

**SALE AND PURCHASE AGREEMENT  
OF INDONESIAN STEAM COAL  
GCV ARB 6300 - 6100 kcal/kg**

**BETWEEN**

**CV. SINAR BAUNTUNG**

**(Banjarmasin South Kalimantan, Indonesia)**

**(Hereinafter called SELLER)**

**And**

**XXXXXXXXXX CO., LTD**

**(country)**

**(Hereinafter called BUYER)**

**Contract No:01/GAR6300/KA-CB/CFR/9/20XX**

**September XX, 20XX**

This Sale and Purchase Agreement (hereinafter referred to as the "**AGREEMENT**") is made and entered into as of the **September XX**, 20XX, by and between:

**CV. SINAR BAUNTUNG**, a company incorporated under the laws of Indonesia and having its registered office at **Jl. GaweSabumi Rt.008, Desa Bersujud, Simpang Empat, Tanah Bumbu, South Kalimantan, INDONESIA**. Represent by **Fadly.F** as **President Director** of **CV. SINAR BAUNTUNG** (Hereinafter referred to as "**SELLER**").

**AND**

**XXXXXXXXX CO., LTD** a company incorporated under the laws of (**country**) having its registered office at (**address**), represent by **Mr. (name)** as **President** (Hereinafter referred to as "**BUYER**")

(hereinafter referred to individually as the "Seller or Buyer" and collectively as the "**PARTIES**".)

**WITNESS:**

**WHEREAS**, the SELLER is the legal entity and beneficial owner of Coal as specified in this Agreement (the "**Coal**");

**WHEREAS**, the SELLER agrees to sell Coal to the BUYER and the BUYER agrees to purchase Coal from the SELLER, with the consideration and the terms and conditions set out in this Agreement;

**NOW THEREFORE**, the Parties have agreed to enter into this Agreement under the terms and conditions as set out herein:

## **ARTICLE 1 - DEFINITIONS**

In this Agreement unless the context otherwise permits the following terms shall have the meanings stated below:

- **Coal** means coal produced in Indonesia.
- **TT** means Telegraphic Transfer of funds via swift
- **"Ton(s)", "Tones(s)", and "MT"** means metric tones of 1,000 Kgs as defined in "International System of Units". A fraction of a tones (s) in any calculation shall be rounded up to the three decimals.
- **"Dollars", "US\$", "\$", "Cents"** where used shall refer to the currency of the United States of America. A fraction of a cent in any calculation shall be rounded up to the nearest cent if such fraction is one half of a cent or more, and otherwise shall be rounded down.
- **Anchorage Point** means the anchorage point in Indonesia.
- **Destination** Any port
- **Bill of Lading** means receipt given by the vessel for the coal shipment and is a document of title.
- **ETA** means estimated time & date of arrival.
- **ASTM** means the American Society for Testing and Materials

- **ISO** means the International Organization for Standardization.
- **kCal** means Kilocalorie as defined in the "International System of Units".
- **mm** means Millimeter as defined in "International System of Units".
- **Laytime** means time allowed to load the cargo on to the vessel.
- **Major Indonesian Holidays** means 2 days of IdulFitri, 1 day of IdulAdha, 1 day of Independence Day, 1 Day of Christmas Day.
- **Working Day** means a day upon which business is regularly transacted and unless expressly stated, the term "day" shall be deemed to mean "working calendar day".
- **Weather Working Day** means day of 24 consecutive hours on which work in loading coal on board a vessel may be carried out without loss of time due to the weather.(For the Climatic Conditions the Seller with the help of BMG (Badan Metrology &Geofisika),should inform to the Buyer)
- **Pratique** means permission to do business at a port by a ship that has complied with all applicable local health regulations.
- **Statement of Facts** means a statement prepared by the ships agent at the port of loading which shows the date and time of arrival of the vessel and the commencement and completion of loading. It details the quantity of cargo loaded each day, the hours worked and the hours stopped with the reasons of stoppages.
- **Time Sheet** means a document which records all daily particulars relating to the loading or discharging of cargo as well as the duration of and reason for any stoppage of work and is used as a basis for the calculation of demurrage/dispatch.
- **MV** means Mother Vessel where the coal is to be finally loaded from barge trans-shipment then sail to buyer discharge port.

## ARTICLE 2 – QUANTITY-PRICE-DELIVERY

- 1.1 The agreed quantity by the PARTIES is **XX,000** metric tons at a price of **USD. XX.00/MT, (XXXX US Dollar)** CFR, with a tolerance of +/- 3% at Seller's option following a successful trial shipment, The firm tonnage shall be delivered starting First Week of October , unless otherwise mutually agreed, Shipment Laycan timing is to be on a mutually agreed schedule.
- 2.1 The price for the above **12** months contract shall be adjusted every 3 months base on the market price mutually agreed by both parties.
- 3.1 Trial shipment available ready to load to MV within 30 days of down payment
- 4.1 Quantity for first trial **XX,000MT** +/- 10% at Seller's option.  
Shipment Schedule after first trial **11 Month** and total qauntity Contract for 12 months **XX0,000 MT**with a tolerance of +/- 10%.

## ARTICLE 3 – SPECIFICATION

The quality of coal to be supplied hereunder shall be free of foreign matters and in accordance with the following specification as measured in accordance with International Standard Organization (ISO) method:

(A) Based on ISO Standards

Parameters	Specification 规格	Reject 拒收
Calorific Value (Gross As Received) 高位发热量 (收到基)	<b>6,300 Kcal/kg</b>	<b>&lt; 6,100 Kcal/kg</b>
Mercury (Hg <sub>d</sub> ) (ADB) 汞(空干基)	≤ 0.6 μ g/g	> 0.6 μ g/g
Arsenic (As <sub>d</sub> ) (ADB) 砷(空干基)	≤ 80 μ g/g	> 80 μ g/g
Fluorine (F <sub>d</sub> ) (ADB) 氟(空干基)	≤ 200 μ g/g	> 200 μ g/g
Phosphorus (P <sub>d</sub> ) (ADB) 磷(空干基)	≤ 0.15%	> 0.15%
Chlorine (Cl <sub>d</sub> ) (ADB) 氯(空干基)	≤ 0.3%	> 0.3%
Total Moisture (ARB) (收到基) 全水	≤ <b>14%</b>	Above 15%
Inherent Moisture (ADB) (空干基) 内水	<b>11% approx.</b>	
Ash Content (ADB) 灰分(空干基)	<b>12%</b>	Above 14%
Volatile Matter (ADB) 挥发分(空干基)	<b>40%</b>	
Total Sulfur (ADB) 全硫分(空干基)	≤ 0.6%	Above 1%
Fixed Carbon (ADB) 固定碳(空干基)	46	
Hard groove Index (HGI) 可磨性系数	45	
Sizing 0-50mm 粒度	> 90 %	

**ARTICLE**

**E 4 - PRICE**

The Base Price for the shipment is **USD. XX.00/MT,(XXX US Dollar)**(all inclusive) charter Mother Vessel(**available Grabs and Crane on MV**), including all export duties, basis **GCV6300 kcal/kg** (ARB), Total Moisture as received 14%, Ash Content 12% air dried and Total Sulphur below 1,0% air dried. The Base Price will be reviewed for every 3 months unless mutually agreed otherwise with the Exception of changes to taxes/levies etc that shall be implemented by any 3<sup>rd</sup> parties following the signing of this agreement.

**ARTICLE 5 – REJECTION, PENALTY AND BONUS**

5.1 Should the loaded cargo have one or more of the following rejection specifications and Buyer determines to accept the cargo then the price will be subject to further negotiation by both parties.

- Total Moisture ( ARB ) : **>15%**
- Gross Calorific Value ( ARB ) : **<6100 Kcal / Kg**
- Ash Content ( ADB ) : **>14%**
- Total Sulphur( ADB ) : **>1,0%**

5.2 Calorific Value (ADB)

**Penalty/Bonus:** Should the Net Calorific Value (Air Dried Basis) be below or above NAR 4800 Kcal/kg the price will be adjusted pro-rata till rejection limits:

$$\text{Effective Invoice Price} = \frac{\text{Contractual Price} \times \text{Actual Kcal GCV (ARB)}}{\text{GCV 6300Kcal (ARB)}}$$

5.3 Total Moisture Penalty/Bonus.

If the actual Total moisture is above 12% or below 12% (ARB) as stated in the surveyor's certificate

at the Port of Loading, then the weight as mentioned in the Certificate of Weight for purpose of billing shall be adjusted as follows:

Weight for invoice purpose =  $(100 - \text{Actual TM}) / (100 - 12) \times \text{BL weight} = \text{Adjusted Weight}$

If Total Moisture exceeds 14%, buyer shall reserve the right to reject cargo or re-negotiate the price.

#### **ARTICLE 6 - CARGO WEIGHT DETERMINATION**

- 6.1. The cargo weight of each shipment shall be calculated using draft surveys and shall be determined at the loading Anchorage Point. The draft surveys shall be conducted by **SGS/CCIC** nominated by buyer. The **SGS/CCIC** shall provide the corresponding Certificate of Weight for each shipment at loading Anchorage Point. The weight so determined shall be final and binding upon SELLER and BUYER for the purpose of this agreement, and shall form the basis of settlement unless adjustment is required in accordance with Article 5 hereof.
- 6.2. A fraction of a tonnage shall be rounded up if such fraction is not less than one half of one tonnage, and shall be rounded down otherwise.
- 6.3. The costs of draft surveys at Loading Anchorage Point shall be for the account of SELLER.
- 6.4. On signing the contract, the Seller agreed to issue the Pre-shipment document to the buyer such as MINE Stockpile, before buyer's inspection of the cargo at nominated stockpile. Buyer shall appoint **SGS/CCIC** as independent surveyor to carry out the sampling and analysis of the samples, including proximate, of the material available at the stockpile(s) before loading to barge or before loading to Mother Vessel, the cargo quantity should be at least 50% of contracted volume which could fully represent the typical specs.

The method of sampling and analysis shall be determined according to ISO Standard. The costs of inspection for sampling and analysis by **SGS/CCIC** shall be borne by Buyer. Buyer has the right to reject the cargo if the certified data is above rejection limit as specified in Article 3. Seller shall be responsible for the losses incurred due to Seller fail to supply qualified cargo.

#### **ARTICLE 7 – INSPECTIONS, MONITORING, SAMPLING, COAL QUALITY ANALYSIS AND UMPIRE ANALYSIS**

- 7.1. The final sampling and analysis of the coal shipments shall be conducted at the loading Anchorage Point by INTERTEK.
- 7.2. All sampling will be carried out in accordance with ISO standard using mechanical sampler, wherever possible. Sample taken by **SGS/CCIC** shall be divided into 4 parts to provide:
  - 1 (one) sample being the shipment analysis sample (the "Shipment Sample");
  - 1 (one) sample being the SELLER's sample (the "Seller's Sample");
  - 1 (one) sample being the BUYER (the "Buyer's Sample"), if requested;
  - 1 (one) sample being the Umpire sample (the "Umpire Sample") which shall be retained by **SGS/CCIC** until 60 (Sixty) days after completion of loading.These samples shall be clearly labeled (including without limitation sample and container weight) and kept in air tight sealed containers.
- 7.3. The Shipment Sample shall be analyzed by **SGS/CCIC** recognized laboratory nominated by buyer. This laboratory shall perform an analysis of the characteristic specified in Article 3, and shall issue the Certificate of Sampling and Analysis certifying the results of such analysis.
- 7.4. In the event that either party wishes to challenge the result of such analysis, it shall do so within sixty (60) days from date of Bill of Lading (date of completion of loading of the vessel). In such event the Umpire Sample shall be sent to mutually acceptable internationally recognized independent commercial laboratory (the "Umpire Laboratory"). The Umpire Laboratory shall perform analysis of the specifications for the parameters requested by the party called for umpire analysis, and shall issue a certificate (the "Umpire certificate") certifying the results of such analysis.
- 7.5. In the event that the results of the analysis of the Umpire Sample are deviating beyond the reproducibility limits (within 2%) from the analysis reports produced by **SGS/CCIC** recognized laboratory or should one

party prove any inaccuracy in taking the samples or the analyzing, both parties will discuss in good faith to clarify the situation and agree on a new analysis result for invoicing purposes. If agreement cannot be reached on a new analysis, the umpire analysis shall be final and binding on both parties.

- 7.6. The costs for sampling and analysis shall be for the account of SELLER. Cost of additional analysis of the umpire sample shall be borne by the requesting party.
- 7.7. BUYER can send their representative to the Anchorage Point to witness the loading operation, sampling and analysis of cargo, if required.

## ARTICLE 8 - BASIC CONDITIONS CONCERNING DELIVERY AND TRANSPORTATION

### 8.1. OBLIGATION OF SELLER

SELLER shall complete the necessary preparation for DELIVERY of Coal TO THE BUYER MV, in accordance with Article 10.

## ARTICLE 9 - SHIPPING SCHEDULES

- 9.1. At least fourteen (14) days prior to the Estimated Time of Arrival of the vessel at LOADING Point, BUYER shall nominate the vessel to THE SELLER for approval by SELLER, within one (1) working days after receipt, a fixed shipping schedule for that vessel. Such schedule shall specify : a) The tonnage of Coal to be loaded on board that vessel; b) The name of that vessel and its particulars; c) The estimated time of arrival (ETA) for that vessel; and d) Demurrage/Dispatch rate.
- 9.2. The quantity of Coal to be loaded into BUYER's vessel may be varied by ten percent (10%) more or less of the notified quantity at the discretion of the vessels master, subject to the maximum tonnage to be sold and purchased as specified in Article 2.
- 9.3. BUYER shall ensure that the master of the BUYER's vessel shall advise - in writing (e-mail, facsimile or telex) or by radio to SELLER or a person designated by the SELLER - its estimated time of arrival at the LOADING Point seven (7) days, five (5) days, and twenty four (24) hours before BUYER's vessel is expected to arrive.
- 9.4. In the event that any Force Majeure conditions occur or are likely to occur regardless whether declared or not in accordance with Article 13 the treatment of the scheduled vessel may be discussed in good faith by BUYER and SELLER. However, once Force Majeure is declared in accordance with Article 13 by SELLER and if there appears, in the mutual opinion of both BUYER and SELLER, little likelihood for early conclusion to the Force Majeure condition, BUYER shall have the option to cancel any scheduled vessel under this agreement or divert it to other port (s) subject to Article 13.3
- 9.5. BUYER and SELLER shall use their best efforts to normalize shipping schedules as soon as possible after removal of Force Majeure.

## ARTICLE 10 - LOADING TERMS

### 10.1 LOADING POINT

The Anchorage Point of **Muara Asam-Asam**, is under the control of **SGS/CCIC** and the LOADING of Vessel is under the control of **SGS/CCIC** , Vessel shall comply with requirements at the LOADING Point as stipulated from time to time by those authorities or any other relevant authority at the LOADING Point. LOADING Point specifications for the coal as advised are:

- a) LOADING rate : **8,000** MT PWWD SHINC  
LOADING coordinate : Lat. **03.' - 52,00 S**  
: Long **114, 25' - 00 E**

- b) Age of Vessel : Twenty-five (25) years and equipped with cranes suitable for grab loading. Grabs (if not fitted to MV) at loading port will be arranged by Seller and shall be for **Buyer's account**. Grabs at discharging port will be arranged by Buyers and shall be for Buyer's account.
- c) SELLER shall exert its best efforts to have the LOADING (a) Point fulfill their obligation to maintain the above specifications.
- d) SELLER at its own expense shall load Coal in bulk using the cranes onto the MV, off trans-shipment barges at LOADING Point, free of all risk and damage to BUYER and vessel.
- e) Buyer shall give vessel nomination to Seller at the latest 14 days before the agreed laycan, on completion of loading, Seller to send sailing advice to receiver with vessel ETA discharge port, total cargo loaded as per Bill of Lading, and the cargo stowage plan.
- f) On arrival at load port, master / vessel agent shall tender notice of readiness in writing or telex to the receiver / their agents certifying that the vessel has arrived and is ready in all respects to commence load the cargo on board and with all shipboard equipment and machinery in efficient working conditions.
- g) Load port agent will be appointed by vessel owner and/or charterer and/or buyer.

#### 10.2 SHIPPING ARRANGEMENT

- a) The BUYER shall arrange for and provide vessels within the dimensions stipulated above clause **10.1(e)**
- b) The BUYER may arrange vessels as stipulated in above (a) to be fully loaded with the coal defined under this Agreement, or may arrange for vessels which would take the coal to load the coal together with the coal not covered by this agreement. However, combined loading as mentioned above shall be discussed and agreed between the BUYER and the SELLER prior to shipment.

#### 10.3 NOTICE OF READINESS

Notice of readiness to be tendered any time between Monday to Sunday, whether in berth or not, whether in custom cleared or not, whether in port or not.

#### 10.4 LAY TIME

Lay time shall commence twelve (12) hours after the vessel tenders N/R unless sooner commenced. Time lost by the following causes shall not count as lay time :

- a) loading interruption due to rain, wind or heavy sea swell.
- b) Delays due to breakdown of the vessel's loading equipment(s), ballasting equipment(s) or lighting equipment(s).
- c) Shifting time due to the vessel's requirements (shifting time due to SELLER's requirement shall count as lay time).
- d) Excess time resulting from the vessel arriving at Anchorage Point prior to the lay days agreed between the BUYER and the SELLER, provided however that in case the SELLER can arrange to load prior to such lay days, time actually used for loading shall count as lay time.
- e) Time lost due to the causes stipulated in Article 13 herein. Provided that the SELLER or the SELLER's representative declares to the master of the vessel or his agent the situation is one of the Force Majeure events pursuant to Article 13, the time from when Force Majeure is declared to when the

Force Majeure event terminates shall not count as lay time. However, the time from when Force Majeure event(s) occur(s) to when Force Majeure is declared shall count as lay time.

Notwithstanding the provisions stipulated in above (a), (b), (c), (d) and (e) after the BUYER's vessel is on demurrage, all time lost shall continuously count as lay time, including the case when Force Majeure is declared after the vessel is on demurrage.

#### 10.5 LOADING RATE

- a) The SELLER shall load the coal onto the vessel at the following average rates per weather working day, Saturday, Sundays and a public holiday or a local holiday included (WWDSHINC).  
Loading rate: 8,000 metric tones per Weather Working Day, Sundays and Holidays included (WWDSHINC) except Major Indonesian Holidays ( days) basis vessel.

#### 10.6 DEMURRAGE/DISPATCH

Subject to the Mother Vessel complying in full with the terms of clause 10.1(b) herein, the Coal shall be loaded onto the vessel by the Seller at the loading rate of 7,500 MT per weather working day of 24 consecutive hours, SHINC (Sunday and Holiday Included) In the event that the Seller fails to maintain the loading rate required, the Seller shall pay demurrage to Buyer at the rate advised at the time of vessel nomination for all time used in excess of laytime. If loading is completed faster than allowed in the Charterparty, Buyer shall pay dispatch to Seller at the rate advised at the time of vessel nomination for working time saved.

Any dead freight claim from the vessel owners for any short loading from the stowage plan issued by the master of the Mother Ship performing the voyage shall be settled with demurrage and dispatch.

The Buyer will settle demurrage claim and the Seller will settle dispatch claim, within 30 days of completion of discharge. The Buyer shall submit lay time calculation to the Seller within 10 days from the date of completion of discharge along with the copies of statement of facts. The Seller shall verify the correctness of Lay Time calculations and provide acceptance within 7 days of receipt of Lay time Calculation from the Buyer.

Any differences in understanding of Lay time calculations will be resolved mutually by the Buyer and the Seller. Payment of dispatch and demurrage must be made through telegraphic transfer in US Dollars. The disastrous weather and other natural reasons, if any, cause the delaying of discharging, this process shall not be calculated in the discharging days.

#### 10.7 SHIPPING TOLERANCE

The master of the vessel shall be entitled to increase or decrease the quantity of the coal to be loaded onto a vessel within the range of +/- 10 % (such range shall be in hereinafter called "Shipping Tolerance"). However, the quantity of the coal to be loaded onto a vessel shall mean the tonnage notified by the SELLER to the BUYER and confirmed in accordance with the provisions of Article 9.

Should the basic conditions at the LOADING Point change, and should the provisions of this Article 10 become inconsistent with the customs and practices prevailing in the LOADING Point, the loading terms as set out herein shall be reviewed at the request of either the BUYER or the SELLER and any change to the loading terms herein shall be mutually agreed.

#### 10.8 DETENTION

In the event the vessel is prevented from or delayed in berthing or sailing at/from the loading port as a result of SELLERS failure to complete all formalities and process necessary documentation, SELLER will be responsible for the costs associated with the detention of the vessel over and above demurrage.

**ARTICLE 11 - TITLE AND RISK**

Title and risk of loss or damage to Coal shall pass from SELLER to BUYER as the coal passes over the ship's rail at LOADING Point.

**ARTICLE 12 – PAYMENT**

**TERM OF PAYMENT:**

Payment for the Coal shipped shall be made by TT Swift cash directly from Buyers Bank to Sellers Bank as agreed between both parties;

Payment of cargo to be paid by TT cash remittance as follows:

1. 10% payment after Sign contract and LC active from Buyer
2. 40% Payment when cargo ready to crushing at stockpile and Trucking to the jetty
3. 40% payment after the cargo 100% of total quantity and loading to barge while transshipment to Mother Vessel and the cargo 100% has delivered to Mother Vessel.
4. 10% settlement against full and final documents at Mother Vessel . And the inspection for sampling and analysis by **SGS/CCIC** .

Balance of cargo value is to be paid against presentation of the following documents as described below:

1. Seller's signed and stamped commercial invoice in 1 original + 4 copies showing details of calculation of GCV and TM and Ash parameters are below or above as per specification.
2. Full set of original clean on board Charter Party Bill of Lading of the Mother Vessel marked "Freight Payable as per Charter Party"
3. Certificate of Sampling and Analysis in 3 original + 3copies issued by an independent surveyor at loading port.
4. Certificate of Weight in 3 original + 3 copies issued by an independent surveyor at loading port.
5. Certificate of Origin in 1 original + 1 copy issued by competent authority. As per buyer instruction for beneficiary name.
6. Certificate Weight loaded on Vessel as per cargo Manifest and draft survey with the copy of ship registry and tonnage certificate 1 original + 2 copy issued by Master of Mother Vessel signed and stamped.

<b>SELLER'S BANK DETAILS</b>	
Account Name	<b>CV. SINAR BAUNTUNG</b>
Bank Name	PT. BANK MANDIRI (PERSERO) TBK
Bank Address	Jl. Soetoyo S Rt.20 Blok 380-381, Banjarmasin 70112
Swift Code	BMRIIDJA
Account Number	<b>031-00-1125217-1 (USD)</b>
Telephone/Fax No.	
Officer In-charge	Ms. Rita Pahliani

BUYER'S BANK DETAILS	
Account Name	
Bank Name	
Bank Address	
Swift Code	
Account Number	
Telephone/Fax No.	
Officer In-charge	

All bank charges incurred by beneficiary are for beneficiary's account and all bank charges incurred by applicant are for applicant's account.

### ARTICLE 13 - FORCE MAJEURE

#### 13.1 DEFINITIONS

The term "Force Majeure" as used herein shall mean any cause(s) beyond the reasonable control of the party involving this Article, which causes may include but are not limited to:

- (a) Acts of God; lightning; storm; fire; flood; slide; earthquake;
- (b) Acts of the public enemy; war; insurrection; sabotage; blockade; riot or disorder;
- (c) Orders or acts of military or civil authority, including, without limitation, any regulation, direction, order made by any governmental authority or person acting therefore, which is complied with in good faith;
- (d) Strike; lockout; and other industrial or labors disturbance;
- (e) Explosion; breakdown or malfunction or damage from any cause whatsoever; or accident by force or otherwise to mine railroad, storage facilities, processing plants, terminal of port facilities or coal receiving/processing plant and facilities (provided, however, that such breakdown, malfunction or damage was not caused by, and did not arise as a result of, the intentional act or gross negligence of the party directly affected by thereby, including such party's officers, employees, representatives and any other persons under its control); or unavailability of equipment or energy from others.

Provided, however, that the aforementioned cause shall constitute Force Majeure only if, and to the extent that, performance as contemplated in this Agreements is prevented or delayed.

#### 13.2 NOTIFICATION

In the event that either SELLER or BUYER is affected by an event of Force Majeure, the affected party shall forthwith give written notice to the other party stating the circumstances of the Force Majeure event and specifying the nature of the event together with an estimate in good faith of the degree to which and the period for which its performance will be affected thereby. The affected party shall, upon request by the other party, provide evidence as to the occurrence of the event and the period of duration thereof.

#### 13.3 SUSPENSION OF OBLIGATION

If either BUYER or SELLER fails, or it delayed wholly or in part, in carrying out any of its obligations under this Agreement due to Force Majeure, except as otherwise expressly provided herein, the obligations of the entity giving such notice shall be suspended to the extent made necessary during the continuance of such Force Majeure or its effects; and the entity shall incur no liability by reason of its

failure to perform the obligations so suspended, provided that the disabling effects of such Force Majeure shall be eliminated by the affected entity as soon as to the extent reasonably possible, further provided that settlement of labor disturbances shall be within the sole discretion of the affected party. Any deficiencies in the supply or purchase of Coal hereunder, excused by Force Majeure are to be made up only following mutual agreement.

#### **ARTICLE 14 - ARBITRATION**

In case of any dispute which may arise between BUYER and SELLER in connection with this Agreement or the interpretation, performance or non-performance hereof, and which cannot be settled by mutual accord between BUYER and SELLER, such dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. Arbitration proceedings, such arbitration shall be conducted in BANJARMASIN. The language to be used in the arbitral proceedings shall be in English. The decision of the majority of the arbitrators shall be final and binding on the parties hereto, including the decision as to allocate of the costs of such arbitration, and may be entered in any court having jurisdiction.

#### **ARTICLE 15 - LIABILITIES**

The liability of a party in respect of 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 direct loss suffered by the party aggrieved and shall exclude lost profits.

#### **ARTICLE 16 - MUTUAL COLLABORATION**

Both BUYER and SELLER recognize that circumstances may arise which could not have been foreseen at the time this Agreement was entered into. Both parties agree that they will use reasonable efforts to solve any problems due to any such unforeseeable circumstances in the spirit of mutual understanding and collaboration.

#### **ARTICLE 17 –ARBITRATION**

All disputes in connection with this contract or the execution thereof shall be settled through friendly negotiation between both parties. In case no settlement can be reached through negotiations, the case should be submitted for arbitration to BANJARMASIN Trade Arbitration Commission in accordance with UCP 600 UNOITRAL rules as at present in force and as may be amended by the rest of this clause, the arbitration place is in BANJARMASIN, the decision of the arbitration commission shall be final and binding upon every parties; Neither party shall seek recourse to a law court nor other authorities to appeal for revision of the decision. Arbitration fee shall be borne by the losing party. This Agreement is binding on and for the benefit of the Parties and their successors, transferees and assigns, but this agreement shall not be assigned or transferred by Seller or Buyer, in whole or in part, either voluntarily or by operation of law, without the written consent of the other Party being first obtained but such consent to assignment shall not be unreasonably withheld.

#### **ARTICLE 18 - TAX**

All import duties, levies, dues etc. on the imported material from the vessel if any at discharge port shall be to BUYER's account. All taxes, duties, export tax, levies etc. on loading goods in the country of origin / loading (Indonesia) to be at SELLER's account.

#### **ARTICLE 19 – AMENDMENTS**

Any amendment of this agreement shall be in the form of an addendum in writing to be signed by both parties and shall, thereafter form and become an integral part of this agreement.

#### **ARTICLE 20 - N O T I C E S**

Any notice required or permitted by this agreement shall be in writing and in the English Language and may be delivered personally or may be sent by telex, e-mail, facsimile, or prepaid registered mail addressed to the parties, as follows:

<b>IF TO SELLER</b>	<b>CV. SINAR BAUNTUNG</b>
Address	Jl. GaweSabumi, DesaBersujud, Rt.008 SimpangEmpat, Batulicin, Kalimantan Selatan
Attention	Mr. Fadly. F
Phone/Fax	
Mobile	
Email Address	

<b>IF TO BUYER</b>	
Address	
Attention	
Phone/Fax	
Mobile	
Email Address	

#### **ARTICLE 21 - CONFIDENTIALITY**

This Agreement is confidential and shall not be disclosed except to affiliates of the parties and appropriate governmental entities, unless otherwise agreed between the parties.

#### **ARTICLE 22 - ASSIGNMENT**

Except for assignment to an affiliated company, neither party may assign or transfer the Agreement or any rights or obligations there under without the prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **ARTICLE 23 - WAIVERS AND REMEDIES**

The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights and the same shall continue and remain in force and effect. All remedies afforded under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or by law.

#### **ARTICLE 24 – HEADINGS**

The headings to Articles are inserted for convenience only and shall not affect the construction of this Agreement.

#### **ARTICLE 25 - NON CIRCUMVENTION**

This agreement is subject to this Clause - Non Circumvent. The Buyer, Buyer's agents, representatives, facilitators, affiliates, etc. will not directly contact, contract, or buy coal directly or indirectly from the mines that CV. SINAR BAUNTUNG uses or introduces to the Buyer unless the buyer can prove previous contact in regard to buying coal prior to the date of our 1<sup>st</sup> contact.

The Buyer will not hire, contact, contract, employ or other wise use the services of any of Seller's employees, agents or consultants either directly or indirectly.

- A. This Clause - Non Circumvent will survive any termination of this Agreement and will be in force for a period of ten years from the date of signing this Agreement.

- B. The Seller will not circumvent the Buyer's Representative mentioned in the preamble to this agreement and or affiliates.
- C. Should the Buyer directly or indirectly circumvent the above and purchase coal directly or indirectly from any mine that CV. SINAR BAUNTUNG uses or introduces to the Buyer or buyer representative then the Buyer shall be liable to pay CV. SINAR BAUNTUNG any and all profits they would have expected to receive should the Buyer have purchased directly through CV. SINAR BAUNTUNG. This agreement shall remain in force regardless as to whether the contract reaches a final conclusion or not.

**ARTICLE 26 - ENTIRE AGREEMENT**

This Agreement includes all agreements, promises and understandings of the Parties hereto concerning the subject matter hereof, if the 1<sup>st</sup> TT payment should fail to be received by the Seller from the Buyer within 5 days from the date of this contract then this gives the Seller option to null and void this contract without any recourse from the Buyer whatsoever, but the Non-Circumvention as detailed in Article 25 will remain valid.

The Parties shall be bound only by the express provisions of this Agreement and documents to be executed in the future by duly authorized representatives of the Parties.

IN WITNESS WHEREOF, both parties have caused their duly authorized representatives to execute this Agreements validity of contract.

**SELLER**  
**CV. SINAR BAUNTUNG**

**BUYER**  
**XXXXXXXXX CO., LTD**

**FADLY.F**  
**President Director**

**XXXXXXXXXXXXXXXXXXXXX**  
**President**

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