

INVITATION TO BID

for

the Purchase of Steaming Coal

**<< Bid Notice No. KOSPO-Coal-2016-EST0
6-1>>**

[High Calorific Value Coal]

KOREA SOUTHERN POWER CO., LTD.

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CHAPTER I

BIDDING INSTRUCTIONS

BIDDING INSTRUCTIONS

CLAUSE 1 - GENERAL

1.1 Introduction

Korea Southern Power Co., Ltd. (KOSPO), duly organized by virtue of the law of the Republic of Korea and having its head office in Busan, Korea, issues this Invitation To Bid (ITB) to provide Bidders with information in detail on the procedures of and requirements for Bidding and Contractual terms and conditions.

1.2 Quantity and Shipping Schedule

The total quantity of coal to be purchased is 138,000 Metric Ton. The coal shall be delivered at the unloading port with the following schedule:

Guaranteed Quality	Quantity	Bid Price
NCV 5,800 Kcal/kg only	138,000 MT (±10%) x 1 Cap	FOBT and/or CFR*

* A bidder of CFR basis should also offer a FOBT basis.

A. Quantity and Price

Bidders offer up to total quantity in lots of **138,000MT** plus/minus ten(10) percentages at shipping tolerance on **both/either a FOBT basis and/or a CFR basis.**

B. Coal Mine

Upon request by KOSPO, a Bidder shall provide relevant supporting documents including certificates, issued by the relevant authorities of the exporting country, to demonstrate the legal status and current situation of the coal mine from which the coal would be supplied. The relevant evidence documents shall be in English.

C. Loading Schedule

- In case of FOBT basis

Origin of Coal	Loading Schedule	Origin of Coal	Loading Schedule
Australia, Canada	July 2H 2016	Colombia	June 2H 2016
Russia, China	July 20th ~ August 1W 2016	South Africa	July 1H 2016

- In case of CFR basis, the coal shall be arrived at the port of Hadong Power plant by August 2W, 2016

D. Shipping Schedule

Bidders shall indicate the preferred laycan more than fifteen (15) consecutive days within the above loading schedule. KOSPO may refer to the Bidder's preferred laycan, however, KOSPO will not be obliged to take the Bidder's preferred laycan into consideration when deciding the final laycan, and will be free to designate the laycan in light of KOSPO's own needs.

When notifying a successful Bidder, KOSPO shall inform the laycan of fifteen (15) consecutive days within the above loading schedule.

In case of a FOBT contract, KOSPO will arrange vessels to arrive at the loading port within the notified laycan. In case of a CFR contract, the successful Bidder shall arrange vessels to arrive at the loading port and commence a shipment within the notified laycan. When failing to do so, the Bidder is liable to pay liquidated damage as per relevant clause of the contract attached.

1.3 Quality Specifications (based on ASTM standards)

1.5.1 Spec 1

Item	Unit	Limit of Range
Total Moisture (As received basis)	% WT	Max. 15
Volatile Matter (Air dried basis)	% WT	Min. 22~36
Fixed Carbon (Air dried basis)	% WT	Max. 60
Ash (Air dried basis)	% WT	Max. 17
Total Sulfur (As received basis)	% WT	Max. 1.0
Grindability (HGI)		Min. 45
Gross Calorific Value (As Received Basis)	kcal/kg	Min. 5,700
Net Calorific Value *1(As Received Basis)	kcal/kg	
Nitrogen (Dry ash free basis)	% WT	Max. 2.4
Ash Fusion Temperature IDT (Reducing Atmosphere)	°C	Min. 1,200
Ash Analysis		
Fe ₂ O ₃	% WT	Max. 16
Na ₂ O	% WT	Max. 2
K ₂ O	% WT	Max. 3
SiO ₂	% WT	Max. 70
Size Distribution		
Above 50mm	%	Max. 5
Under 2mm	%	Max. 40

*1. Net Calorific Value = Gross Calorific Value - 5.72 (Har × 9)

Where: Har = Hd × (100-TM)/100 + 0.1119 × TM (Har : Total hydrogen on as received basis)

※ In the event that the quality is outside the limits of range as the above standard quality specifications, KOSPO may select as the successful Bidder if KOSPO judges that the Coal can be used at Hadong power plant. In this case, each Bidder's price shall be evaluated by KOSPO differently considering Calorific Value, total Sulfur, Ash and etc.

1.4 Terms of Payment

KOSPO shall determine the payment from either Letter of Credit (L/C) or Telegraphic Transfer (T/T) payment basis and notify it to seller.

1.5 Compliance with Invitation to Bid

Bidders shall prepare and submit the Bid in compliance with the procedures and requirements as provided in this ITB. Any failure to do so may give KOSPO a reason to

reject or to unfavorably evaluate the Bid. Bidders shall be regarded as having been thoroughly acquainted with and having accepted all the contents of the ITB. Upon submission of Bid documents, Bidders are thereafter regarded as having agreed to fully comply with the terms and conditions of the Contract as attached in the Invitation to Bid.

1.6 Language

The Bid proposal documents shall be prepared in English.

1.7 Disqualification of BID or Bidder

Any of the following Bids will not be accepted by KOSPO;

- a. Bid submitted by a company not qualified for participation in this Bidding.
- b. Bid registered after the dead line.
- c. Bid which, as deemed by KOSPO, deviates from the other essential requirements of Chapter I, Bidding Instructions, of the ITB.
- d. Bid containing any changes whatsoever in the context or any additions to the content of the attached contract, which is not required by the ITB.
- e. Bid submitted through undesignated e-mail address.

1.8 Definition of Terms

The meaning defined in Article 1 of Contract Terms, Chapter III shall be applied to the words of terms employed in other Chapters of the ITB, except where the context otherwise requires.

1.9 Notice of Changes in the ITB

KOSPO may notify the Bidders of any amendment or changes to the ITB, if any, and they will constitute a part of the ITB.

1.10 Computation of Time

Unless otherwise specifically provided in the ITB, the time stated in number of days and months, will include Saturday, Sunday and holidays, and in case that any specific day falls on Sunday or a holiday, the day will be postponed to the first following business day.

1.11 Confidentiality of Bidding

The prices in the Bidder's Price Proposal must be issued independently, without consultation, communication, or agreement with any other Bidder or potential Bidder;

The prices that have been quoted in the Bidder's Price Proposal issued have not been disclosed knowingly by the Bidder and will not be disclosed knowingly by the Bidder, directly, or indirectly, to any other Bidder or potential Bidder prior to the time Bids are due; and

No attempt has been made directly or indirectly to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

The Bidder shall not disclose the ITB to any third party who is not directly related with the preparation of the Bid proposal.

1.12 Validity Period of the Bid

The Bid including the price shall be bound as a firm offer and valid for a period of a

t least three (3) business days after the Closing Time. KOSPO may request the Bidder to extend the validity period of the Bid, if necessary.

1.13 Withdrawal of Tendering

KOSPO has the right, at any time and without any liability to the Bidder, to withdraw or delay this tendering or re-tendering, or to alter the scope of purchase.

CLAUSE 2 - BIDDING PROCEDURES

2.1 Qualifications of the Bidder

Coal producers, marketing companies or traders who have any successful coal supply records of more than 120,000MT in recent three(3) years to 5 Gencos (KOSEP, KOM IPO, KOWEPO, KOSPO, EWP) or Tai-power or Japanese Power Utilities including J-Power or the steel companies in Korea, Taiwan, Japan and shall meet the whole requirements of ITB including, but not limited to, coal quality specification, shipping schedule, etc. are qualified to participate in the ITB.

KOSPO has the right to restrict the bidder's participation in case of any one of the following items;

- 1) After being awarded as a successful Bidder, if a successful Bidder fails to enter into making a contract or fails to execute the contract signed, the Bidder will be banned from participating in KOSPO's future coal purchasing tender for 2 years.
- 2) The bidder who has unfaithful coal supply records will be banned from bidding for 1 year.

The meaning of unfaithful coal supply records is as follows;

- Those who have received a "Notice of Sanction as an inappropriate company" from Korean Gencos.
- Those who have records of arbitration or lawsuit with Korean Gencos.

Above mentioned the right to restrict the bidder's participation is the KOSPO's sole right and could not be challenged under any circumstances.

Nonetheless the above qualifications, KOSPO may employ its own, even not declared, qualifications.

2.2 Submission of Bid Documents

The Bid documents shall be submitted through the designated e-mail address (kospofuelbidding@kospo.co.kr) and arrive not later than the deadline.

2.3 Bid Closing Date

The Bidder shall be submitted not later than 14:00, 9th June, 2016 (Korean Standard Time).

CLAUSE 3 - PREPARATION OF BID PROPOSALS

3.1 Contents of Bid Documents

The Bid documents shall include the price proposal and the technical proposal with authorized Signature. Each proposal shall include the following contents and the form in Chapter II shall be used:

A. Price Proposal

Bidders shall submit one single price for the entire quantity they offer. Price proposal shall consist of Bid Price Form and Shipping Conditions.

B. Technical Proposal

Coal Specifications are to be guaranteed by the Bidder.

CLAUSE 4 - EVALUATION OF BID

4.1 Evaluation Methods of Bids

The Bid will be appraised by comparing the evaluated CFR prices determined in accordance with the following formula:

→ Evaluated price = (CFR price + Quality penalty (Sulfur, Ash, Nitrogen, VM) + Power constant (0.64) + Consumption Tax) × (6,080kcal/kg / Guaranteed net calorific value based on as received basis)

→ Quality penalty shall be quoted by the following formulas;

a. Sulfur penalty = USD2.10/tonne × Guaranteed Sulfur content (%)

b. Ash penalty = USD0.04/tonne × Guaranteed ash content (%)

c. Nitrogen penalty = USD0.19/tonne × Guaranteed Nitrogen content

d. Volatile Matter penalty = USD0.49/tonne × (24% - Guaranteed VM content), if VM is less than 24%

e. Consumption tax = worth of 27,000KRW/MT

→ The amount of consumption tax penalty shall be calculated in US\$ applying 'KRW/US\$ basic exchange rate' posted by the Korean Exchange Bank on the 1st base rate for the date of public notice of a bid shall be applied.

In case of FOB bid, the freight rate to be applied for price evaluation shall be the rate estimated by KOSPO, based on the recent market situations, according to loading port that Bidder proposes.

In case of CFR bid, the freight rate to be applied for price evaluation shall be the lower rate, comparing the rate estimated by KOSPO, based on the recent market situations with the rate of the Bidder's proposal.

And in case of FOB or CFR bid with several loading ports, the freight rate to be applied for price evaluation shall be the lower rate, comparing the rate estimated by KOSPO, based on the recent market situations with the highest of the freight rates for the loading ports proposed by Bidder.

4.2 Selection of the Successful Bidder

※ **There is no procedure of selection of the Preferentially Negotiable Bidders and Individual Price Negotiation.**

Each Bidder's price will be evaluated in accordance with the formula stipulated in clause 4.1. KOSPO shall select successful Bidders among bidders whose price is less than the target price in the order of the lowest evaluated price until the quantity amount to the target quantity of KOSPO.

In case the last lowest Bidder's quantity is in excess of the KOSPO's target contract

quantity, the excessive quantity will be excluded from the Contractual quantity. In the event that there are two or more Bidders who proposed the same price, a Bidder who proposed the largest quantity shall be selected as the successful Bidder. In the event that there are two or more Bidders who proposed the same price as well as the same quantity, the Bidder who proposed the highest net calorific value coal on as received basis will be selected as the successful Bidder. In the event that there are two or more Bidders who proposed the same price, the same quantity as well as same net calorific value coal on as received basis, the Bidder who proposed the lowest sulfur on as received basis and the lowest ash in order will be selected as the successful Bidder.

4.3 Adjustment of the Contract Price

Bidder of the lowest price will be selected as the successful Bidder, but in the event that the Bidder's price is in excess of the target price of KOSPO, KOSPO may, at its sole discretion, decide not to select even the lowest price Bidder as the successful contract party.

KOSPO shall have the right, at its sole discretion, to cancel or withdraw this invitation at any time and assumes no obligation or liability whatsoever with respect to a Bidder's preparation or the costs incurred in responding hereto.

4.4 Appointment of the Contractor

Award notice shall be made after reaching an agreement on the contract price and shipping schedule adjustments between KOSPO and the successful Bidder.

CHAPTER II

BID FORMATS

CLAUSE 1 - Bid Price Form

Bid No. KOSPO-Coal-2016-EST06-1

To. Mr. Sung Joo Keum / General Manager
Fuel Team, Business Strategy Department
Korea Southern Power Co., Ltd.

_____, undersigned, hereby offer to supply coal for Hadong power plant within the laycan at the loading port in accordance with the ITB.
(Bid No. KOSPO-Coal-2016-EST06-1)

Mine : _____
Loading Port : _____ (Loading Rate : _____)

Bidding Quantity (MT)	Preferred Laycan	Price *2
		FOBT US\$___per MT, CFR US\$___per MT (Freight rate US\$___ per MT) on ___kcal/kg NAR basis.

Date : _____

Bidder : _____

Address : _____

Tel No. : _____

Fax No. : _____

Signed by : _____

(Authorized Signature)

(Printed Name)

(Title)

CLAUSE 2 - Shipping Conditions

Bid No. KOSPO-Coal-2016-EST06-1

- NAME OF BIDDER :

- NAME OF COAL MINE (INCLUDING COUNTRY NAME) :

- NAME OF LOADING PORT :

- CAPACITY OF LOADING PORT
 - ✚ CAPE SIZE :
 - ✚ PANAMAX SIZE :

- TYPE OF VESSEL, GEARED OR GEARLESS :
(IN CASE OF GEARED, WITH GRAB OR NOT)

- ESTIMATED LAYCAN :

- LOADING CONDITION
 - ✚ LOADING RATE :
 - ✚ **DEMURRAGE/DISPATCH :**
 - ✚ NOTICE OF READINESS TO LOAD :
 - ✚ TURNTIME :
 - ✚ LOA : BM : DFT :

CLAUSE 3 - Coal Specification Form

Bid No. KOSPO-Coal-2016-EST06-1

Item	Unit	Bidder's Guaranteed Quality
Total Moisture (As received basis)	% WT	
Moisture (Air dried basis)	% WT	
Volatile Matter (Air dried basis)	% WT	
Fixed Carbon (Air dried basis)	% WT	
Ash (Air dried basis)	% WT	
Total Sulfur (As received basis)	% WT	
Grindability (HGI)		
(Dry Basis)		
Hydrogen (Hd)	% WT	
Gross Calorific Value (Air dried basis)		
Gross Calorific Value (As received basis)	kcal/kg	
Net Calorific Value (As received basis)*	kcal/kg	
Nitrogen (Dry ash free basis)	% WT	
Ash Fusion Temperature IDT (Reducing Atmosphere)	°C	
Ash Analysis		
Fe ₂ O ₃	% WT	
Na ₂ O	% WT	
K ₂ O	% WT	
SiO ₂	% WT	
Size Distribution		
Above 50mm	%	
Under 2mm	%	

- Each item above shall be determined in accordance with the appropriate American Society for Testing and Materials standards.

* Net Calorific Value = Gross Calorific Value - 5.72 (Har × 9)

Where:

Har = Hd × (100-TM)/100 + 0.1119 × TM

Har : Total hydrogen on as received basis

CLAUSE 4 - Certificate of Origin

Bid No. KOSPO-Coal-2016-EST06-1

We, the undersigned, do hereby jointly certify to the effect that the information relating to the shipment of coal described below is true and correct and that shipment of coal was exclusively mined from the coal mine with the name as _____ located in the country of _____ at the address of _____, which is owned/ operated by the undersigned Coal Mine Owner/ Coal Producer.

(1) Coal Mine Owner/Coal Producer

Company Name : _____

Signed by: _____ *1

(Authorized Signature)

Name:

Title:

Telephone Number :

Date:

(2) Seller

Company Name : _____

Signed by: _____

(Authorized Signature)

Name:

Title:

Telephone Number:

Date:

*1 If the signature of the authorized officer of the Coal Mine Owner/Coal Producer has not been certified as authentic by a Notary Public, this Certificate of Origin will be unacceptable.

※ Those bidders who have had coal supply contract with five generation companies of KOMIPO, KOSEP, KOWEPO, KOSPO and EWP shall be exempted from submission to this Certificate of Origin.

Chapter III

Contract

**BITUMINOUS COAL SALE AND PURCHASE
CONTRACT**

(KOSPO-Coal-2016-EST06-1)

BETWEEN

KOREA SOUTHERN POWER CO. LTD.

AND

BITUMINOUS COAL SALE AND PURCHASE

CONTRACT

This Contract is made on the ___ day of ___, 2016 by and between Korea Southern Power Co. Ltd. (KOSPO), a corporation organized and existing under and by virtue of the laws of the Republic of Korea with its principal office located at [34th Floor, BIFC B/D, 40, Munhyeon-Geumyung-ro, Nam-gu, Busan, Korea](#) (hereinafter referred to as the "Buyer") and _____, with its principal office at _____ (hereinafter referred to as the "Seller").

WITNESSETH

WHEREAS, Seller intends to sell certain quantities of Coal to Buyer as set forth herein: and WHEREAS, Buyer intends to purchase, for use as fuel at coal-fired power plants of Buyer, certain quantities of Coal from Seller as set forth herein: NOW THEREFORE, the parties hereto agree as follows:

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ARTICLE 1

Definitions

The following terms when used in the Contract shall have the meanings as stated below (and definitions of certain terms which are given in the preamble and in other articles of the Contract shall have the same meanings as those stated in this Article):

- (1) "Coal" shall mean the (sub-) bituminous coal mined from _____ mine in _____.
- (2) "FOBT" shall refer to the completion of the loading of the coal in the vessel designated by the Buyer at the loading port including the trimming work.
- (3) "CFR" shall mean the cost of the cargo and freight necessary to bring the Coal to the unloading port designated by the Buyer.
- (4) "Trimming work" herein shall mean any and all work of trimming by manpower, spouts or such mechanical trimmers as may be available at the loading port.
- (5) "Ton(s)" shall mean metric ton(s).
- (6) "US\$, US ¢" shall refer to the lawful currency of the United States of America.
- (7) "Year" shall mean a calendar year starting from January 1 and ending on December 31.
- (8) A fraction of a cent in any calculation shall be rounded up to a cent if such fraction is one half of a cent or more, and shall be rounded down if otherwise.
- (9) A fraction of a ton in any calculation shall be rounded up to a ton if such fraction is one half of a ton or more, and shall be rounded down if otherwise.

ARTICLE 2

-----**Quantity**

The quantity of Coal which is the object of the sale and purchase shall be _____ tons plus or minus ten (10) percentages at buyer's option.

-----Quality

The quality of Coal to be supplied hereunder shall be as follows.

■ Bituminous Coal Specification

Item	Unit	Limit of Range	Seller's Guaranteed Quality
Total Moisture (As received basis)	% WT		
Volatile Matter (Air dried basis)	% WT		
Fixed Carbon (Air dried basis)	% WT		
Ash (Air dried basis)	% WT		
Total Sulfur (As received basis)	% WT		
Grindability (HGI)			
(Dry Basis)			
Hydrogen (Hd)	% WT		
Gross Calorific Value (Air dried basis)	kcal/kg		
Gross Calorific Value (As received)	kcal/kg		
Net Calorific Value (As received)	kcal/kg		
Nitrogen (Dry ash free basis)	% WT		
Ash Fusion Temperature IDT (Reducing Atmosphere)	°C		
Ash Analysis			
Fe ₂ O ₃	% WT		
Na ₂ O	% WT		
K ₂ O	% WT		
SiO ₂	% WT		
Size Distribution			
Above 50mm	%		
Under 2mm	%		

○ Each item above shall be determined in accordance with the appropriate American Society for Testing and Materials standards.

* Net Calorific Value = Gross Calorific Value - 5.72 (Har × 9)

Where: Har = Hd × (100-TM)/100 + 0.1119 × TM

Har = Total hydrogen on as received basis

Determination of Quantity and Quality

4.01.1 The determination of the quantity and quality of Coal at the loading port shall be final. The certificates of determination of quantity and quality should be issued by an international independent inspection agency which will be selected by Buyer. The costs required for the determination of the quantity and quality certification thereof shall be borne by the Seller.

4.01.2 Determination of the weight of Coal on the vessel shall be made by draft survey, and the quantity certified by such agency shall be the basis of the payment for each shipment of Coal.

4.02.1 Determination of the quality of Coal on the vessel shall be made through sampling, reduction and analysis to be performed in accordance with the A.S.T.M. Standards and the quality certified by such agency shall be the basis for determination of the amount payable by the Buyer for the shipment.

4.02.2 The representative sample obtained during the course of loading operation shall be divided into three (3) parts to arrange

- One sample for shipment analysis
- Two sample to Buyer
- One sample for the umpire

[The Buyer sample and Umpire sample shall be sealed within 1 working day after the procedure of sample preparation completes.](#)

The two samples for the Buyer shall be sent to the nominated power plant by coal carrier, air mail or another way agreed by the parties hereto through a necessary arrangement with the international independent inspection agency. The one umpire sample shall be retained by the international independent inspection agency in a suitable airtight container properly sealed and labeled until ninety (90) days after completion of loading.

4.03 In the event that the Buyer wishes to challenge the result of any analysis made at the loading port, the one umpire sample shall be promptly delivered at the seller's cost to and analyzed by an independent laboratory which shall be appointed by the Buyer. In such event that the umpire sample shall be sent to a third independent laboratory which shall be appointed

d by the Buyer, of which the result which will finally determine the quality of the delivery in question will be based upon the umpire sample. The costs required for such further analysis shall be borne by the Seller.

4.04 The Buyer shall have the right to cause itself or its designee(s) to attend and observe the procedures for the determination of the quantity and/or quality of Coal at the loading port any time at the expense of the Buyer. This supervision includes mother vessel loading supervision, lab test witness, supervision of representative sampling and sample sealing witness. In such event, the Seller shall cooperate with such attendance and observation.

4.05 The Seller shall supply Coal in accordance with the provisions of this Contract and, in particular, ensure that :

- (1) Coal shall be of good grade without any dust problem during unloading work and free of impurities such as wood, iron, non-ferrous materials, blast materials or other foreign materials, whether contaminated in process of mining operations, storage, handling, railing or loading, and
- (2) Each shipment of Coal supplied shall have the characteristics stated in Article 4 (Quality), and
- (3) Salt has not been added to Coal for freeze-proofing, dust-proofing or the elimination of spontaneous combustion, and Coal has not been in contact with sea or salt water during preparation, handling, storage and loading.

-----**Rejection**

5.01 If the quality of loaded Coal as determined pursuant to the quality analysis at the loading port pursuant to Article 4 is outside the limits of the range as specified in Article 3, the Buyer shall have (in addition to other rights the Buyer may have under this Contract and by operation of the law) the right to reject such inferior coal. In the event that the quality is outside the limits of range as specified in Article 3, the Buyer will accept the Coal if the Buyer judges that Coal can be used by the Buyer and if both parties reach an agreement to a price adjustment thereof.

5.02 If, in accordance with the Inspection Company's determination a shipment is subject to being rejected, the Buyer shall have no obligation to unload the vessel until it has determined an appropriate course of action with respect to such shipment, and the Seller shall be responsible for any third party claims against the Buyer including without limitation any demurrage incurred with respect to the vessel carrying such shipment and any other vessels whose unloading is delayed as a result of a delay in unloading of the vessel carrying such shipment.

5.03 All costs and responsibility incurred to the Buyer and the Seller as a result of the rejection of Coal pursuant to Section 5.01 shall be borne by the Seller.

5.04 In the event that a shipment of coal fails to meet the minimum/maximum specifications set forth in the contract agreement, in addition to other remedies available to the Buyer, the Buyer shall have the right to disqualify the supplying coal mine from the Buyer's spot coal open tender(s) for a period of one year, with each such period to commence from the Seller's receipt of the Buyer's notice of the said disqualification.

ARTICLE 6 (FOBT)

Price (FOBT)

The Base Price of Coal supplied under this Contract shall be US\$___per ton based on FOBT_____kcal/kg net calorific value on as received basis at the port of _____.

ARTICLE 6 (CFR)

Price (CFR)

The Base Price of Coal supplied under this Contract shall be US\$___per ton based on CFR_____kcal/kg net calorific value on as received basis at one unloading port of Korea (Hadong).

Adjustment of the Price for Quality

7.01 The price of Article 6 shall be adjusted by increase and/or decrease pursuant to Section 7.02, 7.03 and 7.04 so that the price per ton payable by the Buyer to the Seller for each shipment shall be determined.

7.02 Net Calorific Value (as received basis)

There shall be no adjustment so long as the certified net calorific value (NCV) of Coal is not less than (Guaranteed Specification for NCV-50) kcal/kg and not more than (Guaranteed Specification for NCV+50) kcal/kg.

In the event the certified net calorific value of Coal is less than (Guaranteed Specification for NCV-50) kcal/kg, the price per ton shall be reduced by the amount calculated until 150kcal/kg by the following formula:

$$\begin{aligned} \rightarrow \text{Guaranteed Specification for NCV} - Y < 150 \\ \text{(Amount of reduction)} = \\ \frac{\text{Guaranteed Specification for NCV} - Y}{\text{Guaranteed Specification for NCV}} \times \text{The FOB price} \times 1.1 \end{aligned}$$

In the event the certified net calorific value of Coal is less than (Guaranteed Specification for NCV-150) kcal/kg, the price per ton shall be reduced by the amount calculated from 151kcal/kg by the following formula:

$$\begin{aligned} \rightarrow \text{Guaranteed Specification for NCV} - Y > 151 \\ \text{(Amount of reduction)} = \\ \frac{\text{Guaranteed Specification for NCV} - Y}{\text{Guaranteed Specification for NCV}} \times \text{The FOB price} \times 1.2 \end{aligned}$$

In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 4.

In the event the certified net calorific value of Coal is in excess of (Guaranteed Specification for NCV+50) kcal/kg, the price per ton shall be increased by the amount calculated by the following formula:

$$\begin{aligned} \text{(Amount of increase)} = \\ \frac{Y - \text{Guaranteed Specification for NCV}}{\text{Guaranteed Specification for NCV}} \times \text{The FOB price} \times 0.9 \end{aligned}$$

In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 4.

7.03 Sulfur (as received basis)

In the event the certified total Sulfur content of Coal exceeds Guaranteed Specification for Sulfur, the price per ton shall be reduced by the amount calculated by the following formula:

$$\begin{aligned} & \text{Y - Guaranteed Specification for Sulfur} \\ & 3\% \text{ of the FOBT price} \times \frac{\text{-----}}{0.1\%} \end{aligned}$$

In the above formula, "Y" shall refer to the certified total Sulfur content on an as received basis of Coal as determined under Article 4.

7.04 Ash (air dried basis)

In the event the certified total ash content exceeds Guaranteed Specification for Ash, the price per ton shall be reduced by the amount calculated by the following formula:

$$\begin{aligned} & \text{(Amount of reduction) =} \\ & \text{Y - Guaranteed Specification for Ash} \\ & 3\% \text{ of the FOBT price} \times \frac{\text{-----}}{1.0\%} \end{aligned}$$

In the above formula, "Y" shall refer to the certified ash content on an air dried basis of Coal as determined under Article 4.

7.05 Ash Fusion Temperature IDT

In the event the certified Ash Fusion Temperature lower than Guaranteed Specification for Ash Fusion Temperature, the price per ton shall be reduced by the amount calculated by the following formula:

$$\begin{aligned} & \text{(Amount of reduction) =} \\ & \text{Guaranteed Specification for Ash Fusion Temperature} \\ & - \text{Y} \\ & 2\% \text{ of the FOBT price} \times \frac{\text{-----}}{\text{-----}} \end{aligned}$$

10C

In the above formula, "Y" shall refer to the certified Ash Fusion Temperature of

Adjustment of the Price for Quality

7.01 The price of Article 7 shall be adjusted by increase and/or decrease pursuant to Section 8.02, 8.03, 8.04 and 8.05 so that the price per ton payable by the Buyer to the Seller for each shipment shall be determined.

7.02 Net Calorific Value (as received basis)

There shall be no adjustment so long as the certified net calorific value (NCV) of Coal is not less than (Guaranteed Specification for NCV-50) kcal/kg and not more than (Guaranteed Specification for NCV+50) kcal/kg.

In the event the certified net calorific value of Coal is less than (Guaranteed Specification for NCV-50) kcal/kg, the price per ton shall be reduced by the amount calculated until 150kcal/kg by the following formula:

$$\begin{aligned} &\rightarrow \text{Guaranteed Specification for NCV} - Y < 150 \\ &(\text{Amount of reduction}) = \\ &\text{The CFR price} \times 0.9 \times \frac{\text{Guaranteed Specification for NCV} - Y}{\text{Guaranteed Specification for NCV}} \times 1.1 \end{aligned}$$

In the event the certified net calorific value of Coal is less than (Guaranteed Specification for NCV-150) kcal/kg, the price per ton shall be reduced by the amount calculated from 151kcal/kg by the following formula:

$$\begin{aligned} &\rightarrow \text{Guaranteed Specification for NCV} - Y > 151 \\ &(\text{Amount of reduction}) = \\ &\text{The CFR price} \times 0.9 \times \frac{\text{Guaranteed Specification for NCV} - Y}{\text{Guaranteed Specification for NCV}} \times 1.2 \end{aligned}$$

In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 4.

In the event the certified net calorific value of Coal is in excess of (Guarant

eed Specification for NCV+50) kcal/kg, the price per ton shall be increased by the amount calculated by the following formula:

$$\text{(Amount of increase) = The CFR price} \times 0.9 \times \frac{\text{Y - Guaranteed Specification for NCV}}{\text{Guaranteed Specification for NCV}} \times 0.9$$

In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 4.

7.03 Sulphur (as received basis)

In the event the certified total Sulphur content of Coal exceeds Guaranteed Specification for Sulphur, the price per ton shall be reduced by the amount calculated by the following formula:

$$3\% \text{ of the (CFR price} \times 0.9) \times \frac{\text{Y - Guaranteed Specification for Sulphur}}{0.1\%}$$

In the above formula, "Y" shall refer to the certified total sulphur content on an as received basis of Coal as determined under Article 4.

7.04 Ash (air dried basis)

In the event the certified total ash content exceeds Guaranteed Specification for Ash, the price per ton shall be reduced by the amount calculated by the following formula:

$$\text{(Amount of reduction) = } 3\% \text{ of the (CFR price} \times 0.9) \times \frac{\text{Y - Guaranteed Specification for Ash}}{1.0\%}$$

In the above formula, "Y" shall refer to the certified ash content on an air dried basis of Coal as determined under Article 4.

7.05 Ash Fusion Temperature

In the event the certified Ash Fusion Temperature lower than Guaranteed Specification for Ash Fusion Temperature, the price per ton shall be reduced by the amount calculated by the following formula :

$$\text{(Amount of reduction) = } \frac{\text{Guaranteed Specification for Ash Fusion Temperature} - \text{Y}}{\text{Guaranteed Specification for Ash Fusion Temperature}} \times \text{CFR price} \times 0.9$$

ure - Y

$$\frac{2\% \text{ of the (CFR price} \times 0.9) \times \text{-----}}{10C}$$

In the above formula, "Y" shall refer to the certified Ash Fusion Temperature of Coal as determined under Article 4.

7.06 Nitrogen

In the event the certified Nitrogen content exceeds Seller's Guaranteed Specification for ash (Dry ash free basis), the Base Price per ton shall be reduced by the amount calculated by the following formula:

(Amount of reduction) =

$$\frac{3\% \text{ of the (CFR Price) } \times \text{ Y - Seller's Guaranteed Specification for Nitrogen} \times 0.9 \times}{\text{-----}} 0.6\%$$

In the above formula, "Y" shall refer to the certified Nitrogen content (Dry ash free basis) as determined pursuant to Article 4 of this Contract.

7.07 Volatile Matter

(Amount of reduction) =

$$\frac{1\% \text{ of the (CFR Price) } \times \text{ Seller's Guaranteed Specification for Volatile Matter} \times 0.9 \times}{\text{-----}} 1.0\%$$

In the above formula, "Y" shall refer to the certified ash content (air dried basis) as determined pursuant to Article 4 of this Contract.

If above "Y" is more than 24%, this penalty clause shall not be applied.

-----Payment

8.01 Unless otherwise agreed between the parties hereto, any and all payments by the Buyer to the Seller shall be made in U.S.Dollars for each shipment of Coal, and the payable amount shall be calculated as follows:

- (1) The price of Coal for each ton
The price in US\$ fixed pursuant to the provisions of Article 5 (Determination of Quantity and Quality), Article 7(Price) and Article 8 (Adjustment of the Price for Quality); and
- (2) Quantity to be paid
The quantity determined pursuant to the provisions of Article 5 (Determination of Quantity and Quality); and
- (3) The amount payable in US\$ for a delivered shipment
The price of Coal for each ton multiplied by the quantity to be paid

8.02 Buyer shall determine the payment terms from either Letter of Credit payment basis or Telegraphic Transfer (T/T) payment basis and notify it to Seller.

8.03 In the case of Letter of Credit payment basis, Buyer shall establish an irrevocable Letter of Credit through a commercial bank in favor of a beneficiary nominated by Seller with a telegraphic transfer reimbursement clause no later than seven (7) days prior to the scheduled arrival date of the vessel at the loading port notified pursuant to Article 10. Advising and negotiating bank will be selected through mutual agreement between Buyer and Seller.

8.04 The Letter of Credit established by Buyer shall include the following matters;

- (1) Amount: A reasonable amount in United States currency, adequate to reimburse Seller for the maximum amount of Coal to be shipped in such vessel pursuant to the terms of this Contract. Each Letter of Credit shall include the provisions to be used for the calculation of the price.
- (2) Time of Payment: At Sight
- (3) Expiry date: Not less than two (2) months after the establishment of the Letter of Credit.
- (4) Seller shall receive payment against such Letter of Credit with the following original documents;
 - i. Commercial Invoice signed by Seller, indicating the basis of the calculation of the payable amount in triplicate
 - ii. Full set of negotiable clean 'on board' ocean Bills of Lading certifying the loading of Coal in the quantity as stated in the Certificate of Quantity issued pursuant to Article 5
 - iii. Certificate of Quantity (including draft survey report), Sampling and

- Analysis in accordance with the provisions of this Contract in triplicate
iv. Certificate of Origin in triplicate.
- (5) All banking charges including postage incurred outside Korea shall be for the account of the Seller.
- (6) Special instructions : The adjustment of the price based on Net Calorific Value, Total Sulphur, Total Ash and Ash Fusion Temperature.

8.05 Within three (3) working days after the issuance of the Bill of Lading, Seller shall promptly notify to Buyer the following details of shipment by telex, facsimile or cable.

- (1) The quantity and the quality specified in the Certificate of Quantity and Analysis referred to in Article 5, and
- (2) The details of calculation of the payable amount referred to in the Commercial Invoice, and
- (3) The date and the number of Bill of Lading, the name of the vessel and the date of completion of the loading stated therein.

8.06 In the case of Telegraphic Transfer (T/T) payment basis, payments shall be made by means of remittance to the bank account nominated by Seller. Such payments shall be made to Seller's drawing bank within seven (7) Korean Bank working days after Buyer's receipt of original shipping documents.

Seller shall present the following original documents to KOSPO;

- (1) Commercial Invoice signed by Seller, indicating the basis of the calculation of the payable amount in triplicate;
- (2) Full set of negotiable clean 'on board' ocean Bills of Lading certifying the loading of Coal in the quantity as stated in the Certificate of Quantity issued pursuant to Article 5;
- (3) Certificate of Quantity (including draft survey report), Sampling and Analysis in accordance with the provisions of this Contract in triplicate; and
- (4) Certificate of Origin in triplicate. One copy of the above mentioned documents shall be sent by fax to Buyer promptly after completion of the loading.
- (5) Copy of Time Sheet at the loading port in case of CFR based Contract.

8.07 All banking charges in connection with the remittance as set out herein shall be for the account of Buyer. All banking charges including acceptance commission incurred at Seller's drawing bank shall be for the account of Seller.

ARTICLE 9 (FOBT)

Delivery (FOBT)

If shipment under the Contract is to be made on a FOBT basis, the following provisions shall govern the shipping arrangement.

9.01 The Seller shall arrange Coal to be loaded, stowed and trimmed to the master's satisfaction under supervision of the master free of risk, expense and responsibility to the vessel and Buyer. The master shall be responsible for safe sea-worthiness of stowage ultimately.

9.02 The arrival date at Loading Port for the shipment shall be between ___ and ___, 2016. If the Seller or Buyer needs to change the above laycan, the Seller shall obtain prior agreement from Buyer. The extension of laycans shall be less than one (1) month.

9.03 Fourteen (14) days prior to the estimated time of arrival of a vessel, the Buyer shall nominate the performing vessel with laycan of consecutive ten (10) days and loading tonnage plus or minus ten percent (10%) at Buyer's option.

The Seller shall, within two (2) working days upon receipt of the notice, confirm to Buyer the acknowledgement of receipt of the above Buyer's notice.

The Buyer, the owner, the master or the agent of the vessel shall advise the Seller or its agent at the loading port the estimated time of arrival of a vessel at the loading port seven (7) days, 48 hours and 24 hours in advance.

9.04 The loading of the vessel shall be so arranged that the vessel's turn shall normally be determined in accordance with the order of arrival at the loading port, unless otherwise determined in accordance with port or terminal requirements in force at the time of arrival of the vessel.

9.05 Notice of readiness to load may be tendered by the vessel or vessel's agent after the vessel's arrival at the loading port, and when in free pratique, whether in berth or not, at any time including Saturdays, Sundays and Holidays (00:00~24:00).

9.06 Laytime at loading port shall commence twelve (12) consecutive hours after Notice of Readiness is tendered, if the vessel, whether in berth or not, provided the vessel is in free pratique, is ready in all respects to receive Coal or when loading commences, whichever first occurs.

In case turn time expires on Saturday afternoons, Sundays or Holidays, laytime shall commence from 08:00 hours on the next working day.

If the vessel is prevented from entering the commercial limits of the loading port because a loading berth or layberth or anchorage is not available under the order of the Seller or the port authorities, and the master warrants that the vessel is physically ready in all respects to commence loading, the Notice of Readiness may be tendered by radio and the time lost waiting at a usual waiting place outside the commercial limits of the port or off the port shall be counted as laytime used, regardless of weather, berth, wharf or harbor condition. The time required for shifting from the waiting point to loading berth shall not be counted as laytime used. Time lost by any cause shall be counted as laytime unless such time lost is due to the causes stipulated in Article 13 and the Seller notifies the Buyer and declares force majeure thereof in accordance with Article 13. However, the time from when force majeure event(s) occur(s) to when a force majeure is declared shall be counted as laytime.

Laytime shall end upon completion of loading, all trimming works, draft survey, all documentation required for sailing including export documents from shipper, whichever occurs last. In case of the interim draft survey, it shall fully count as laytime regardless of whether vessel is once on demurrage at loading ports or not.

9.07 The Seller shall guarantee the following average loading rate aboard the vessel per weather working day of twenty four (24) consecutive hours, excluding Saturday afternoons (13:00-24:00), Sundays (00:00-24:00) and Holidays (00:00-24:00) unless used: if used, actual time worked will be counted as laytime.

Loading rates shall be calculated pro rata for a period of less than twenty four (24) hours.

<u>Vessel Size</u> (Deadweight long tons)	<u>Average Loading Rate</u> (MT/W.W.D.)
over 50,000 up to 100,000	min 15,000
over 100,000 up to 125,000	min 35,000
over 125,000 up to 150,000	min 40,000
over 150,000	min 45,000

9.08 In the event of actual laytime overused for loading, the Seller shall pay demurrage to the Buyer for all time lost. If vessel is once on demurrage at loading port, the vessel shall be deemed to be always on demurrage without exceptions, unless leaving port for bunkering or fumigation or delays due to the vessel master's or the Buyer's requirements.

In the event of actual laytime saved for loading, Buyer shall pay dispatch money to Seller as half the demurrage rate for all laytime saved at the loading port.

The buyer and the seller agree that the buyer nominates buyer's shipping company to handle all laytime matters on behalf of the buyer including payments of any demurrage or dispatch.

The buyer must provide the seller with all necessary information about the nominated shipping company for settling laytime. However, should the shipping company fail to settle any laytime matters with the seller, the buyer and the seller shall settle that laytime matter directly.

The daily (or pro rata for part thereof) demurrage rates applicable are as follows:

<u>Vessel Size</u> (Deadweight long tons)	<u>Daily Demurrage</u> Rate in US\$
over 50,000 up to 100,000	As per C/P
over 100,000 up to 125,000	As per C/P
over 125,000 up to 150,000	As per C/P
over 150,000	As per C/P

Settlement of demurrage and dispatch money shall be made within thirty (30) days after receipt of invoice for such demurrage and dispatch money.

- 9.09** Overtime at loading port and related extra expenses shall be to the account of the Seller unless ordered by Buyer. Vessel's officers and crew overtime shall always be borne by the vessel.
- 9.10** The vessel shall furnish lighting necessary for night work on board of the vessel. Hatchcovers and hatchbeams, if any, shall be removed and replaced at loading port by the vessel owner at owner's cost.
- 9.11** If warping or shifting alongside the wharf is necessary after the vessel has berthed thereat, the time required therefore shall be counted as laytime used and all expenses incurred therefore shall be borne by the Seller, unless it is made by vessel's request.
- 9.12** Seller shall bear the costs of loading the Coal on the vessel hereunder, wharfage, export tax and similar tax, impost or charge imposed by the government or other agency, and other similar costs which normally are considered to be to Seller's account. All costs of ocean transportation applicable to any cargo after delivery of such cargo aboard vessels at the loading port shall be to the account of and paid by Buyer. It shall be the Buyer's responsibility to assure that the vessels shall pay and bear all port charge, tonnage dues, light dues and other similar charges which are customarily payable on or with respect to the vessels at the loading port. If there is doubt as to the bearing of any costs or expenses related to the delivery,

the costs or expenses directly related to the vessel shall be borne by the Buyer, and the others by the Seller.

9.13 Bill of lading for Coal received on board vessel shall be issued on the basis of official weights at the loading port determined by an international independent inspection agency using standard water displacement methods under Section 4.01.1.

9.14 Seller shall be agreed to accept from time to time vessels combined for loading of two or more different brands of coal or coal of two or more shippers on board one vessel at loading port. The normal loading terms and conditions in the contract shall apply except as provided for in the following clauses (a) to (c).

- (a) Notice of Readiness is to be tendered to major shipper to load, as determined by vessel, and copies of same are to be provided to other shippers.
- (b) Determination of total cargo weight shall be by draft survey. And weights of individual coal types shall be determined by individual draft survey.
- (c) When a vessel is fully loaded at the port, then vessel size shall determine the agreed loading rate. When vessel is only partly loaded, the aggregate amount of the two or more different types of Coal loaded shall determine the agreed loading rate.

Delivery (CFR)

If shipment under the Contract is to be made on a CFR basis, the Seller shall be responsible for arrangements of shipment by sea in accordance with the requirements of the Contract. The following provisions shall govern the shipping arrangement.:

9.01 The Seller shall deliver the Coal to discharging the port of Hadong Power plant by August 2W

9.02 The Seller shall give the Buyer at least twenty (30) days prior notice of the estimated time of arrival (ETA) of each vessel at discharging port.

Such notice shall state the loading port, vessel's particulars including vessel name, D.W.T.,

draft, length overall, breadth, month-year built, flag, number of hatches/holds, geared or

gearless status, size of each hatch, and the Buyer shall confirm to the Seller within two (2)

working days after receipt of such notice if the vessel specified by the Seller is acceptable or

not. The Seller shall advise the Buyer of any alteration to such notice.

Vessels shall be single-deck bulk carriers, gearless, minimum length and width for each hatch

should be twelve meters, maximum LOA is 290 meters, GRT max 93,000 MT, draft restriction

not exceed 16.5m at discharging port, suitable for loading Coal in main holds only

and must comply with applicable laws and regulations including customs and

regulations at discharging port and aged less than twenty-five (25) years and classed highest

Lloyds or equivalent.

In case the vessel has any problem incurred due to vessel's equipment, it is the Seller's responsibility for the time/expenses required to settle such problem.

9.03 The Seller shall ensure that the shipmaster updates the Buyer of the vessel's ETA at the

discharging port 72 hours, 48 hours, 24 hours and 12 hours, respectively in advance by

e-mail or facsimile designated by the Buyer.

As soon as the vessel completes loading, the Seller shall inform the Buyer by fax the tonnage of Coal loaded, time of completion of loading, departure time from the loading port and estimated time of arrival at the discharging port.

9.04 Notice of Readiness to unload shall be tendered by the vessel or vessel's agent after the vessel's arrival at the discharging port, and when in free pratique, whether in berth or not, during any time (including Saturday afternoons (13:00~24:00), Sundays and Holidays (00:00~24:00)).

9.05 Laytime at the discharging port shall commence 24 consecutive hours after Notice of Readiness is tendered, whether in berth or not, unless sooner commenced. If unloading is commenced sooner, laytime shall count from the time of actual unloading. In case turn time expires on Saturday afternoons, Sundays or Holidays, laytime shall commence from 09:00 hours on the next working day. Laytime shall end at the point of time when the unloading work has been completed.

9.06 The Buyer shall guarantee the following average unloading rate per weather working day of twenty four (24) consecutive hours, including Saturdays, Sundays and Holidays. Unloading rate shall be calculated pro rata for a period of less than twenty four (24) hours.

<u>Vessel Size</u>	<u>Average Unloading Rate(LT)</u>
(Deadweight long ton)	Hadong
under 100,000	21,000
over 100,000	25,000

9.07 In the event actual laytime used exceeds the allowed laytime for unloading, the Buyer shall pay demurrage money to the Seller for all time lost, provided such loss of time is not attributable wholly or in part to the fault or failure of the vessel.

If the vessel, whether in berth or not, is once on demurrage at the discharging port, the vessel shall be deemed to be always on demurrage, unless the vessel discharging delay be for Force Majeure, bunkering, fumigation, request of vessel's master, crew, agent or agent of Seller.

If the vessel waits for her turn to berth, the time which the prior berthed vessels is unable to discharge due to bad weather shall not be counted as laytime used.

The time spent in shifting from the waiting point to discharging berth after the commencement of laytime shall not be counted as laytime spent. In the event actual laytime saved for unloading, the Seller shall pay dispatch money to Buyer at half the demurrage money for all laytime saved at the discharging port.

The daily (or pro rata for part thereof) demurrage rates applicable are as follows:

<u>Vessel Size</u> (Deadweight long ton)	<u>Demurrage Money</u> (US\$)
under 100,000	8,000
over 100,000	8,000

9.08 Overtime at the discharging port and related extra expenses shall be for the account of the Buyer unless ordered by the Seller. Overtime of vessel's officer or crew shall always be borne by the Seller.

9.09 The vessel shall furnish the lighting necessary for night work on board of the vessel. Hatchcovers and hatchbeams, if any, shall be removed and replaced at discharging port by the owner or Seller at his cost.

9.10 If warping or shifting alongside the wharf is necessary after the vessel has berthed thereat, the time required thereof shall be counted as laytime used and all expenses incurred shall be borne by the Buyer, unless it is made by vessel's request.

9.11 The Buyer shall bear the costs of unloading the Coal from the vessel hereunder, import tax and similar tax, imposts or charges imposed by the government or other agency, and other similar costs which normally are considered to be for the Buyer's account. It shall be the Seller's responsibility to assure that the vessels shall pay and bear all port

charges tonnage dues, light dues and other similar charges which are customarily payable on or with respect to the vessels at the discharging port. If there is doubt as to the bearing of any costs or expenses related to the delivery, the costs or expenses directly related to the vessel shall be borne by the Seller, and the other by the Buyer.

9.12 The other unloading conditions at the discharging port shall be determined pursuant to the American Welsh Coal Charter Party as modified by agreement between the Seller and the Buyer; provided, however, that any matter which can not be so resolved shall be determined by consultation between Seller and Buyer.

9.13 In the event Coal delivered is contaminated by foreign materials or sticky, Seller shall pay liquidated damages to Buyer, an amount calculated pursuant to Clause 12.03.

Liquidated Damages For Delay and Quantity Shortage

10.01 In case of CFR based Contract, if the Seller fails to commence a shipment of Coal at the Port of Loading on or before the last date in the laycan for that shipment as specified in the Article 9, the Seller may load such shipment within the immediately succeeding thirty(30) day period, in which case the Seller shall pay the Buyer liquidated damages for each day's delay at the rate of 0.5% times the price amount of the shipment, including prorated amounts for fractions of a day's delay.

If the Seller fails to load the late shipment within such thirty (30) day period, the Buyer shall have the right to terminate or cancel the Contract without further liability, holding the Seller responsible for all resulting damages. If the Buyer elects to grant the Seller additional time within which to load the Coal, the Seller shall load the Coal within such period and shall pay the Buyer liquidated damages for the total period of delay. If such extension is granted by the Buyer, the Contract and the date of expiry of the Seller's performance bond associated with the delayed shipment shall be extended correspondingly. If the Seller fails to load the Coal within the extension period, the Buyer shall have the right to terminate or cancel the Contract without further liability, holding the Seller responsible for all resulting damages.

10.02 If the quantity of Coal shown in the Bill of Lading (B/L) fails to meet the minimal quantity requirement of the shipment (designated by Vessel Nomination from the Buyer), in addition to other remedies available to the Buyer. The Seller shall pay the Buyer liquidated damages for quantity shortage as follows:

$$\frac{\text{The Base Price} \times \text{the minimal quantity} \times 20\% \times \frac{\text{the minimal quantity} - \text{B/L Quantity}}{\text{the minimal quantity}}}{\text{the minimal quantity}}$$

10.03 The Buyer shall be entitled to deduct the amount of liquidated damages payable to it under this Article from any amount payable by it to the Seller under the Contract and/or to draw against the performance bond an amount not to exceed the amount of such liquidated damages.

**Warranties With Respect To Coal
Quality**

11.01 The Seller shall supply the Coal of a quality in accordance with the provisions of the Contract and which warrants that:

- (a) Each shipment of Coal shall be of good grade meeting the requirements referenced in Article 3 (Quality) and not sticky during unloading and substantially free of impurities such as wood, iron, nonferrous materials, blast materials or other foreign materials, whether emanating from mining operations, storage, handling, loading or otherwise;
- (b) No shipment of Coal will contain petroleum coke, pitch, pitch coke, tar sludge, or other by-product-related solids (collectively "Organic Contaminant(s)") as determined by the Testing Laboratory in accordance with Article 4 (Determination of Quantity and Quality);
- (c) No Organic Contaminant or any other non-coal material other than water added for purposes of dust suppression has been intentionally added to any shipment of Coal;
- (d) No salt has been added to any shipment of Coal, whether for freeze-proofing, dust-proofing or elimination of possibilities of spontaneous combustion, or otherwise, and no part of that shipment of Coal has been in contact with sea or salt water prior to completion of loading at the loading port ;
- (e) All coal shipped hereunder shall not cause difficulty with stickiness or dust dispersion when it is unloaded, handled and processed by Buyer. In the event that when unloading Coal, the serious difficulty related to coal quality such as stickiness, dust dispersion or oversize is found, buyer shall have the right to determine whether to accept the coal or not without any liability or charges to buyer, at the buyer's discretion. Seller shall be liable to Buyer for any and all damages, losses, or costs caused by or related to the difficulty including stickiness or dust dispersion in unloading, handling or processing the Coal.

11.02 The liability of a party in respect to any claim brought by the other based on a failure of the first party to fulfill its obligations hereunder shall be limited in any event to liability for the direct loss suffered by the party aggrieved.

11.03 At the Buyer's option, the Buyer may appoint an independent survey company to survey the Coal for any foreign materials at the port of discharging. All expenses relating to such survey shall be for the account of and paid for by the Seller if such survey discloses excessive foreign mate

rials or stickiness in the Coal. In that case, in addition to remedies available to Buyer, Sellers shall pay Buyer liquidated damages for time loss at discharging port caused by the contamination of coal or sticky coal: Demurrage Rate agreed between KOSPO and ship owner (for FOB shipment) or Demurrage Rate as specified in Clause 9 (for CFR shipment) × Time Loss × 2.

Said liquidated damages shall be deducted from or added to finally settled demurrage or dispatch money of a relevant shipment. The determination of the independent survey company so appointed shall be final, conclusive and binding on both parties.

11.04 If the Testing Laboratory determines that Organic Contaminants are present in a shipment of Coal, then Seller shall pay to Buyer an amount calculated in accordance with the following formula:

- Total volume of Organic Contaminants based on percentage of Organic Contaminants determined by Umpire Laboratory multiplied by three times the Initial Commercial Invoice price.

11.05 Seller shall be liable to Buyer for excessive cost caused by Seller's breach, except as contemplated by Article 13 (Force Majeure), including but not limited to liability and expense incurred by Buyer with respect to the transportation or other handling process of Coal.

11.06 If Seller is unable to supply coal, by reason of Seller's breach, to Buyer in a situation of interruption of normal supply (except as contemplated by Article 13. Force Majeure), Buyer reserves the right to procure such coal from the open market, and then Seller shall pay the extra cost beyond the Contract price specified in Articles 6 (Price) and 7 (Adjustment of the price for quality).

11.07 Without prejudice to the rights of Buyer specified in the preceding paragraphs, if all or any part of a shipment of Coal is sticky or contaminated by any foreign materials or if such shipment contains an excessive number of stones or contains significantly hard or large stones (notwithstanding the fact that such shipment does not exceed the applicable ash or grindability specifications), and Buyer determines that use of the Coal contained in such shipment may be detrimental to Buyer's facilities or may adversely affect the operation of Buyer's generating units, Buyer may, under protest, discharge and/or store such Coal in Buyer's storage yard or any other place, and notify Seller to screen and/or remove, within the time fixed by Buyer, such sticky coal or foreign materials or excessive stones from the Coal at Seller's risk and expense. If Seller fails to do so in the period fixed by Buyer, Buyer shall have the right to screen and/or remove such sticky coal or foreign materials or excessive stones from the Coal

at Seller's risk and expense, and Seller shall compensate Buyer for all extra handling costs and all expenses incurred in screening and disposing of the sticky coal or contaminated Coal, foreign materials, or excessive s tones.

Performance Bond

- 12.01** Unless otherwise agreed between the Seller and the Buyer, the Seller shall establish a performance bond in favor of KOSPO within seven (7) days after receipt of the Price Term Notice from KOSPO after an agreement on the contract price and shipping schedule adjustments in an amount not less than ten percent (10%) of the price amount of each shipment. The performance bond should be in the form of irrevocable clean letter of credit or bank guarantee with confirmation of Korea Exchange Bank, Seoul, acceptable to KOSPO. (form: attached)
- 12.02** The performance bond shall be valid from the date of its establishment until three (3) months after the date of Bill of Lading of each shipment as specified in the Contract.
If the Buyer has any claim against the Seller which is not settled within the validity of the performance bond, the Seller shall cause the issuing bank of that clean letter of credit to confirm to Buyer, not later than five (5) days before the date of expiry of that letter of credit, of the extension of the validity of that letter of credit for such period of time as required by the Buyer. If the Seller's clean letter of credit is not so extended, the Buyer may draw the full amount of that said such letter of credit.
- 12.03** In the event of the Seller's default in the performance of its obligations under the Contract, the Buyer may draw such amount under the performance bond if the Buyer judges it is necessary to compensate the Buyer for its losses, damages, expenses, or other costs (or any part thereof) arising from or related to the Seller's default.
- 12.04** The Buyer will release each performance bond, without interest, after the expiration of the validity of the performance bond or after the Buyer has completed discharging of each shipment of Coal at the port of discharging, provided that the Buyer is satisfied that each shipment of Coal is in accordance with all the requirements of the Contract.
- 12.05** If the Seller fails to establish the performance bond required hereunder to be deposited within the required period specified above, the Buyer shall have the right to cancel the Contract.

Sample of P-Bond

Please advise the following performance bond with confirmation of Korea Exchange Bank KEPCO Branch in Seoul.

Quote

Issuing Date:

To: Korea Southern Power Co. Ltd.

We hereby issue our irrevocable letter of guarantee No..... in your favor for or account of contractor up to an aggregate amount of US\$..... (Say US Dollars.....only) as a performance bond in accordance with the terms and conditions of the tender for the (Contract No.)

This guarantee shall be available upon receipt of your first demand either by your Bank's authenticated swift message accompanied by your declaration stating that the amount claimed is due by reason of the contractor having failed to perform the work.

This guarantee will expire on (expiry date) and any claims must be received by us in writing on or before (expiry date plus 20 days mailing period), after which date this guarantee will become null and void whatsoever whether the letter of guarantee is returned to us or not.

Unquote

This message is the operative instrument

Force Majeure

13.01 The Seller shall not be liable to the Buyer nor shall the Buyer be liable to the Seller for any delay, interruption or failure in the performance of obligations hereunder (including delay or loss of or damage to any vessel after notification) if such delay, interruption or failure is due to or results from war (whether declared or undeclared), blockade, revolution, riot, insurrection, mobilization, civil commotion, strike, lockout, act of God, public enemies, acts of the Government in either its sovereign power or governmental restrictions or control on imports, exports or foreign exchange, fire, flood, storm, tempest, embargoes, quarantine restrictions, accident in and to vessel or strikes, break down of loading and unloading facilities, freight embargoes and breakdowns of railroad, or any other cause beyond the control of the Seller or the Buyer as the case may be.

13.02 In the event that any conditions of force majeure occur or are likely to occur, the party directly affected shall promptly notify the other party by telex, facsimile or cable to be followed by a written notice setting forth the particulars of the relevant event with supporting evidence. The party so affected shall take all reasonable steps to remove the conditions of force majeure, with the least possible delay, in compliance with its obligations under this Contract.

13.03 If no consultation is made within 7 working days or no agreement is reached between the parties within 21 days of such request being made, then the performance of this Contract by the party giving the notice shall be suspended for the duration of and insofar as the same is affected by disability resulting from such Force Majeure and the party giving the above mentioned notice shall not be liable for delay or failure in performance of the relevant provisions of this Contract for such duration. If any contingency persists as a period 90 days or more either party may cancel any fulfilled orders affected by such delay without any liability to the Seller/Buyer.

ARTICLE 14

Transfer of Title and Risk

14.01 The shipment of coal shall be deemed to have been sold and delivered to the Buyer after loading and trimming work. Title and risk of loss or damages thereto shall pass to the Buyer as the coal passes the ship's rails at the loading port.

14.02 In the event that a shipment of coal is rejected in accordance with Article 5, the title of that coal and the risk of loss or damages thereto shall pass back to the Seller upon the Buyer's notice.

ARTICLE 15

Dispute and Arbitration

All disputes, controversies, or differences which may arise between the parties, out of, or in relation to or in connection with this contract, or for the breach thereof shall be finally settled by arbitration in Seoul, Korea in accordance with The Commercial Arbitration Rules of The Korean Commercial Arbitration Board and under the laws of Korea. The award rendered by the arbitrator(s) shall be final and binding upon both parties concerned.

ARTICLE 16

Notices

All notices, requests, demands, and other communications hereunder shall be in writing, and shall be deemed to have been duly given upon delivery to the party to be notified if delivered by personnel or registered airmail, or at the date of dispatch for notices by telex, facsimile, cable or radio unless otherwise expressly provided for in this Contract.

If the notice is to the Buyer, to:

Fuel Procurement Team, Business Strategy Department
Korea Southern Power Co. Ltd.

Attention: Sung Joo Keum/ General Manager

Address : 34th Floor, BIFC B/D, 40, Munhyeon-Geumyung-ro, Nam-gu, Busan,
608-828, Korea

Facsimile No. : 82-70-7713-8271

If the notice is to the Seller, to: -----

Attention: -----

Address: -----

Facsimile No.: -----

The address or facsimile number may be changed from time to time, such changes are to be notified in writing.

ARTICLE 17

Termination

17.01 In the event that Seller commits any breach of its undertaking hereunder so as to prevent completion of Seller's obligations under this Contract, then Buyer may, by giving written notice to Seller, terminate this Contract without any liability or charge to Buyer.

In the event that conditions of force majeure called by Seller continue, Seller's obligations remain suspended for a period or periods amounting in aggregate to ninety (90) days in any consecutive period of one hundred and eighty (180) days, and at the end of said period or at any time thereafter Buyer concludes that there is no likelihood of ending such conditions in the immediate future, then Buyer may terminate this Contract without any liability or charge to Buyer by giving written notice to Seller.

17.02 Termination of this Contract shall be without prejudice to the accrued rights and obligations of the Parties hereunder.

ARTICLE 18

Assignment

18.01 Neither party shall assign this Contract in whole or in part without written consent of the other party, which consent shall not be unreasonably withheld. Neither party may assign any moneys due or to become due hereunder to a third party without the written consent of the other party, which consent shall not be unreasonably withheld. This Contract shall be binding upon and shall inure to the benefit of the legal representatives and successors of the parties hereto.

Any purported assignment by either party without said written consent by the other party shall be void and of no effect.

18.02 Any assignment pursuant to Section 17.01 shall not take effect until the assignee has executed in favor of the other party hereto a deed of covenant in a form approved by such other party to comply with, observe, and perform the provisions of this Contract in regards to the subject of th

e assignment.

ARTICLE 19

Waivers

The failure of either party to enforce at any time any of the provisions of this Contract, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Contract or any part hereof, or the right of either party thereafter to enforce each and every provision. Notwithstanding the above, the parties may modify or amend any provisions of the Contract if in writing and signed by both parties.

ARTICLE 20

Effective Date

This Contract shall be effective and executed as from the date the authorized representatives of both parties have signed.

ARTICLE 21

Entire Agreement

This Contract contains the entire agreement and understanding between the parties as to the subject matter of the Contract, and merges and supersedes all prior agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any other prior obligations, conditions, warranties, or representations with respect to the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed by their respective duly authorized representative as of the day and year first above written.

SELLE :
D

BUYER :
Korea Southern Power Co. Ltd.

Signed : _____

by Name : _____

Title : _____

Signed : _____

by Name : _____

Title : _____