

Mahanadi Coalfields Limited

(A Subsidiary of Coal India Limited)

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NO. MCL/SBP/GM/S&M/NOTICE/NCDP-FSA/2009/4612

DT.15.01.2009

N O T I C E

Sub : Memorandum of Understanding for new consumers coming through LOA route.

As per Fuel Supply Agreement (FSA) for new consumers coming through Letter of Assurance (LOA) route, commencement of coal supplies are dependent on fulfillment of certain condition precedents both by Purchaser and Seller. In respect of Seller condition precedents also includes tying-up arrangement for import of coal. However, import of coal has still not been tied-up, but yet consumers want that their coal supplies should be commenced after execution of FSA.

To take care of the relevant clauses in the FSA and decision to supply part quantity from indigenous coal and part from imported coal, such consumers need to sign Memorandum of Understanding (MOU). A copy of the model MOU is available in our website.

GENERAL MANAGER(S&M)

*Cc : GM(System), MCL with a request to hoist on MCL's website.
SOM, S&M Deptt., MCL HQ for necessary hoisting in website.*

OC – RMB

MC – Sr.PA

FORMAT FOR M.O.U

Date: _____

MEMORANDUM OF UNDERSTANDING (MOU)

Between

MAHANADI COALFIELDS LIMITED (MCL) (SELLER)

AND

M/s _____ (PURCHASER)

- 1) *Whereas, a Fuel Supply Agreement dated _____ has been signed between seller and Purchaser for supply of coal to _____ (Name and location of the Plant) of the Purchaser.*
- 2) *Whereas, the Agreement dated _____, inter-alia, provides for certain conditions precedent (CP) of the Seller as well as the Purchaser, issuance and acceptance of notices of satisfaction of these CPs by respective Parties, as applicable and also the determination/declaration of "Effective Date", "Target Start Period" and "First delivery Date".*
- 3) *Whereas, the Purchaser hereby declares and warrants that the Purchaser's CPs have been achieved/fulfilled.*
- 4) *Whereas, the Seller is yet to achieve/fulfill Seller's CP in respect of supply of imported coal. Notwithstanding this, the Purchaser is desirous for commencement of indigenous coal supplies under the Said Agreement, quantum of which shall be at the absolute discretion of Seller from time to time.*
- 5) *Whereas, the Purchaser has conveyed unconditional acceptance for supply of imported coal in the prescribed letter format.*
- 6) *Now, therefore, it is mutually agreed and declared as under:*
 - (i) *This MOU shall form an integral part of the Agreement dated _____.*
 - (ii) *Provisions of the Agreement dated _____ regarding issuance of notice of satisfaction of Purchaser's CPs and its acceptance by the Seller are deemed to have been complied.*
 - (iii) *Provision of the Agreement dated _____ regarding issuance of notice of satisfaction of Seller's CP and its acceptance by the Purchaser are dealt as under:*
 - (a) *CP in respect of supply of domestic coal is deemed to have been waived by the Seller provided that no project is identified for supply of coal to Purchaser on Cost Plus Basis .*
 - (b) *CP in respect of supply of imported coal is deferred till the same is achieved /*

fulfilled by the Seller.

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- (iv) "Effective Date" of the Agreement dated _____ shall be the date of signing this MOU.*
- (v) "Target Start Period" under the Agreement dated _____ shall be a period of 3 months commencing from the date of signing of this MOU and "First Delivery Date" shall be 1st of the month following the date of signing this MOU.*
- (vii) Quantum of supply of indigenous coal under the Agreement dated _____ shall be at the sole discretion of Seller from time to time but shall not exceed 50% of ACQ in any case.*
- (viii) For the purpose of calculating the compensation arising out of short supply or short lifting, ACQ under the said Agreement dated _____ shall be reckoned as reduced to 50%. In other words, compensation shall be payable if supply/lifting falls below 25% of ACQ as given in FSA.*
- (ix) As quantum of allocation of indigenous coal may vary from time to time, the difference between 50% of ACQ and quantum of allocation of indigenous coal made by Seller during the corresponding period, shall be counted as deemed delivered quantity of seller.*
- (x) Notwithstanding anything to the contrary, the performance incentive shall be payable by the Purchaser to the Seller by reckoning of ACQ as reduced to 50%. In other words, performance incentive with multiplier at 0.15 for additional deliveries between 45% to 47.5% of ACQ and with multiplier as a 0.30 for additional deliveries in excess of 47.5% of ACQ shall be payable by the Purchaser to Seller.*
- (xi) On receipt of Side Agreement regarding imported coal from CIL, Purchaser shall execute and abide by the same forthwith, and any arrangement as per the provision of the Agreement dated _____ and this MOU shall be necessarily subject to being consistent and in accordance with the Side Agreement.*
- (xii) Seller reserves the right to terminate this MOU without any liability or notice whatsoever.*
- (xiii) As and when, if any captive coal block is allotted to the Purchaser, the same shall be intimated to the Seller. ACQ under FSA will stand modified accordingly.*

For MCL

For Purchaser

Director(Tech./Oprn.)