lading of the last consignment of the MATERIALS under the Agreement. No change in the prescribed Form of the bank guarantee for PG is acceptable. The PG shall 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, the bidder may submit Security Deposit of USD 60,000.00 (Sixty Thousand United States Dollars) in the bank account mentioned in 11.1 above.

**30.3** In the event of the failure of the successful Bidder to furnish PG in the prescribed form or in the stipulated time, or the Security Deposit within the stipulated time, MBL shall have the right to terminate the Agreement and forfeit the EMD furnished by the Bidder without giving any prior notice.

## **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 EMD. 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  
(To be submitted to mjunction only)**

**GLOBAL TENDER NO. MBL/TC/2018-05 DATED 10TH AUGUST 2018**

**PROFORMA FOR PRICE BID**

1. Name of the Bidder: .....
2. Address:  
.....
3. Thermal Coal from Benga Mine, Mozambique
4. Discount per Metric Tonne over API#4: US \$ .....  
(in figures as well as in words)  
..... United States dollars
5. Quantity offered: : ..... MT  
(in figures as well as in words) ..... Metric Tonnes

**(Minimum Bid Quantity of \_\_\_\_\_ Metric Tonne (\_\_\_\_\_ shipments) +2.5%/-10%**

**6. Shipment Schedule**

Month	SEPTEMBER 2018	OCTOBER 2018	NOVEMBER 2018
No of shipments ( Each shipment contains 38,000 MT +2.5% -10%)	One	One	One

Bidder has to agree to the above shipment schedule in any case.

7. Bidder to provide Shipment Schedule in the below table if they want to take more than Three shipments.

Month	SEP2018	OCT 2018	NOV 2018
No of shipments ( Each shipment contains 38,000 MT +2.5% -10%)			

**The allotment of additional qty above (Clause no 7) shall solely be at the discretion of the seller depending on the availability at any particular point of time.**

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

**(NAME OF THE BIDDER)**

**Note:** No conditions shall be mentioned in this Format. Any conditional offer is liable for rejection and forfeiture of EMD. **The price bid shall be submitted to mjunction only . Price bid submitted to any other mail id shall be liable to rejection.**



PART – IV OF BIDDING DOCUMENTS

GLOBAL TENDER NO. *MBL/TC/2018-05 DATED 10<sup>TH</sup> AUGUST 2018* .....

FORM OF 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 \_\_\_\_\_ 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, 4º Piso, No. 1123, 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 and according to the Tender Documents as per the Global Tender No. *MBL/TC/2018-05* dated 10<sup>TH</sup> AUGUST 2018

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.

**1.2** For the purpose of this Agreement, the delivery period shall be reckoned as from \_\_\_\_\_ to \_\_\_\_\_. The SELLER reserves the right to postpone the deliveries upto \_\_\_\_\_ without any additional financial liability to the SELLER.



## **CLAUSE 2 : PRICE**

**2.1** The price of the MATERIALS shall be API#4 average of 2 (two) weeks, price immediately prior to actual shipment less USD \_\_\_\_ PMT. Port of Loading will be Beira. The FOB price shall be as per clause 16.6 , Part II of the bidding document.

**2.2** The discount quoted 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 BANK GUARANTEE/ SECURITY DEPOSIT**

**4.1** The PURCHASER shall deposit a Security deposit in SELLER'S Bank Account or establish a Performance Bank Guarantee (hereinafter also referred to as "PG") in the prescribed binding Form (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 \_\_\_\_\_ ( \_\_\_\_\_ United States Dollars) in favour of the SELLER.

**4.2** The aforesaid PG 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 after the date of Bill of Lading of the last consignment of the MATERIALS under the Agreement.

OR

**4.3** The PURCHASER shall deposit USD \_\_\_\_\_ ( \_\_\_\_\_ United States Dollars) as Security deposit in SELLER'S Bank Account:



Bank Name : Standard Bank (Mauritius) Limited  
 Branch Name : Head Office  
 Account Holder Name : Minas de Benga, Limitada  
 Account Number : 9090000111939  
 IBAN Number : MU61SBIC2201900001119390000USD  
 BIC (SWIFT) : SBICMUMU  
 Currency : USD  
 Account type : Current Account

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

**4.5** The Performance Guarantee/ 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,  
 4º 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**



<b>ANNEXURE – I</b>	<b>GENERAL CONDITIONS OF AGREEMENT (GCA)</b>
<b>ANNEXURE – II</b>	<b>TECHNICAL SPECIFICATIONS</b>
<b>ANNEXURE – IIA</b>	<b>BONUS AND PENALTIES</b>
<b>ANNEXURE – III</b>	<b>TERMS &amp; CONDITIONS FOR DELIVERY OF THE MATERIALS ON THE BASIS OF FOB (TRIMMED) PORT(S) OF LOADING</b>
<b>ANNEXURE – IV</b>	<b>FORM FOR PERFORMANCE BANK GUARANTEE</b>

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

**FOR AND ON BEHALF OF  
THE PURCHASER**

Signature:  
Name:  
Designation:  
Company:  
Place :

**IN THE PRESENCE OF:**

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

**IN THE PRESENCE OF:**

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



## 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 reputed independent Agency providing such services, based at Beira. Should the PURCHASER wish to appoint another Independent Inspection Agency instead of Bureau Veritas, any fee/cost differences shall be borne by the PURCHASER. 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).

**Seller may engage Intertek as the testing agency based on Seller's satisfaction regarding Intertek's ability to provide service at Beira and thereafter if agreed by the Purchaser.**

**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

Bureau Veritas

## **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.

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

**5.1** The purchaser shall make payment equivalent to the quantity to be delivered against each shipment in Advance to the following bank account of the Seller. Seller shall provide Proforma Invoice to the Purchaser to enable them to transfer the fund. Purchaser should send the SWIFT details of such transfer well in advance before placing the vessel for berthing :-

Bank Name : Banco Comercial de Investimentos S.A.  
Name : Minas de Benga Limitada



Account Number : 137311358-1300-1  
IBAN No : MZ59000800003731135813105  
Swift Code : CGDIMZMA  
NIB Number : 000800003731135813105  
Currency : USD

**If there is any excess/shortage in payment for the shipment, as per the Proforma Invoice and the Final Invoice, the differential shall be refunded/paid on the strength of the final invoice or shall be adjusted against payables by seller for next shipment.**

## 5.2 Documents

**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 or SELLER`s Bank shall send through Courier Service, 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 PURCHASER'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** 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 38,000 Metric Tonne +2.5/- 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 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 10 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 30TH OF NOVEMBER 2018, unless agreed by MBL, failing which the Performance Bank Guarantee shall be encashed and the Agreement terminated. In case the extension is granted by the SELLER, then in that case the Performance Guarantee shall not be encashed.

**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 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**

The PURCHASER 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 SELLER.

**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 its country for export of the MATERIALS.

**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 except if 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, shall be fully applicable.

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

All disputes arising in connection with the present Agreement shall be 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 2010" 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
Net 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.	Ash	Penalty for every increase of 1% (fractions pro-rata) in Ash content in excess of the specification of 28% Max upto 31%	1.2% of the FOB Price
2.	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
3.	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 38,000 Metric Tonne (Handymax Vessel) with a tolerance of +2.5/- 10% 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 up till 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 (2) 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, crew's overtime shall be borne and paid for by the Ship-owner and/or PURCHASER.

**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 (thirty) 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, 5º A/E

Beira – Moçambique

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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 \_\_\_\_\_**

**FORM OF PERFORMANCE BANK GUARANTEE**

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

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

**LETTER OF GUARANTEE**

1. WHEREAS MESSRS **Minas de Benga, Limitada** (hereinafter referred to as the SELLER) and MESSRS. \_\_\_\_\_ (hereinafter referred to as the PURCHASER) have entered into the 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 first 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 (6) 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 fully settled, 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  
(Procurement)*