INVITATION TO BID

for

Steaming Coal for TAEAN Power Plant

≪Bid Notice No. : **KOWEPO-COAL-2014-LT-01**≫

 **KOREA WESTERN POWER CO., LTD.**

27th Floor, GFC, 152, Teheran-ro, Ganganm-gu,

Seoul 135-984, Korea

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**Chapter Ⅰ**

**Bidding Instructions**

**Clause 1 - General**

**1.1 Introduction**

 Korea Western Power Co., Ltd. (KOWEPO) duly organized by virtue of the law of the Republic of Korea and having its head office in Seoul, 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**

○ Quantity and Shipping schedule

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Bid Type | Steam Coal(Specification) | Quantityper annum | Price(For CY1) | Shipping ScheduleAt Loading Port during Contract Year 1 |
| TERM | NCV min. 5,700 kcal/kg  | 330,000MTPer annum+/- 10% | One Single FixedU$ per mt | July.1 2014 ~ September.30 2014 |

 (1) Shipment Size & Delivery Term :

- Mini capesize(110,000mt) on FOBT basis only

※ No Russian Coal is allowed to participate in this tender.

 (3) Term of the Contract : 5 Years

- Starting from July 1, 2014 to Jun 30, 2019

※ The prices for the remaining Contract Years (CY2 ~ CY5) shall be determined by

mutual agreement of the both parties.

(4) Additional quantity supply

On the basis of mutual agreement, additional quantity can be sold and purchased and addendums for the additional tonnage shall be attached to the original contract.

(5) Coal Mine

Each shipment of coal to be purchased by KOWEPO and delivered by the Bidder shall be entirely supplied from a single mine. Supply of coal for any shipment from more than one mine may not be allowed. Upon request by KOWEPO, a Bidder shall provide to KOWEPO's satisfaction 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.

**1.3 *(Intentionally left bank)***

**1.4 Quality Specifications (based on ASTM standards)**

|  |  |  |
| --- | --- | --- |
| Item | Unit | Limit ofRange |
| Total Moisture (As received basis) | % WT | Max. 15 \*¹ |
| Inherent Moisture (Air dried basis)  | % WT |  |
| Volatile Matter (Air dried basis) | % WT |  22~38 |
| Fixed Carbon (Air dried basis) | % WT | Max. 60 |
| Ash (Air dried basis) | % WT | Max. 17 |
| Total Sulphur (As received basis) | % WT | Max. 1.00 |
| Grindability (HGI) |  | Min. 45 |
| Gross Calorific Value (Air dried basis) | kcal/kg |  |
| Gross Calorific Value (As received basis) | kcal/kg | Min 6,000 |
| Net Calorific Value (As received basis) \*2 | kcal/kg | Min 5,700 |
| Hydrogen (Hd) (Dry Basis) | % WT |  |
| Nitrogen (Dry ash free basis) | % WT | Max. 2.4 |
| Oxygen (Dry ash free basis) | % WT |  |
| Ash Fusion Temperature IDT (Reducing Atmosphere)  | ℃ | Min. 1,200 |
| Ash Analysis |  |  |
|  Fe₂O₃ | % WT | Max. 16 |
|  Na₂O | % WT | Max. 2 |
|  K₂O | % WT | Max. 3 |
| Size Distribution Above 50mm | % | Max. 5 |
|  Under 2mm  | % | Max. 40 |

\*₁Total Moisture is acceptable up to 18.5% max, if Ash content is equal to or less than 10%.

\*₂Net 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**, KOWEPO will select as a successful Bidder if KOWEPO judges that Coal can be used by the Taean Power Plant.

**1.5 Terms of Payment**

 KOWEPO shall determine the payment from either Bank's Letter of credit (L/C) or Telegraphic Transfer(T/T) payment basis and notify it to Seller.

**1.6 Compliance with Invitation to Bid**

 Bidders shall prepare and submit a Bid in compliance with the procedures and requirements as provided in this ITB.

 Any failure to do so may give KOWEPO 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.

**1.7 Language**

 The Bid proposal documents shall be prepared in English.

**1.8 Unacceptable Bids**

 Any of the following Bids will not be accepted by KOWEPO :

(1) Bid which is submitted by a company not qualified for participation in this bidding.

(2) Bid which is submitted after the bid closing date.

(3) Two or more Bids which are submitted from the same mine.

(4) Bid which, as deemed by KOWEPO, deviates from the other essential requirements of ChapterⅠ, Bidding Instructions, of the ITB.

(5) Bid submitted containing any changes whatsoever in the context or any additions to the content of the attached contract, which are not required by the ITB.

**1.9 Definition of Terms**

 The meanings 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.

**1.10 Notice of Changes in the ITB**

 KOWEPO may notify the Bidder of any amendment or changes of the ITB, if any, and they will constitute a part of the ITB.

**1.11 Computation of Time**

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

**1.12 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 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.

**1.13 Validity Period of the Bid**

 The Bid including the price shall be bound as a firm offer and valid for a period of at least seven (7) calendar days after the bid closing date. KOWEPO may request the Bidder to extend the validity period of the Bid, if necessary.

**1.14 Withdrawal of Bid**

KOWEPO has the right, at any time and without any liability to the Bidder, to withdraw or delay this bid process or to re-tender or alter the scope of purchase.

#### Clause 2 - Bidding Procedures

**2.1 Qualifications of the Bidder**

**- FOR TERM** : Coal production company or Marketing Company or Trading Company only those who has performed or performing following contract during the recent three (3) years;

a) at least one (1) year coal supply term contract of no less than 60,000MT per annum to one of the five (5) power generation companies (KOWEPO, KOSEP, KOMIPO, KOSPO, and EWP) or major power generation companies(or electric power companies) in Taiwan, Japan or major steel mill companies in Taiwan, Japan and Korea,

b) coal supply spot contract of minimum 60,000MT to KOWEPO. However, if Bidder has supplied 1 panamax(60,000MT to 70,000MT) to KOWEPO, the Bidder shall submit a letter of guarantee concerning the freight costs (including demurrage cost, dead freight, port charges etc.) in order to be awarded as a successful bidder on a FOBT basis.

All bidders shall meet the whole requirement of ITB including but not limited to coal quality specification, shipping schedule and quality, etc.

If the Bidder has had any material unfaithful performance record in honoring the contract with one of Korean 5 Gencos(KOSEP, KOSPO, KOWEPO, KOMIPO, and EWP) KOWEPO shall have the right, at its sole discretion, neither to allow its participation in this Bid nor to award the contract even if it is selected as most competitive one. With regard to this, Bidders are deemed to agree not to raise any claim against KOWEPO’s referring, if any, to other Gencos whether they have any unfaithful track record.

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 KOWEPO’s future coal purchasing tender for at least 6 months, which is the KOWEPO’s sole right and could not be challenged under any circumstances.

**2.2 Bid Bond**

A) The bidders who have never had any successful record of coal supply(no less than 60,000MT equivalent to one panamax) to one of the five power generation companies(KOWEPO, KOSEP, KOMIPO, KOSPO, and EWP) or major power generation companies(or electric power companies) in Taiwan, Japan or major steel companies in Taiwan, Japan and Korea in recent three(3) years or Bidders who have material unfaithful records of coal supply to the above five power companies in Korea shall provide bid bond in favor of KOWEPO not less than five percent(5%) of the total tender price by 18:00 hours Korea Standard Time of one day prior to the bid closing date, according to the Bidding Instructions 2.2

(1) Cash or certified check issued by a first-class international bank; or

(2) Irrevocable stand-by letter of credit, in which the L/C should be advised to KOWEPO through the KEPCO-Branch of Korea Exchange Bank ; or

(3) Bank guarantee or surety bond issued by a first-class bank with the condition that Korean Bank in Korea reissue Bank Guarantee under your counter guarantee

1. Guarantee Certificate issued by Guarantee Insurance Company

B) The bid bond shall be payable unconditionally to KOWEPO at sight against the KOWEPO's simple request for payment in the event that:

 (1) the bidder withdraws his bid proposal before its expiration of validity; or

(2) the successful bidder refuses to sign the Contract within the designated period

 (3) the successful bidder fails to establish the relative performance bond within the designated period.

C) The bid bond shall be valid for at least one(1) month after the expiration of validity of the bidder proposal referenced in 1.13 Validity Period of the Bid

D) The bid bond shall be returned without interest thereon, (ⅰ) to the unsuccessful bidder within one(1) month after award of the Contract or promptly after rejection of the bidder proposal, and (ⅱ) to the successful bidder as soon as he establishes the performance bond as provided in Article 14, Chapter Ⅲ.

**2.3 Enveloping of Bid Documents**

The Bid documents as noted in Clause 3.1 shall be sealed in a single envelope marked as “Bid document for KOWEPO-COAL-2014-LT-01 and shall be submitted to the Korea Western Power Co., Ltd. The name and address of the Bidder shall be marked on the envelope.

**2.4 Submittal of Bid Documents**

 The Bid documents shall be submitted in person, by mail or courier to the address below not later than the deadline.

**Mr. Kwak, Myung-moon** / Team Leader, Coal Procurement Team

27th Floor, GFC, 152, Teheran-ro, Ganganm-gu, Seoul 135-984, Korea

 The Bid documents which are not completely sealed or submitted by a method other than those noted above shall not be accepted.

**2.5 Bid Closing Date**

 The Bid documents shall be submitted no later than **2:00 PM, February 20, 2014.** (Korea Standard Time)

Clause 3 - Preparation of Bid Documents

**3.1 Contents of Bid Documents**

 The Bid documents shall include the price proposal and the technical proposal. Each proposal shall include the following contents:

1. Bidding Price

Bidders shall submit one single price for the entire quantity (of each spec.) they offer.

 (The Bid Price Form in Chapter Ⅱ shall be used)

 (2) Shipping Conditions

(3) Coal Specifications

 Coal Specifications are to be guaranteed by the Bidder.

 (The Coal Specification Form in Chapter Ⅱ shall be used)

(4) Certificate of Performance of Coal Supply Contract

1. Integrity Pact
2. Power of Attorney

**Clause 4 - Evaluation of Bid**

**4.1 Evaluation Method of Bids**

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

○ Each Spec. shall be evaluated separately.

○ Evaluated price

 = 〔CFR price + Penalty(Sulphur + Ash + Nitrogen + Volatile Matter) + 1.21+17.85〕×

 6,080kcal/kg

 ──────────────────────────────

#####  Guaranteed Net Calorific Value based on as received basis

 ○ Penalties above shall be quoted by the following formulas;

- Sulphur penalty = US$2.31/Mt × Guaranteed Sulphur content (%)

 - Ash penalty = US$0.02/Mt × Guaranteed Ash content (%)

- Nitrogen penalty = US$0.18/Mt × Guaranteed Nitrogen content (%)

- Volatile Matter(VM) penalty = US$0.06/Mt × Guaranteed Ash content (%)

when the VM is no greater than 24%.

 - Equipments operation costs = US$1.21/Mt

 - Individual consumption Tax = U$17.85/Mt

○ CFR Price = FOBT Price + Freight Costs

 In case offered Freight Costs by the Bidders are greater than KOWEPO’s internal rates, KOWEPO may evaluate them in Bidders’ favor by adopting KOWEPO’s internal rates. And if a Bidder suggests plural loading ports, the highest freight cost among the routes from the Taean Power Plants to the ports shall be referred as a loading port.

**4.2 Selection of the Preferred Suppliers**

In the order of the lowest evaluated price according to Clause 4.1, multiple companies will be selected as the Preferred Suppliers for further individual negotiation.

**4.3 Individual Negotiation of Price and other terms and conditions with the Preferred Suppliers**

In the event that the Preferred Suppliers’ prices are in excess of the target price of KOWEPO, both parties shall negotiate the price and other terms and conditions.

In the process of the negotiation with the Preferred Suppliers, in the event that both parties fail to reach an agreement on the price and other terms and conditions, KOWEPO may, at its sole discretion, decide not to select even the lowest price supplier as the successful contract party.

**4.4 Selection of the Successful Supplier, Right of Rejection**

 According to the results of individual negotiation of price and other terms and conditions with the selected Preferred Suppliers, KOWEPO shall select successful suppliers in the order of the lowest evaluated price until the quantity amounts to the target contractual quantity of KOWEPO.

In the process, if the last lowest supplier’s quantity is in excess of the target contractual quantity of KOWEPO, the excessive quantity will be excluded from the contractual quantity.

 In the event that there are two or more suppliers who proposed the same price, the

supplier who proposed the largest quantity shall be selected as the successful supplier.

In the event that there are two or more supplies who proposed the same price as well as the same quantity, the supplier who proposed the highest Net Calorific Value coal will be selected as the successful supplier.

In the event that the proposed price of a new bidder is in the order of the lowest evaluated price, the new bidder whose supplying coal is originated from Indonesia shall be inspected by an international surveyor approved by KOWEPO. And a contract can be awarded to the new bidder conditional upon KOWEPO’s receipt of a satisfactory inspection result from the surveyor. If KOWEPO, in its sole discretion, has any doubt as to the ability of such a new bidder to fulfill the requirements of the ITB, KOWEPO has a right to reject the bid.

KOWEPO shall reserve the right, at any time without any liability, to reject any part or all of the ITB, to withdraw this ITB, to increase or decrease the quantity of necessary coal to be purchased in the ITB for the best interests of KOWEPO.

 No claim(s) from Suppliers for compensation with regard to the rejection, withdrawal and further price negotiation shall be accepted by KOWEPO.

**4.5 Appointment as Contractor**

 Award notice shall be made after reaching an agreement on the contract price and shipping schedule adjustments between KOWEPO and the lowest price supplier.

 KOWEPO shall inform the awarded supplier either FOBT basis or CFR basis as the contractual price term within two (2) weeks after notifying the supplier of appointment as Contractor.

 KOWEPO may, at its sole discretion, decide to select FOBT basis or CFR basis as the contractual price term.

**4.6 Signing of Contract**

The awarded bidders(successful bidders) shall sign a contract within three (3) weeks after the notice of contractual price term by KOWEPO.

**Clause 5 – Performance Bond**

The Seller shall establish a performance bond in favor of KOWEPO within seven (7) days after receipt of the Price Term Notice from KOWEPO 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 issued by a first class international bank with the condition that Korean Bank in Korea reissue Bank Guarantee.

In case the Bidder has had a successful record of coal supply (no less than 60,000MT equivalent to one panamax) to one of the five power generation companies(KOWEPO, KOSEP, KOMIPO, KOSPO, and EWP) or major power generation companies(or electric power companies) in Taiwan, Japan or major steel companies in Taiwan, Japan and Korea in the recent three(3) years, then KOWEPO may exempt the seller from establishing the Performance Bond.

Clause 6 –Special Terms and Conditions for Loading & Unloading

6.1 Loading Port Supervision

KOWEPO, at its sole discretion, may appoint and dispatch an independent inspector for the whole unloading process including but not limited to – barge loading, barge transferring, mother vessel loading, measuring temperatures of the barge coal, coal sampling, laboratory witnessing, sample sealing and etc,. KOWEPO may add more procedures when it determines that those are required to secure the quality and homogeneity of the loaded coal. Bidders who submitted their Bid Proposals shall be deemed to be fully acquainted with this loading port supervision and they shall fully cooperate with the whole process. All the costs related with this supervision shall be borne by KOWEPO.

6.2 Unloading Problem

If the coal actually delivered to the unloading port is not readily handleable or substantially unable to unload in the reasonable effort by KOWEPO, KOWEPO may request the Seller to select an independent inspector to investigate exact causes of the problem. KOWEPO O will also appoint an independent inspector for the same task. Pending the results of

the investigations, KOWEPO shall endeavor to finish the unloading as soon as possible. And the final results of the investigations shall be basis of the sharing ratio of directly incurred costs including demurrage money related to the subject cargo unloading. The Seller shall not have any right of not acceding to KOWEPO’s demand to select an independent inspector by reason of the full compliance of the coal specifications to the required standard in the contract.

**Chapter Ⅱ**

**Bid Formats for TERM**

**Clause 1 - Bid Price Form**

**Bid No. KOWEPO- Coal-2014-LT-01**

|  |  |  |
| --- | --- | --- |
| To | : | **Kwak, Myung-moon** / Team Leader |
|  |  | Coal Procurement Team |
|  |  | Korea Western Power Co., Ltd. |

 , undersigned, hereby offer to supply coal for Taean power plant within the laycan at the loading port in accordance with the ITB (KOWEPO- Coal-2014-LT-01)

Mine :

Loading port :

Validity : A period of seven(7) calendar days after the bid closing date.

|  |  |  |
| --- | --- | --- |
| Bidding Tonnage | Delivery Period for 1st CY | Price for 1st CY\* |
|  MT per annum( 110,000mt × ) | Q3 ’14 : MT |  FOBT US$ per MTon *(Bidder’s guaranteed CV to be inserted)* kcal/kg NAR basis. |

\* Bidder shall submit FOBT price only.

 \* Bidders shall submit one single fixed price.

|  |  |  |  |
| --- | --- | --- | --- |
| Date  | : |   |  |
| Bidder | : |   |  |
| Address | : |   |  |
|  |  |   |  |
| Tel No. | : |   |  |
| Email Addr. |  |   |  |
| Fax No. | : |   |  |
| Signed by | : |   | (Authorized Signature) |
|  |  |   | (Printed Name) |
|  |  |   | (Title) |

**Clause 2 - Shipping Conditions**

**Bid No. KOWEPO- Coal-2014-LT-01**

- Name of Bidder :

- Name of Coal Mine (including country name) :

- Name of Loading Port :

- Capacity of Loading Port

 ㆍCape Size : [ ]Mt. Max

 ㆍPanamax Size : [ ]Mt. Max

- Type of Vessel : Gearless Only

- Estimated LAYCAN :

- Loading Conditions

 · Loading Rate :

 · Demurrage / Dispatch :

 · Notice Of Readiness to load :

 · Turn Time :

ㆍ LOA : BM : DFT :

- This shipping condition should be general rule of the Loading Port and will be inserted into the contract accordingly.

**Clause 3 - Coal Specification**

 *(Mine & Origin To be inserted)*

**Bid No. KOWEPO- Coal-2014-LT-01**

|  |  |  |  |
| --- | --- | --- | --- |
| Item | Unit | Limit of Range | Supplier's GuaranteedQuality |
| Total Moisture (As received basis) | % WT | Max. 15\*₁ |  |
| Moisture (Air dried basis)  | % WT |  |  |
| Volatile Matter (Air dried basis) | % WT |  22~38 |  |
| Fixed Carbon (Air dried basis) | % WT | Max. 60 |  |
| Ash (Air dried basis) | % WT | Max. 1 |  |
| Total Sulphur (As received basis) | % WT | Max. 1.00 |  |
| Grindability (HGI) |  | Min. 45 |  |
| (Dry Basis)Hydrogen (Hd) | % WT |  |  |
| Gross Calorific Value (Air dried basis)Gross Calorific Value (As received basis) | kcal/kgkcal/kg | Min. 6,000 |  |
| Net Calorific Value (As received basis) \*2 | kcal/kg | Min. 5,700 |  |
| Nitrogen (Dry ash free basis) | % WT | Max. 2.4 |  |
| Ash Fusion Temperature IDT (Reducing Atmosphere)  | ℃ | Min. 1,200 |  |
| Ash Analysis |  |  |  |
|  Fe₂O₃ | % WT | Max. 16 |  |
|  Na₂O | % WT | Max. 2 |  |
|  K₂O | % WT | Max. 3 |  |
| Size Distribution Above 50mm | % | Max. 5 |  |
|  Under 2mm  | % | Max. 40 |  |

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

\*₁ TM is acceptable up to 18.5% max, if Ash content is equal to or less than 10%.

\*2 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 Performance of Coal Supply Contract**

Bid No. KOWEPO- Coal-2014-LT-01

We,\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to prove our qualifications as a supplier, do hereby certify that the information described below is true and correct. We, also, do confirm to provide KOWEPO of relevant supporting documents to demonstrate our qualifications as a supplier if KOWEPO requests any additional documents.

1. Buyer :
2. Seller :
3. Contract Date :
4. Supply Period :
5. Contract Volume :

Company Name : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signed by :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Authorized Signature)

Name:

Title:

Date:

Clause 5 – Integrity Pact

Bid No. KOWEPO- Coal-2014-LT-01

Integrity Pact

Understanding that transparent business management is a key factor to social development and national competitiveness, and accordingly, being fully committing to the operation of Integrity Pact System, in connection with the submit tender for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , all personnel of our company and its sub-contractors and agents hereby agree that:

1. In the process of tender, executing or performing a contract, the company shall not offer any bribe, gifts, entertainment or any other undue benefits directly or indirectly to related officials. In case it is proven that the company has violated any terms of this Integrity Pact, the company shall accept and agree that it will be prohibited from submitting tenders initiated by KOWEPO for 2 years from the date when the company was notified with the fact of violation.

2. If it is proven or disclosed, in relation with a Bid, execution or performance of concluding or execution of a contract, that the company has engaged in Bid-rigging activities or offered bribes to related officials, the company shall accept and agree that the contract will be cancelled if the contract has not been finalized, or all or part of the contract will be terminated if the contract has come into effect and the company shall not raise a formal objection as a civil or criminal case.

3. The company shall use its best effort to institute this Integrity Pact that bans bribery and to establish a company regulation that prohibits any retaliatory acts toward anyone reporting internal corruptions, that protects whistle blowers/that prohibits any retaliatory acts toward whistle blowers.

The company shall comply with this Integrity Pact as a solemn oath made on the basis of mutual trust and shall abide by this Integrity Pact as the special terms and conditions when signing the contract. The company shall not file any civil or criminal appeals regarding enforcement action resulting from non-compliance or any of the above terms.

Signed by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Chapter Ⅲ**

**Contract**

|  |
| --- |
| NOTICE : The bidder should unconditionally accept all the terms and conditions of the contract hereunder. These terms and conditions shall not be adjusted by any bidder’s request for fairness and equitability.(Ref. ITB 1.6 : -- Upon submission of Bid documents, Bidders are thereafter regarded as having agreed to fully comply with the terms and conditions of the contract in Chapter III in the Invitation to Bid.) |

BITUMINOUS COAL SALE AND PURCHASE TERM CONTRACT

(KOWEPO-COAL-2014-LT-01-xx)

BETWEEN

KOREA WESTERN POWER CO., LTD.

AND

BITUMINOUS COAL SALE AND PURCHASE CONTRACT

This Contract is made on the day of , 2012 by and between Korea Western Power Co., Ltd. (KOWEPO), a corporation organized and existing under and by virtue of the laws of the Republic of Korea with its principal office located at 29th Floor, GFC, 152, Teheran-ro, Gangnam-gu, Seoul 135-984, Korea(hereinafter referred to as the "Buyer") and , with its principal office at

(hereinafter referred to as the "Seller").

 **WITNESSETH**

WHEREAS, Seller owns and operates or markets coal mines in , and

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:

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 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) 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.

(8) 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

### **Term of the Contract**

**2.01** Term of Contract shall be 5 years starting from July 1, 2014 to Jun 30, 2019

**2.02** Extension beyond the end of the Contract Year shall be subject to the mutual agreement of both parties no later than the Contract expiry date.

ARTICLE 3

**Quantity**

##### **3.01** The quantity of Coal per annum which is the object of the sale and purchase shall be ( ) metric tons with a shipping tolerance of plus or minus 10%.

**3.02** The actual quantity loaded onboard the vessels as per the Bill of Lading shall be used in determining the cumulative tonnage which has been shipped.

**3.03** In addition, Buyer and Seller can negotiate the supply of additional quantity up to 200% of the above tonnages at mutually agreed price(s).

ARTICLE 4

**Quality**

**4.01** The quality of Coal(Spec. A) to be supplied hereunder shall be as follows.

|  |  |  |  |
| --- | --- | --- | --- |
| Item | Unit | Limit of Range | Supplier's GuaranteedQuality |
| Total Moisture (As received basis) | % WT | Max. 15\*₁ |  |
| Moisture (Air dried basis)  | % WT |  |  |
| Volatile Matter (Air dried basis) | % WT | 22 ~ 38 |  |
| Fixed Carbon (Air dried basis) | % WT | Max. 60 |  |
| Ash (Air dried basis) | % WT | Max. 17 |  |
| Total Sulphur (As received basis) | % WT | Max. 1.00 |  |
| Grindability (HGI) |  | Min. 45 |  |
| (Dry Basis)Hydrogen (Hd) | % WT |  |  |
| Gross Calorific Value (Air dried basis)Gross Calorific Value (As received basis) | kcal/kgkcal/kg | Min. 6,000 |  |
| Net Calorific Value (As received basis) \*2 | kcal/kg | Min. 5,700 |  |
| Nitrogen (Dry ash free basis) | % WT | Max. 2.4 |  |
| Ash Fusion Temperature IDT (Reducing Atmosphere)  | ℃ | Min. 1,200 |  |
| Ash Analysis |  |  |  |
|  Fe₂O₃ | % WT | Max. 16 |  |
|  Na₂O | % WT | Max. 2 |  |
|  K₂O | % WT | Max. 3 |  |
| Size Distribution Above 50mm | % | Max. 5 |  |
|  Under 2mm  | % | Max. 40 |  |

\*₁Total Moisture is acceptable up to 18.5% max, if Ash content is equal to or less than 10%.

\*₂Net 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, KOWEPO will select as a successful Bidder if KOWEPO judges that Coal can be used by the Taean Power Plant

4.02 Seller shall make its best endeavors to ensure that the coal supplied conforms with "Seller's Guaranteed Quality" based on coal Specification set out in the table in Article 4.01.

4.03 Even though the coal supplied conforms with "Seller's Guaranteed Quality", Buyer may terminate this contract by giving not less than thirty (30) days' notice to Seller if any of the following events occur.

(a) the coal is found to be unsuitable for use at the facility following burning test of the first shipment of coal received hereunder;

(b) subsequent shipments of the coal are found to be unsuitable for use at the facility due to problems that were not detected during the burning test of the first shipment of coal.

ARTICLE 5

# **Determination of Quantity and Quality**

**5.01** 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(“the Agency”) which will be selected by mutual agreement between the parties hereto.

The costs required for the determination of the quantity and quality certification thereof shall be borne by the Seller.

**5.02** Determination of the weight of Coal on the vessel shall be made by draft survey, and the quantity certified by the Agency shall be the basis of the payment for each shipment of Coal.

**5.03** 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.

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

 One sample for shipment analysis

 One sample to Buyer

#  One sample for umpire

 The One sample 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 Agency. The one umpire sample shall be retained by the Agency in a suitable airtight container properly sealed and labeled until ninety (90) days after completion of loading.

**5.05** In the event that the Buyer wishes to challenge the result of any analysis made at the loading port, the 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 (“the Independent Laboratory”).

The results of the Independent Laboratory shall be final as to the quality of the delivery in question. The costs required for such further analysis shall be borne by the Seller.

**5.06** 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(including witness of 1. sample preparation 2. sealing representative sample 3. test procedure AT LABORATORY) at any time at the expense of the Buyer.

 In such event, the Seller shall cooperate with such attendance and observation.

ARTICLE 6

**Rejection**

**6.01** If the quality of loaded Coal as determined pursuant to the quality analysis at the loading port pursuant to Article 5 is outside the limits of the range as specified in Article 4, 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 4, 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.

**6.02** 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.

**6.03** All costs and responsibility incurred to the Buyer and the Seller as a result of the rejection of Coal pursuant to Section 6.01 shall be borne by the Seller.

**6.04** 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 7

**Price(FOBT)**

**7.01** The Coal Price of the 1st Contract Year under this Contract shall be **US per metric ton based on FOBT kcal/kg net calorific value** on as an received basis at the port of .

**7.02** The Contract Price for each Contract Year after the first Contract Year shall be determined by mutual agreement.

**7.03** The consultation by the Parties concerning the review of the price shall be commenced at an appropriate point of time within three(3) months prior to the commencement of each Year.

 The price shall be determined not later than July of the Year for which the price is being reviewed.

**7.04** In the event price agreement is not reached prior to the commencement of next year, both Parties shall apply the previous year’s price or an agreed price to the next year’s shipments, which will be paid on a provisional basis until the price is fixed and both Parties shall settle the difference by invoice. In the event the price is not determined as set forth in Article 7.03, this Contract shall be automatically terminated at the end of the year, unless otherwise agreed by both Parties.

**7.05** The method of the price determination for deliveries of coal in each Year may be changed by prior written agreement between the Parties.

ARTICLE 8 **(FOBT)**

**Adjustment of the Price for Quality**

**8.01** The price of Article 7 shall be adjusted by increase and/or decrease pursuant to Section from 8.02 to 8.07 so that the price per ton payable by the Buyer to the Seller for each shipment shall be determined.

**8.02** 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 by the following formula:

 (Amount of reduction) = The FOBT price ×

Guaranteed Specification for NCV - Y

----------------------------------------------- × 1.1

 Guaranteed Specification for NCV

 In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 5.

 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:

(Amount of increase) = The FOBT price ×

Y- Guaranteed Specification for NCV

 ------------------------------------------------- × 0.9

 Guaranteed Specification for NCV

 In the above formula, "Y" shall refer to the certified net calorific value on an as received basis of Coal as determined under Article 5.

**8.03** 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:

 (Amount of reduction) = 3% of the FOBT price ×

 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 5.

**8.04** 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:

 (Amount of reduction) = 3% of the FOBT price ×

 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 5.

8.05 Ash Fusion Temperature IDT

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

 (Amount of reduction) =

Guaranteed Specification for Ash Fusion Temperature - Y

 2% of the FOBT price × ------------------------------------------------------------------------

 10℃

 In the above formula, "Y" shall refer to the certified Ash Fusion Temperature of Coal as determined under Article 5.

8.06 Nitrogen

 In the event the certified Nitrogen exceeds Guaranteed Specification for Nitrogen (Dry ash Free Basis), the price per ton shall be reduced by the amount calculated by the following formula:

 (Amount of reduction) =

Y - Guaranteed Specification for Nitrogen

 3% of the FOBT price × -------------------------------------------------------

 0.6%

 In the above formula, "Y" shall refer to the certified Nitrogen content(Dry ash Free Basis) as determined under Article 5.

8.07 Volatile Matter

 (Amount of reduction) =

Guaranteed Specification for Volatile Matter - Y

 1% of the FOBT price × --------------------------------------------------------------

 1.0%

 In the above formula, "Y" shall refer to the certified Volatile Matter(Air Dried Basis) as determined under Article 5.

 If above “Y” is greater than 24%, this penalty clause shall not be applied.

ARTICLE 9

**Payment**

**9.01** Unless otherwise agreed between the parties hereto, any and all payments by Buyer to Seller shall be made by 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

**9.02** Buyer shall determine the payment terms from either Banker's Letter of Credit payment basis or Telegraphic Transfer (T/T) payment basis and notify it to Seller.

**9.03.1** In the case of Banker's Letter of Credit payment basis, Buyer shall establish an irrevocable Letter of Credit through a commercial bank in favour of a beneficiary nominated by Seller with a telegraphic transfer remittance 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.

**9.03.2** 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 one (1) 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, and

 (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, and

 (ⅲ) Certificate of Quantity (including draft survey report), Sampling and Analysis in accordance with the provisions of this Contract in triplicate, and

 (ⅳ) Certificate of Origin in triplicate.

 (ⅴ) Copy of Time Sheet at the loading port.

 (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, Ash Fusion Temperature IDT, Total Nitrogen and Total Volatile Matter

**9.03.3** 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.

**9.04.1** 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 KOWEPO ;

 (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.

**9.04.2** 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 10

**Delivery(FOB)**

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

\* This ARTICLE should be change in accordance with the proposed shipping conditions of the Loading Port in ITB Clause 2.

**10.01** 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.

**10.02** At least thirty (30) days prior to the commencement of each Quarter, Buyer shall give notice to Seller of provisional shipment schedules showing the quantity to be shipped for each vessel.

**10.03** Fourteen (14) days prior to the estimated time of arrival of a vessel, the Buyer shall nominate the performing vessel with laydays narrowed to ten (10) days spread, which shall fall within original layday spread and loading tonnage plus or minus ten percent (10%) at Buyer's option.

 The Seller shall, within one (1) working day 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.

**10.04** 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.

**10.05** 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, during ( ).

**10.06** 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 count as laytime unless such time lost is due to the causes stipulated in Article 15 and the Seller notifies the Buyer and declares force majeure thereof in accordance with Article 15. However, the time from when force majeure event(s) occur(s) to when a force majeure is declared shall count as laytime.

 Laytime shall end at the point of time when the loading, all trimming work and the draft survey has been completed.

**10.07** TheSeller 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 count as laytime.

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

Vessel Size Average Loading Rate

 (Deadweight long tons) (MT/W.W.D.)

~ up to 60,000

 over 60,000 up to 100,000

 over 100,000 up to 150,000

over 150,000

**10.08** 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 despatch money to Seller as half the demurrage rate for all laytime saved at the loading port.

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

 Vessel Size Daily Demurrage

 (Deadweight long tons) Rate in US$

 ~ up to 60,000

over 60,000 up to 100,000

over 100,000 up to 150,000

over 150,000

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

 Notwithstanding any other clauses to the contrary expressed or implied hereto, if Seller fails to start loading the coal within the mutually agreed laycan due to Seller’s default in arranging the coal, Demurrage and Despatch money shall be as per Charter Party.

**10.09** 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.

**10.10** 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.

**10.11** 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.

**10.12** 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.

**10.13** 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 5.01.

ARTICLE 11

### **Guarantee of Supply**

**11.01** Seller guarantees to Buyer the stable supply of Coal in the quantities described in Article 3 and of the quality described in Article 4. For this purpose, Seller shall give the first priority in cargo allocation for coal export.

**11.02** In the event that the supply of Coal by Seller is interrupted due to force majeure or other reasons, Seller shall use its best endeavors upon Buyer's request to supply Coal of Quality set forth in Article 4 from alternative sources in Seller's country or any other country.

**11.03** Seller shall be liable to Buyer for excess cost resulting from such supply or other damages caused by Seller's breach, except as contemplated by Article 15, including but not limited to liability and expenses incurred by Buyer with respect to the transportation or other handling of Coal.

**11.04** If Seller is unable to supply the substitute coal required by reason of Seller's breach to Buyer in a situation of interruption of normal supply(except as contemplated by Article 15, 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 7 and 8.

ARTICLE 12

#### Liquidated Damages For Delay and Quantity Shortage

**12.01** In case of CFR based Contract, If the Seller fails to arrive a vessel at the Port of Unloading on or before the last date in the mutual agreed laycan for that shipment as specified in the Article 10, the Seller may supply 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 supply 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 supply 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 supply 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.

**12.02** In case of both CFR contract and FOBT contract, if the quantity of Coal shown in the Bill of Lading (B/L) fails to meet the required quantity in stowage plan notified by ship master (the Stowage Plan Quantity), in addition to other remedies available to the Buyer, the Seller shall pay the Buyer liquidated damages for quantity shortage calculated as follows:

 The Base Price × The Stowage Plan Quantity × 30%

 The Stowage Plan Quantity - B/L Quantity

 × ----------------------------------------------------

 The Stowage Plan Quantity

**12.03** 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.

ARTICLE 13

**Warranties With Respect To Coal Quality**

**13.01** The Seller shall supply the Coal of quality in accordance with the provisions of the Contract and warrants that :

 (a) Each shipment of Coal shall be of good grade meeting the requirements referenced in Article 4 (Quality) 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 5 (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 ;

**13.02** 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 materials in the Coal. Otherwise, the Buyer shall pay. The determination of the independent survey company so appointed shall be final, conclusive and binding on both parties.

**13.04** If the Testing Laboratory determines that Organic Contaminants are present in a shipment of Coal, then the Seller shall pay to the 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.

**13.05** Coal loaded in all layers of the vessel vertically and all hatches of the vessel horizontally shall be of the uniform quality in all items specified in Article 4 of this Contract. If otherwise, Buyer may reject the Coal loaded at the relevant vessel without any liability thereof.

ARTICLE 14

### **Performance Bond**

**14.01** The Seller shall establish a performance bond in favor of KOWEPO within seven (7) days after receipt of the Price Term Notice from KOWEPO 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 issued by a first class international bank with the condition that Korean Bank in Korea reissues Bank Guarantee.

In case the Bidder has had a successful record of coal supply(no less than 60,000MT equivalent to one panamax) to one of the five power generation companies(KOWEPO, KOSEP, KOMIPO, KOSPO, and EWP) or major power generation companies(or electric power companies) in Taiwan, Japan or major steel companies in Taiwan, Japan and Korea in the recent three(3) years, then KOWEPO may exempt the seller from establishing the Performance Bond.

The performance bond shall be an absolute and unconditional guarantee and unconditionally payable to the KOWEPO forthwith on KOWEPO's simple demand of payment in the event that the Seller fails or refuses to promptly fulfill its relevant obligations without any justification.

The performance bond should conform to the specimen attached to this Article.

**14.02** The performance bond shall be valid from the date of its establishment until at least 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 performance bond to confirm to Buyer, not later than five (5) days before the date of expiry of that performance bond, of the extension of the validity of that performance bond for such period of time as required by the Buyer. If the Seller’s performance bond is not so extended, the Buyer may draw the full amount of that said such performance bond.

**14.03** In the event that the Seller fails to fulfill its obligations under the Contract, the performance bond shall revert to KOWEPO without any justification and KOWEPO may draw such full amount under the performance bond if KOWEPO judges it is necessary to compensate KOWEPO for its losses, damages, expenses, or other costs (or any part thereof) arising from or related to the Seller's default.

      The performance bond shall be payable unconditionally, without any justification, to KOWEPO at sight against KOWEPO 's simple demand for payment to the guarantor .

**14.04** KOWEPO 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.

**14.05** If the Seller fails to establish the performance bond required in this Article to be deposited within the required period specified above, the Buyer shall have the right to cancel the Contract.

**14.06**   In no event shall the Seller be exempted from any liabilities under this Contract exceeding the performance bond amount, and KOWEPO's reversion of any amount of the performance bond shall not prejudice any of KOWEPO's additional rights and remedies available under the Contract and law.

[Attachment: P-Bond (Specimen)]

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

*[Quote]*

Issuing Date :

To : Korea Western Power Co. Ltd.

 Planning Department

Guarantee No.

or Credit No.

Dear Sir,

We hereby irrevocably undertake to pay to you an amount not exceeding ten (10) percent of the total Contract price *(US$       )* despite any objection by the ‘Seller’, upon receipt by us of your first and simple demand accompanied by your declaration stating that the ‘Seller’ has not complied with the terms and conditions of the Contract No*.           .*

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.

Yours faithfully,

Manager

Guarantee Department

*[Unquote]*

This message is the operative instrument

ARTICLE 15

**Force Majeure**

**15.01** TheSeller 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.

**15.02** 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.

**15.03** 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 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 90days or more either party may cancel any fulfilled orders affected by such delay without any liability to the Seller/Buyer.

ARTICLE 16

**Termination**

**16.01** 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.

**16.02** In the event conditions of hardship stated in the Article 17 continue, and Buyer judges that there is no likelihood of ending such conditions in the near future, then Buyer may terminate this Contract without any liability or charge to Buyer by giving sixty (60) days' prior written notice to Seller.

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

ARTICLE 17

**Hardship**

**17.01** The Parties confirm the spirit of mutual cooperation and long-term goodwill which underlies this Contract and shall transact the business contemplating the principles of mutual cooperation. The Parties therefore undertake that if it should become apparent, at any time after the signing of this Contract, that the implementation of its terms and conditions will inflict undue hardship on either of them, they shall negotiate with a view to rectifying the situation.

**17.02** In the event Buyer judges that there is a substantial difficulty in using Coal due to the quality of the Article 4 and any other elements of quality than those stipulated in Article 4, which may arise in future for technical and/or environmental reasons, both Parties shall, upon request by Buyer and under recognition of such hardship on Buyer, enter into good-faith negotiations to rectify such situation.

ARTICLE 18

**Transfer of Title and Risk**

**18.01** 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.

**18.02** In the event that a shipment of coal is rejected in accordance with Article 6, 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 19

**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 20

**Governing Law**

 This Agreement shall be governed, construed and interpreted in accordance with the laws of

 the Republic of Korea.

ARTICLE 21

**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 email., telex, facsimile, cable or radio unless otherwise expressly provided for in this Contract.

If the notice is to the Buyer, to:

Fuel Procurement Team

Korea Western Power Co. Ltd

Attention : Mr. Kwak, Myung-moon / Team Leader, Coal Procurement Team

27th Floor, GFC, 152, Teheran-ro, Gangnam-gu, Seoul 135-984, Korea

Facsimile No. : 82-2-3456-7629

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

Attention :

Address :

Facsimile No.:

E-mail address :

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

ARTICLE 22

**Assignment**

**22.01** 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 nor 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.

**22.02** Any assignment pursuant to Section 22.01 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 the assignment.

ARTICLE 23

**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 24

**Effective Date**

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

ARTICLE 25

**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.

|  |  |  |  |
| --- | --- | --- | --- |
| **SELLER** | **:** | **BUYER** | **:** |
|  |  | **Korea Western Power Co., Ltd.**  |  |
| Signed by | :  | Signed by | :  |
| Name | :  | Name | :  |
| Title | :  | Title  | : Managing Director |
|   |