

UNCONDITIONAL ACCEPTANCE FOR IMPORTED COAL

Date: -----

MEMORANDUM OF UNDERSTANDING (MOU)

Between

SOUTH EASTERN COALFIELDS LIMITED (SECL) (SELLER)

And

M/s ----- (PURCHASER)

- 1) Whereas, a Coal Supply Agreement dated ----- (hereinafter called the FSA) has been signed between Seller & Purchaser for supply of coal to -----
----- (Name and location of the Plant) of the Purchaser.
- 2) Whereas, the FSA, inter-alia, provides for certain Conditions Precedent (CP) of the Seller as well as the Purchaser, issuance and acceptance of notices of satisfaction of these CP by respective Parties, as applicable and also the determination/ declaration of "Effective Date", "Target Start Period" and "First Delivery Date".
- 3) Whereas, the Purchaser hereby declares and warrants that the Purchaser's CP have been achieved/fulfilled.
- 4) Whereas, the Seller is yet to achieve/fulfill Seller's CP in respect of supply of imported coal. Notwithstanding, the Purchaser is desirous for commencement of supply of indigenous coal component under the FSA.
- 5) Whereas, the Purchaser has conveyed unconditional acceptance for supply of imported coal in the prescribed letter format.
- 6) Now, therefore, it is mutually agreed and declared as under:
 - i) This MOU shall form an integral part of the FSA.
 - ii) Provisions of the FSA regarding issuance of notice of satisfaction of Purchaser's CP and its acceptance by the Seller are deemed to have been complied.
 - iii) Provisions of the FSA regarding issuance of notice of satisfaction of Seller's CP and its acceptance by the Purchaser are dealt as under:
 - a) CP in respect of supply of domestic coal is deemed to have been waived by the Seller unless and until any project is identified for Purchaser on Cost Plus Basis.
 - b) In case of Purchaser giving unconditional acceptance for imported coal, the CP in respect of supply of imported coal is deferred till the same is achieved/fulfilled by the Seller.

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- c) In case of Purchaser exercising the Import Surrender Option, CP in respect of supply of imported coal is deferred unless & until the Purchaser withdraws the Import Surrender Option in accordance with the provisions of said option and in the event of such withdrawal of Import Surrender Option, sub clause b) above shall be applicable, whereby the Purchaser shall also be required to give unconditional acceptance for imported coal.
- iv) "Effective Date" of the FSA shall be the date of signing this MOU.
- v) "Target Start Period" under the FSA shall be a period of 3 months commencing from the date of signing of this MOU and within this "Target Start Period", "First Delivery Date" shall be the date as per the relevant provision of FSA.
- vi) In case of Purchaser giving unconditional acceptance for imported coal;
 - a) Quantum of supply of indigenous coal under the FSA shall be at the sole discretion of Seller from time to time, but shall not exceed 50% of ACQ under any circumstances.
 - b) The quantum of indigenous coal supplies may vary from time to time even within 50% of ACQ, hence, in such case, for the purpose of calculating the compensation for short delivery/lifting, ACQ under the FSA shall be reckoned with reference to the quantum of indigenous coal allotted by the Seller during respective period(s).
 - c) The performance incentive under the FSA shall be applicable only above 90% of the overall supplies against the ACQ and shall not be applicable on 90% of the fragment to be supplied from the indigenous sources independently.
- vii) In case of Purchaser exercising the Import Surrender Option;
 - a) 50% of the original ACQ shall be treated as ACQ_{effective}.
 - b) ACQ_{effective} shall be the basis for the purpose of calculating the compensation for short delivery/lifting.
 - c) The performance incentive shall be applicable in the event deliveries exceed 45% of original ACQ or 90% of ACQ_{effective}.
- viii) Seller reserves the right to terminate and/or modify this MOU without any liability or notice whatsoever.

For Seller

For Purchaser

Encl: (With Seller's copy of MOU)

- 1) Copy of final report dated ----- for LoA milestones' documents verification.
- 2) Copy of physical verification report dated ----- & report dated ----- for MOU.
- 3) Copy of unconditional acceptance letter from Purchaser for imported coal.

Revised MOU format applicable in both the situations, viz. the consumers giving unconditional acceptance for imported coal as well as the consumers exercising the Import Surrender Option.