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TEMPLATE & DRAFT - SALES AND PURCHASE CONTRACT

Contract No:

THIS AGREEMENT MADE AND ENTERED INTO ON \_\_\_\_\_ 20

Commento [cg1]: Date of the signature

VALID FOR 5 (FIVE) DAYS

Commento [cg2]: Terms of duration

By and between:

Herein after called the "seller" with

Through:

And

Reg no.: \_\_\_\_\_

Herein after called the "buyer" and

Commento [cg3]: Parties

Whereas: The seller and buyer, each with full corporate authority, certifies, represents and warrants that each can fulfill the requirements of this agreement and respectively provide the products and the funds referred to herein, in time and under the terms agreed to hereafter;

and

Whereas: The buyer hereby agrees and makes an irrevocable firm contract to purchase \_\_\_\_\_ MT (\_\_\_\_\_ metric tons) \_\_\_\_\_ of cement \_\_\_\_\_ N or R cost, freight and insurance (CIF) incoterms \_\_\_\_\_ 20,

Commento [cg4]: incoterms

and

Whereas: The seller and the buyer both agree to finalize this contract under the terms and conditions; and the product offered for sale is subject only to the terms and conditions contained in this contract and strictly confidential between the buyer and the seller and it is therefore agreed as follows:

Commento [cg5]: premises

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1. **PRODUCT**

\_\_\_\_\_ SHALL CONFORM TO INTERNATIONAL STANDARD ACCORDING TO, BRITISH STANDARDS \_\_\_\_\_, OR UNITED STATES STANDARDS \_\_\_\_\_ or RUSSIAN CERTIFICATION \_\_\_\_\_ OR EUROPEAN STANDARD \_\_\_\_\_ 2000

Commento [cg6]: conformity

SPECIFICATIONS:

2. ~~ORIGIN~~

~~SELLERS OPTION Excluding China~~

3. **DESTINATION / PRODUCT DISCHARGE:**

- 3.1 Destination shall be **CIF** \_\_\_\_\_ (non USA sanctioned port) (see article 26 terms and definitions) subject to sellers receipt of all appropriate permits, permissions and licenses.
- 3.2 The basis of delivery for all other shipments shall be minimum twelve thousand five hundred (12,500) metric ton shipments.
- 3.3 Delivery shall begin thirty to forty (30 -40) days after receipt and confirmation of an operative financial instrument acceptable to the seller, and completed within the stated time.
- 3.4 Minimum discharge rate of fifteen hundred (1,500) metric tons per weather working day (WWD) subject to discharge port offloads capabilities.

Commento [cg7]: incoterms

4. **PRODUCT DELIVERY**

- 4.1 The date (s) of bill of lading (CIF) shall be considered the date (s) of delivery.
- 4.2 The first delivery shall begin thirty to forty (30 - 40) days after receipt and confirmation of a letter of credit acceptable to the seller.
- 4.3 The seller shall have the right to deliver earlier than agreed in this contract giving notice to all designated parties as required herein, with the approval of the buyer.
- 4.4 The product shall be shipped to the relevant provisions of this contract with the shipment to be forwarded to destination port/s in minimum shipments of twelve thousand five hundred (12,500) metric tons per lift (+/-5%)

Commento [cg8]: risk passage: incoterms

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- 4.5 Total shipments shall be according to shipping schedule. (See "Appendix 2") minimum is subject to slight and reasonable variations in schedules due to the customary and usual exigencies. Consecutive shipments shall be shipped by delivering and receiving schedule of buyer, sent to the seller after the first shipment has left the port as indicated by the SGS certificate. Incoterms 20 / CIF (see article 26 terms and definitions)
- 4.6 The buyer and the seller agree that partial shipments are allowed and transshipment not allowed.

## 5. CONTRACTED QUANTITY

The total quantity of the contract shall be determined by the certifications of weight issued by the inspection authority and by the bill of lading of the shipment that was in effect delivered to the buyer.

## 6. PRODUCT WEIGHT AND QUALITY

- 6.1 The seller guarantees that each shipment of cement 42.5 shall be provided with an inspection certificate of weight and quality at time of loading and such certificate shall be provided by Société \_\_\_\_\_ or similar recognized authority at seller's expense, and shall be deemed to be final.
- 6.2 The seller shall instruct said authority to carry out the inspection in strict accordance with the international chamber of commerce (I.C.C.) rules.
- 6.3 The buyer shall, if desired, and at his own expense provide additional inspection at port of loading to confirm loading.
- 6.4 If discrepancies should at any time and in particular case result in relation to the inspection certificate (s) issued at the port of loading and destination, it is hereby agreed that arbitration shall be employed to determine the appropriate judgment.
- 6.5 Both parties agree to be bound by the arbitrator's decision for or against either buyer or seller.

## 7. PACKING

- 7.1 The product will be packed in net \_\_\_ kg (\_\_\_ kilograms) new polypropylene bags with polyethylene lining. The bags have a combined tare of \_\_\_ gm (\_\_\_ grams) and are sufficient to ensure the safe arrival of product to destination and packed in 1MT, 1.5MT or 2MT wet proof sling-bags/big-bags

## 8. QUANTITY

- 8.1 \_\_\_\_\_ METRIC TONS (+/-5%) CIF FOR CONTRACT

Commento [cg9]: packaging

- 8.2 **25,000 METRIC TONS (+/-5%) CIF PER MONTH** Commento [cg10]:
9. **PRICE PER METRIC TON**
- \_\_\_\_\_ UNITED STATES DOLLARS \$\_\_\_\_\_ CIF **ASWP** (NON USA SANCTIONED PORT)
10. **CONTRACT AMOUNT**
- UNITED STATES DOLLARS \$\_\_\_\_\_ .00 (+/- 5%)  
**MILLION \_\_\_\_\_ HUNDRED THOUSAND US DOLLARS** Commento [cg11]: price
11. **PAYMENT TERMS** Commento [cg12]: payment terms
- 11.1 Shall be by **Irrevocable, Confirmed, Non-Transferable, Auto-Revolving Documentary Letter of Credit (MRDLC)** with a face value of \_\_\_\_\_ **Million \_\_\_\_\_ hundred and \_\_\_\_\_ Thousand United States Dollars (US\$ \_\_\_\_\_ .00) (+/-5%)** and is assured for the full contract value of \_\_\_\_\_ **Million \_\_\_\_\_ Hundred Thousand United States Dollars (US\$ \_\_\_\_\_ .00)**. This instrument will be valid for 14 months and 16 days on a 12 month contract and issued or confirmed by a **top 50 Western Bank**.
- 11.2 The letter of credit shall allow a minimum of fifteen (15) banking days for presentation and negotiation of documents but within the expiry period.
- 11.3 The letter documents shall be negotiable and payable at the seller's bank; the negotiation and payable shall be at counter of corresponding bank.
- 11.4 Letter of credit opening bank shall allow adding confirmation and advising by any bank at the expense of the buyer's side.
- 11.5 All bank costs from buyer's bank to seller's bank are for the buyers account.
- 11.6 Transfer of the letter of credit shall be on sellers' account (beneficiary) all credit to be made out to mandate holder with full corporate authority.
- 11.7 If a letter of credit is issued by the buyer to the seller that is not in accordance with the terms of the contract or what is acceptable to the seller and the sellers bank the contract will be cancelled and the buyer shall be responsible for all confirmation, advising and cancellation costs.
12. **PERFORMANCE BOND**

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Two (2%) percent of the monthly shipment value will be issued within ten (10) international banking days of receipt, confirmation, verification and acceptance of letter of credit acceptable to the seller and the sellers bank.

13. **PROOF OF PRODUCT**

Full POP shall be provided by seller after receipt of a **non-operative** letter of credit acceptable to seller and seller's bank by Swift MT799. **Or** a partial POP can be provided in form of an **AFFIDAVIT, CONFIRMED BY THE SELLERS BANK** when a payment of \$30,000 "Buyers Good Faith Deposit" has been received into an Escrow Account. The \$30,000 is fully refundable when the buyer has fulfilled his obligations under this contract. Should the buyer, after signing this agreement, fail to deliver the non-operative LC within the time frame of 30 days or for any other reason breach this agreement, the seller has the right to cancel this agreement and keep the "Buyers Good Faith Deposit" for defaulting of this agreement.

14. **PRODUCT DOCUMENTATION PER LIFT**

A full set of the following documents will be presented to the buyer, buyer's bank:

- A. Three (3) original and three (3) copies of signed commercial invoices;
- B. Three (3) original and three (3) copies of full set of clean on board ocean
- C. Bill of lading (b/l) marked "fright pre-paid" issued to the order of buyer;
- D. Two (2) original and four (4) copies of certificate of quality quantity and weight inspection issued by SGS only;
- E. One (1) original and four (4) copies of certificate of origin, issued by the chamber of commerce and industry of the country of origin;
- F. One (1) original and two (2) copies of shipping company statement confirming that the age of the vessel does not exceed twenty (20) years and the vessel is registered under Lloyds registry;
- G. One (1) original and two (2) copies of non-radioactivity certificate;
- H. Pre-shipment condition survey of cargo, inspection certificate for the vessel (cargo hold cleanliness/suitability to load);
- I. International maritime bureau certificate;

15. **PRODUCT INSURANCE**

The seller shall provide insurance at his sole expense and responsibility covering **110%** of total shipment value and the buyer is the beneficiary.

16. **DEMURRAGE**

- 16.1 At the loading port it is on seller's account.

Commento [cg13]: insurance

Commento [cg14R13]: insurance

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16.2 At the discharging port it is on buyer's account.

17. **IMPORT FACILITIES, DOCUMENTS, TAXES AND FEES**

17.1 All taxes or levies imposed by the country of destination having any effect on this contract are on the buyer's account and his sole responsibility.

17.2 Buyer must have all import permissions and permits in writing, and copy sent to seller.

17.3 Buyer bears the sole responsibility of securing all permits, licenses or any other documents required by the government of the importing nation.

17.4 Seller will bear no responsibility to provide such documentation.

17.5 Buyer will bear all costs associated with securing such documents and will also bear all costs and penalties if such documents are not secured.

17.6 In no case shall the seller be held liable for missing or improper documentation the buyer is required to provide. Shipping based on Incoterms 2000.

Commento [cg15]: taxes and fees

18. **FORCE MAJEURE**

Neither party to this contract shall be held responsible for breach of contract caused by an act of god, insurrection, civil war, war, military operation or local emergency. The parties do hereby accept the international provision of "Force Majeure" as published by the international chamber of commerce, Geneva, Switzerland, and as defined by I.C.C. rules uniform customs and practice.

Commento [cg16]: force majeure

19. **DISPUTES AND ARBITRATION**

The parties hereby agree to settle all disputes amicably. If settlement is not reached, the dispute in question shall be submitted and settled by arbitration at the International Arbitration Association Chambers in Geneva, Switzerland by one or more arbitrators appointed in accordance with said rules and regulations and the losing party will pay the arbitration fee. The findings of the arbitration shall be considered as final, irrevocable and binding upon both parties.

Commento [cg17]: dispute resolutions

20. **AUTHORITY TO EXECUTE THIS CONTRACT**

The parties to this contract declare that they have full authority to execute this document and accordingly to be fully bound by the terms and conditions.

21. **EXECUTION OF THIS CONTRACT**

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This contract may be executed simultaneously in two or more counterparts via electronic (email) or facsimile transmission, each of which shall be deemed as originals and legally binding.

## 22. GOVERNING LAW

This contract shall be governed, and interpreted in accordance with the united nation convention for the sale of goods (U.N. Convention). In event of inconsistency between this contract and the provisions of the U.N. Convention, this contract shall have priority for the purpose of article 39 of the U.N. Convention a reasonable period of time shall be deemed to be five (5) days. This contract shall further be construed in accordance with the courts of the European Union, which shall apply to ICC rules and regulations.

Commento [cg18]: reference to CISG

## 23. LANGUAGE USED

The English language shall be used.

Commento [cg19]: language

## 24. ASSIGNMENT

This agreement is assignable and transferable by the seller, without prior written permission of the other party.

## 25. NON-CIRCUMVENTION AND NON-DISCLOSURE

The parties accept and agree to the provisions of the International Chamber of Commerce, Geneva, Switzerland for non-circumvention and non-disclosure with regards to all and everyone of the parties involved in this transaction and contract, additions, renewals, and third party assignments, with full reciprocation for a period of (5) five years from the date of execution of this contract. This clause is extensive to all subsidiaries and or affiliated companies. It is further agreed that any information of buyer and seller contained in this agreement is to be held in the strictest confidence, and any violation of which will resolute in the immediate cancellation of this agreement.

## 26. PROCEDURES

1. The seller, after discussing and finalizing all amendment with the buyer on phone or via fax or e-mail, amends where necessary the contract, and signs, seals and issues to the buyer a final copy of the contract for its completion.
2. The buyer reviews the final contract and upon acceptance signs the final copy contract and returns it to the seller. If further revisions are

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required they are noted and sent back to the seller for further review. Any facsimile or electronic copy shall be considered as the original.

3. Upon receipt of the accepted signed and sealed final contract from the seller via fax or email, buyer will print a copy of the contract as a hard copy, sign it and return it to us. Seller will then send three (3) hard copies to the buyer of their final contract signed and sealed.
4. **Before the payment instrument is transferred** to a designated mandate holder account the text of the payment instrument must be **reviewed and approved by a representative of Equity Business Trust and/or the Seller** and notification of approval shall be sent to the buyer.
5. The **non-operative irrevocable prime bank letter of credit** is issued, confirmed and guaranteed by a top world prime bank acceptable to the seller, in accordance with the agreement within 7-international banking days of signing and exchanging this agreement and from receipt of the irrevocable prime bank guarantee in accordance with this agreement, the seller's bank will issue to the buyer's bank the proof of product by Swift MT 700 **that will activate the letter of credit.**
6. Within 10-international banking days of the receipt, verification and authentication of buyer's irrevocable prime bank guarantee at seller's bank, the seller will issue a 2% performance bond for the value of the monthly shipment.
7. Delivery and shipment shall commence after the fulfillment of the procedure, stated above, as per the terms and conditions of this contract.

## 27. AGREEMENT TO TERMS

- 27.1 Signatures on this agreement received by the way of facsimile, mail and /or e-Mail shall be an executed contract. Agreement enforceable and admissible for all purposes as may be necessary under the terms of the agreement.
- 27.2 All signatories hereto acknowledge that they have read the foregoing agreement and by their initials and signature that they have full and complete authority to execute the document for and in the name of the party for which they have given their signature.



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27.3 **Electronic signature is valid and accepted as hand signature, EDT** (electronic document transmissions)

Fourteen months and sixteen (16) days. Includes first thirty to forty five days where shipment is being prepared;

27.4 If any party to this agreement should make unauthorized contact with the bank of the seller or the buyer, such contact shall be considered interference with the agreement and shall at the option of the buyer or the seller, constitute valid reason to terminate this agreement. The interfering party will be charged with the loss of profits in this transaction by the injured party who will be entitled to file legal proceedings against the interfering party at the international chamber of commerce at Paris, France to recover their losses.

27.5 The buyer agrees to open the bank guarantee according to the payment schedule within five (5) days after signing of the final contract, and if the letter of credit is not opened than the buyer shall pay to the seller a fee equal to two percent (2%) of the full contract value within fifteen (15) calendar days of default

27.6 We also confirm that said funds are good clean, cleared unencumbered, legitimately earned and of non criminal origin

27.7 Any changes made in the contract that are not initialed will make the contract null and void.

**BY SIGNING ON THE SIGNATURE PAGE THE PARTIES HEREBY ENTER INTO THIS AGREEMENT PROVIDED THAT THE ACCEPTANCE EXPIRATION DATE ON THE FULL CORPORATE OFFER HAS NOT PASSED PRIOR TO SIGNATURE.**

SIGNATURE PAGE

**Witness whereof, the parties hereto do set their hands and are witnessed with seals upon this Commodity Contract as of the following date:**

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**Seller Signature:**

**FOR SELLER:**

**DATE:** \_\_\_\_\_ 20\_\_

**SELLER DETAILS:**

**Buyer Signature:**

**FOR BUYER :**

**DATE:** \_\_\_\_\_ 20\_\_

**BUYER DETAILS:**

Company Name:

Reg no.:

Adress:

FAX:

MOBILE:

EMAIL:

FAX: +

MOBILE: +

EMAIL:

**WITNESS:**

**General Manager:**

**AGENT:**

**MANDATE HOLDER DETAILS:**

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Reg no:

Tel: +1-

Mobile: +

Mobile:

Email:

**DATE:** \_\_\_\_\_ 2009

Email:

**DATE:** \_\_\_\_\_ 2009

**APPENDIX “1”**

**BANKING INFORMATION**

**SELLERS BANKING INFORMATION**

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**APPENDIX "2"**

**DELIVERY SCHEDULE**

**1. Delivery:**

Delivery of Portland Cement 42.5 will commence no later than 45 days after the acceptable operative payment instrument is received at the Seller's bank.

**2. Transport:**

All supervision and fees or levies at the port of loading are for the Seller's account.

Vessel must be classified as 100-A-1 in the Lloyd's Register or be of an equivalent classification and must **not be older than twenty (20) years**.

Vessel should be certified cargo hold cleanliness / suitable to load.

Not later than seventy two (72) hours from the completion of loading, the Seller's agent shall telex, fax or cable the Buyer and inform him of the vessel's sailing date and the expected time of arrival at the port of destination. Seller shall also inform the Buyer of the vessel's name, vessel's capacity, number of hatches, number of cargo and particulars of the vessel's readiness to effect operations through all hatches and at completion of loading the quantity loaded per chamber and the quantity shipped.

**3. Vessel Discharge**

The vessel's Master is to advise the Buyer's agent at port of discharge the vessel's name, date of arrival, vessel capacity, number of hatches / number of cargo chambers, quantity loaded per cargo chamber and the particulars of the vessel's readiness to effect cargo operations through all hatches.

Lay time shall commence from 1.00 PM if vessel's notice of readiness to discharge is given prior to noon and from 8.00 AM of the next working day if notice is given

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after noon. If the port is congested, then lay time is to commence twenty-four (24) hours after notice of readiness is given. The Buyer is responsible for the product discharge.

The average discharge rate shall be 1,500 MT for bagged product at 5,000 MT for bulk product per weather working day of twenty-four (24) hours. If the port of discharge has a lower average discharge, the discharge rate will be adjusted according to the port's capacity. The times from 5.00 PM on Saturday to 08.00 AM on Monday and from 5.00 PM on the day preceding to 08.00 AM on the day succeeding any holidays are excluded even if used.