

DRAFT CONTRACT

CONTRACT:

THIS AGREEMENT IS ENTERED INTO BETWEEN

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Hereinafter referred to as the "Seller")

AND

.....

(Hereinafter referred to as the "Buyer")

**IN RESPECT OF THE SALE AND PURCHASE OF STEAM COAL
EITHER RB1 OR RB2 COAL**

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Effective date

This SALE AND PURCHASE AGREEMENT (the "Agreement") is made effective as of 2007 by and between the following parties:

Seller's
domicilium
citandi et
executandi

XXXX

AND

Buyer's
domicilium
citandi et
executandi

.....
.....
.....
.....
.....

Commodity

Steam Coal A-Grade according to the specifications as Following

Seller
undertaking

XXXXXXXXXX a company fully registered (XXXXXX) with its principal place of business at XXXXXXXXXXXX , represented by the undersigned, duly authorized directors for and on behalf of the Party, (hereinafter referred to as the (SELLER), and who has the complete power and authority to SELL and deliver the requested commodity with his execution in this Agreement,

Buyer
undertaking

..... a company fully registered in.....
..... company (registration number with its principal place of business at represented by the undersigned, duly authorized director for and on behalf of the Party, (hereinafter referred to as the "BUYER"), and who has the complete power and authority to purchase the requested commodity with his execution in this Agreement,

Preamble

PREAMBLE

WHEREAS, the BUYER warrants that he is a duly authorized representative and has the capacity and capability to purchase from the SELLER who warrants that he has the authority to sell Steam Coal A-Grade (the Commodity"), to be delivered at
.....
.....

WHEREAS, the PARTIES hereto hereby agree in furtherance of the aforementioned purpose and any ambiguities in this AGREEMENT should be interpreted in a manner, which furthers the above stated purpose and hereunder, and for good and valuable consideration, the undersigned Parties agrees to the stipulated terms and conditions construed in this AGREEMENT.

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NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties hereto agree as follows:

Interpretation	1	INTERPRETATION
Act of God	1.1	"Act of God" shall mean an inevitable event occurring without the intervention of man, such as flood, tempest, or death, operating in case of certain contracts, such as those of insurers or carriers;
Advising	1.2	"Advising" shall mean the conveying of the terms and conditions of a First Class Letter of Credit (LC) to the beneficiary. The advising bank is the issuing bank's agent and is located in the beneficiary's country. The advising bank also takes reasonable care to verify the authenticity of the credit. (ICC UPC 500);
Applicant	1.3	"Applicant" shall mean any party, who applies for a Letter of Credit;
Beneficiary	1.4	"Beneficiary" shall mean a) a payee or recipient of payment, and b) a party in whose favour a documentary Letter of Credit is established, which in this regard is the seller;
Commodity	1.5	"Commodity" or "Goods" or "Material" or "Merchandise" or "Product" under the terms of this Agreement, shall mean Steam Coal A-Grade;
Consignee	1.6	"Consignee" shall mean the person/ company/bank to whom the goods are delivered to in this regard be the buyer or its assigns;
Country of origin	1.7	"Country of Origin" shall mean the country where a consignment of the Commodity has been mined or extracted;
Discrepancy	1.8	"Discrepancy" shall mean any deviation from the terms and conditions of a LC, or the documents presented there under, or any inconsistency between the documents themselves;
Dishonour	1.9	"Dishonour" shall mean Non-payment or non-acceptance;
Documents	1.10	"Documents" shall mean the characteristics and importance of the various documents associated with the transaction;
Documents of title	1.11	"Documents of Title" shall mean documents that give their owner the right to the goods in this regard shall mean Invoices and Assay;
Due date	1.12	"Due Date" shall mean a maturity date for payment. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday or Sunday, in which case, the last day shall be the next succeeding day which is not a Saturday or, Sunday.
Freight	1.13	"Freight" shall mean the cost of transporting goods;
ICC		"ICC" shall mean International Chamber of Commerce. The international body which promotes and facilitates world trade, and which codifies world trade practices in various publications;

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ICC500	1.14	"ICC 500" shall mean Uniform Customs and Practice for Letters of Credit (1993 revision);
Incoterms	1.15	"INCOTERMS" shall mean the standards of the International Chamber of Commerce that sets out the international rules for the interpretation of common trade terms, such as FOB, CFR etc.
Valuator or surveyor	1.16	"Independent Valuator" or "Surveyor" shall mean a recognized company or body co-nominated by the Seller and Buyer to inspect and value the commodity and gives a Certificate of Authentication.
Invoice	1.17	"Invoice" shall mean a document setting out in detail the goods consigned, marks and numbers, cost, any charges, and name of consignee.
Load port	1.18	"Load port" shall mean the Seller's nominated Load port.
Packing list	1.19	"Packing List" shall mean an important document in exporting, which shows the quantity and type of merchandise being shipped;
Partial shipments	1.20	"Partial shipment" shall mean the part or portion of the quantity of shipment to be shipped per month;
Parties	1.21	"Parties" shall mean the Seller and the Buyer;
Party	1.22	"Party" shall mean either Seller or Buyer;
Paying bank	1.23	"Paying Bank" shall mean the bank that makes payment to the beneficiary of a payment LC after presentation to it of documents stipulated in the LC;
Presenting bank	1.24	"Presenting Bank" shall mean the bank that requests payment of a collection bill. This may be the collecting bank, its nominated branch or its local correspondent, whichever party is best located to contact the buyer;
Principals	1.25	"Principals" shall mean the initiators of a given transaction whose instructions are followed at all stages. In this specific transaction the principals are the SELLER who are resellers and joint venture partners and the BUYER who issues a LC and purchases the product on the terms and condition of this contract;
Receiving date	1.26	"Receiving Date" shall mean evidences that goods have been received at the Loading Port. Therefore the date that is entered on the at the port of loading is considered to be the receiving date for documentary purposes;
Relevant documentation	1.27	"Relevant documentation" shall mean e.g., Certificate of Authentication from SGS and Pro Forma invoice and weight bridge certificates;
Payable at sight	1.28	"Sight" shall mean "payable at sight" is synonymous with "payable on demand", payable upon presentation to the drawer;
Transferable credit	1.29	"Transferable Credit" shall mean permits the beneficiary to transfer all or some of the rights and obligations of the credit to a second beneficiary or beneficiaries;

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Unites States
Dollar

1.30 "United States Dollar" or" US\$ "shall mean the currency of the United States of America;

Warranty

1.31 "Warranty" shall mean an undertaking by one party to an Agreement agreeing to abide by certain conditions required by the other party in relation to performance of the Agreement;

2 GENERAL DEFINITIONS

Commodity

2.1 COMMODITY
Grade A Steam Coal

Typical
specification

2.1.1 Specification (typical analysis)

Inherent Moisture % ± 0.5

Total Moisture	%	$\pm 2,9$
Analysis Moisture	%	$\pm 2,4$
Ash content(d.b.)	%	$\pm 12,5$
Volatile Matter (d.b.)	%	$\pm 25,63$
Fixed Carbon (d.a.b.)	%	$\pm 56,0$
Chlorine %		$\pm <0,01$
Total Sulphur (d.b.)	%	$\pm 0,56$
Calorific Value kcal/kg		± 6752 kcal
Hardgrove Grindability Idex		± 48

2. Ash Composition

SiO2	%	$\pm 49,5$
Al2O3	%	$\pm 31,6$
Fe2O3	%	$\pm 2,2$
TiO2	%	$\pm 1,7$
MgO	%	$\pm 1,0$
CaO	%	$\pm 5,4$
Na2O	%	$\pm 0,1$
K2O	%	$\pm 0,7$
P2O5	%	$\pm 1,8$
MnO	%	$\pm <0,1$
SO3	%	$\pm 4,4$

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Moisture content	<p>2.1.2 Moisture</p> <p>Total Moisture content as on received basis ± 5 % max</p>
Size of Coal	<p>2.1.3 Physical composition</p> <p>0 – 50MM</p>
Contract Quantity	<p>2.2 QUANTITY</p> <p>2.2.1 Quantity</p> <p>Period of contract: 12 (twelve) calendar months with roll over and extensions to 60 months</p> <p>Total annual quantity of this contract: 12 000 000 metric tons (twelve million)</p>
Shipping arrangements	<p>2.2.2 Shipping period</p> <p>Shipping commences 14days after Buyer opens a Letter of Credit acceptable to the Seller and its banks or sooner as per arrangement between Seller and Buyer.</p>
Loading port	<p>2.2.3 Loading port</p> <p>Shall be defined in the delivery schedule or as defined by Seller</p> <p>2.2.4 Country of origin</p> <p>The country of origin would be as per port of loading (Richards Bay South Africa)</p>
Price basis	<p>3 PRICE: delivered at Richards Bay (USD) RBI times CV value divided by 6000 plus 3.5%</p> <p>3.1 Price basis</p> <p>All prices used in this agreement are in USD</p>
Contract value	<p>3.2 Contract mass</p> <p>The total mass of the contract is 12 000 000 MT over 12 months in monthly volumes of 1000 000 MT.</p> <p>To be renewed on a yearly basis.</p> <p>4 PAYMENT</p> <p>A. Provisional Payment:</p> <p>Payment against the said letter of credit shall be payable against Seller' Provisional invoice and sight draft for the amount of 100% (One hundred percent) of the value of shipment accompanied by documents as stipulated in Clause 4.</p> <p>Shipment cargo value shall be calculated by the result of the draft survey weight and chemical analysis at loading port.</p>

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B. Final Payment:

Seller shall draw against the Letter of credit for the balance 5% due to Seller on presentation of Seller's final invoice and draft. This invoice is to be based on SGS certificate(s) as provided in the Clause 6 to be issued within 60 days from the date of Bill of Lading. The difference in analysis as a result of price adjustments for penalties, between provisional invoice and final based on the certificate issued by SGS at the Loading Port and at the discharge port works out to less than 1% of shipment value, the buyer will adjust the difference from the balance 1% (final invoice) and if the difference is more than 1% then the sellers will reimburse the excess over 1% to the buyers immediately.

Payment adjustment arising from this will be made when the umpire's certificate is available. If CIQ's certificates are not available, Seller shall apply the load-port results for calculation of final invoice.

Non-availability of Port of Discharge weight and/or analysis

If no determination of weight and/or analysis is undertaken at the Port of Discharge or the relevant CIQ certificate is not received by Seller within 60 days from the date of B/L, at Seller's discretion, the certificates at the loading ports issued by SGS is final.

4.1 Letter of Credit

The Buyer shall open within three (3) banking days after Buyer receives Seller's signed copy of this agreement, through the XXXXXXXXXXXX a fully funded, irrevocable, divisible, transferable, revolving Documentary Letter of Credit at sight, confirmed by in favour of the Seller for an amount in USD sufficient to cover 100% (one hundred percent) +/- 10%

All bank charges relating to the issuing of this Letter of Credit are for the buyers account. All charges for activation of the Letter of Credit is for the Seller's account

4.1.1 A copy of the chartered Agreement will be released to the Buyer after the confirmation of the Letter of credit.

4.1.2 Performance Bond (PB): The Seller shall within seven (7) working days after signing of contract issue through XXXXXXXX to the Buyer a Performance Bond of two percent (2%).

4.2 Payment method

4.2.1 Payment for each shipment

The payment for each shipment shall be made to Seller as per Seller's invoice, which covers 100% value of each shipment loaded at Richards Bay, together with the presentation of the documents as stipulated in Clause 4.2.1.1.

4.2.1.1 Documents for payment of each shipment.

Payment shall be made to seller at sight under L/C for One Hundred (100%) percent of the total value of the commercial

Letter of credit

Provisional payment

Documents for provisional payment

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invoice, immediately upon the presentation of the following documents.

1) Complete set of “Clean on Board” shipped Bills of Lading made out to order.

2) Invoice in three originals and two copies of the FOB/CNF value of the shipment, based on assayer analysis (SGS) in accordance with Clause 5 and price in accordance with Clause 3.

The invoice issued by Seller shall indicate the contract number and name of carrying vessel

3) Certificate of Quality and certificate of Weight of contracted goods in two originals and three copies each issued by SGS (*Certificate of quality to show actual result of the test of chemical composition and all other tests called for in this contract*).

4) Certificate of Origin (one original and three copies) to be endorsed/ issued by coal mine in South Africa and detailing loaded quantity, commodity carrying vessel and suppliers name and address.

FINAL PAYMENT

Final commercial invoice which should be balance between the final goods value and 100% of the provisional commercial invoice value, will be paid at sight against presentation of the following documents.

A. Certificate of quality and certificate of weight by draft survey issued by SGS at port of discharge

B. Beneficiary’s final commercial invoice (based on certificate of quality and certificate of weight by draft survey issued by SGS at port of discharge) indicating final goods value.

C. If certificate of quality and certificate of weight by draft survey issued by SGS at port of discharge are not received by beneficiary within 60 days after shipment date, certificate of quality and certificate of weight by draft survey issued by SGS at port of loading will be regarded as final docs. These final docs and beneficiary’s final commercial invoice (based on the a/m final docs) indicating final goods value should be presented for payment.

5 WEIGHING

Weighing at
loading port

5.1 At the loading port

Seller at the Seller’s expenses shall determine the weight of shipment of Steam Coal by draft survey. The weight of coal as ascertained and certified together with qualified Assayers/ SGS analysis certificate shall be basis of seller’s invoice. Buyer’s representative(s) may at the expense of the Buyer be present at the time of weighing at the loading port

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Weighing at Destination Port:
The buyer shall apply the CIQ/..... for weighing of wet ton at the destination port at the buyer's expense. The draft survey weight at destination port will be final.

Draft survey

5.2 Draft survey
In the event that it is impossible or extremely difficult to conduct the vessel's draft survey at the loading port(s), Seller and Buyer shall decide an alternative method of weighing, through mutual agreement, and then if no draft survey is performed at the discharging port, the qualified surveyor's weight certificate at loading port will be registered as final

Loading port sampling

6 SAMPLING AND ANALYSIS
6.1 At loading port
At the time of loading of each shipment, a qualified assayer (SGS) appointed by Seller, at Seller's expense, shall sample and analyse the goods shipped and determine the specification of the goods in each shipment and provide a certificate showing the details of the determination. The SGS shall analyse for content and other chemical composition.

SGS analyse for chemical composition

Buyer attendance

The Buyer may, at the Buyer's expense, have its representative(s) present at the time of such determination. Analysis thus determined shall be the basis for the invoice. Seller shall advise Buyer by cable or facsimile the contents of such analysis within seven (7) working days after sailing of the vessel from the loading port.

6.2 ANALYSIS AT DESTINATION PORT

At the destination port, the buyer shall entrust CIQ/..... at the buyer's expense to draw samples from the shipment and divide it into two portions. One for the buyer, the second for possible need of umpire analysis which shall be sealed and kept with CIQ shall analyse the sample for the buyer and within 60 (Sixty) days of B/L date issue and promptly fax and forward to the seller and airmail a certificate showing the percentage of principal chemical elements, the free moisture loss at 105 degree centigrade and the relevant screen analysis.

If difference of sulphur content between the buyer's and seller's analysis is more than $\pm 0.5\%$ or if there exist difference between the two said analysis in respect of any one or more chemical contents the seller shall consult with the buyer to reconcile such differences. If the difference can not be reconciled by the consultation between the seller and the buyer, the second sample should be submitted to analysis by an umpire surveyor. The certificate of the analysis by umpire surveyor shall be final for relevant chemical content.

The cost of umpire analysis shall be for the account of the party whose own analysis differs from the umpire analysis. If the result of umpire analysis is the mean of the analysis of the buyer and the

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analysis of the seller, then such cost shall be equally borne by both parties.

The buyer has the right to attend loading operation at its own expense similar rights shall be tendered to the seller at the destination port.

7. SHIPPING SCHEDULE AND LOADING CONDITIONS

To be agreed upon by parties

8. INSURANCE

insurance is the responsibility of the Buyer

9. TRANSFER OF TITLE AND RISK

The title with respect to each shipment shall pass from seller to the buyer when seller receives reimbursement of the proceeds from the opening bank through the negotiating bank against the relative shipping documents as set forth in clause 4.2.1.1.

All risk of loss, damage or destruction respective to the Steam Coal delivered shall pass to the buyers at the time of discharging of the Steam Coal from the loading devices into the transport carrier.

10. FORCE MAJEURE

10.1 In the event of delivery of all or part of ore under this contract being obstructed and/or delayed due to or resulting from cause or causes beyond the control of seller and buyer, such as war hostility, military operation of character, civil commotions, sabotage, quarantine restriction, acts of government, fire, floods, explosion, epidemics, blockades, revolutions, insurrection, mobilization, strikes, lockouts, riots, act of god, seller or buyer shall be relieved of the responsibility for performance of this contract as per subparagraph 3 hereinafter to the extent to which such performance has been obstructed.

10.2 The party declaring a force majeure shall during the duration of such force majeure condition uses its best effort to resume the performance of its obligations under this contract with the least possible delay and such party shall always advise the other party of detailed progress of the event of force majeure and the prospect of settlement of such event and of the resumption of the performance of its obligations under this contract prevented by any such cause or causes hereinabove mentioned.

10.3 In the event that the duration of the postponement of this contract mentioned herein exceed three (3) months, the other party shall have the option to cancel this contract in respect of the non-delivered quantity or extend the period of delivery by mutual agreement.

Notice of
Readiness

Currency
Parity

Delivery
obstructed

Advice to
other party

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Non performance

Dispute resolution

Contract validation

11 ARBITRATION

Any dispute between seller and buyer which may arise hereunder and which cannot be settled by mutual accord shall be referred to arbitration under the rules of conciliation and arbitration of the International Chamber of Commerce of Paris/France. The Board of arbitration shall be composed of three arbitrators, one of whom shall be chosen by seller, one by buyer and third by the two so chosen and the Board of Arbitration will convene in Botswana.

If either the Seller or Buyer fails to choose an arbitrator within thirty days after notice of commencement of arbitration or the two arbitrators fails to choose, a third arbitrator within thirty days after their appointment, the court of the International Chamber of Commerce shall, upon the request of Seller or Buyer, appoint the arbitrator or arbitrators to complete the Board and the place of arbitration shall be the country of the defendant party. The arbitration award shall be final and binding upon the parties to such the arbitration and may be entered in any court having jurisdiction. Neither party shall take any dispute to any court until such an arbitration award has been made. No dispute as to a matter expressly stated in this agreement or to be determined by mutual written agreement after signature of this agreement shall be referred to arbitration nor otherwise determined else than by written agreement between Seller and Buyer.

12 VALIDATION AND ALTERATION

This contract shall become effective when the duly authorized representatives of Seller and Buyer sign thereon.

Any change, modification in or addition to the terms conditions of this contract shall become effective when confirmed by both seller and buyer in writing

Facsimile copies will be deemed as original and will be confirmed by dispatch of the original signed documents by any party to the other party

13 PENALTY CLAUSE

A Penalty of 5% of contract value will be applied/become effective, in the case of a back out after signature of this contract by the Buyer

14 COMMISSION

Commission to the value of 1% (one percent) will be divided in equal parts between agents/brokers on either side.

Paymaster will be:

Bank: XXXXXXXXXXXX
Bank Address: XXXXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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15 WHOLE CONTRACT

15.1 The validity of this contract is subject to verification of funds/guarantees to the satisfaction of the Sellers Bank (Stanbic Bank).

BANKING CO-ORDINATES

Seller's bank details

16 Seller's Bank

Bank Name :
Bank Address:

Branch Code:
Account No :
SWIFT Code :
Account Name:
Telephone No:
Fax No :
Bank Officer:

Buyer's bank Details

17 Buyer's Bank

BANK NAME:

BANK ADDRESS:

.....

BRANCH CODE:
ACCOUNT NUMBER:
ACCOUNT NAME:
SWIFT CODE:
TEL NO:
FAX NO:
BANK OFFICIAL NAME

18 ACCEPTANCE

Seller acceptance

18.1 Seller acceptance:

Signed at on this day of 2007

Seller XXXXXXXXXXXX Seal

For Seller:
Name: XXXXXXXXXXXXXXXX

SIGNATURE

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Buyer
acceptance

18.2 Buyer acceptance

Signed at on thisday of 2007

Buyer

Seal

.....
Duly authorised as per Board Resolution number ____ dated ____

Passport number

Country of issuance

Date of issuance

SIGNATURE