

# **SALES AND PURCHASE CONTRACT AGREEMENT**

## **SAMPLE DRAFT**

**FOR PHILIPPINES ORIGIN**

**IRON ORE CONCENTRATE**

**TERMS: CFR**

**PARTIES TO CONTRACT**

**AS SUPPLIER**

**AND**

**CONTRACT NUMBER:**

**CONTRACT DATE:**

**august 23, 2017**

**BUYING PARTY (HEREINAFTER REFERRED TO AS "BUYER")**

COMPANY NAME :  
ADDRESS :  
TELEPHONE NUMBER :  
AUTHORIZED PERSON NAME :  
POSITION : President/Owner  
EMAIL ADD :

**BUYING PARTY BANK DETAILS**

BANK NAME :  
ADDRESS :  
ACCOUNT NUMBER :  
ACCOUNT NAME :  
SWIFT CODE :

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**SELLING PARTY (HEREINAFTER REFERRED TO AS "SELLER")**

COMPANY NAME :  
ADDRESS :  
TELEPHONE NUMBER :  
AUTHORIZED PERSON NAME :  
POSITION : President/Owner  
EMAIL ADD :

### SELLING PARTY BANK DETAILS

Bank Details:	BANK NAME	:
	ADDRESS	:
	ACCOUNT NUMBER	:
	ACCOUNT NAME	:
	SWIFT CODE	:
	CONTACT NO.	:
	BANK MANAGER'S NAME	:

### DEFINITION

**IN THIS CONTRACT THE FOLLOWING TERMS AND CONDITIONS SHALL, UNLESS OTHERWISE DEFINED:**

**WHEREAS :**

1. The **Seller** trades **Iron Ore concentrate** with complete mining permits and licenses mandated by laws of the Philippines, and intends to supply the **Iron Ore concentrate** to the Buyer.
2. The **Seller** and the **Buyer** have agreed to enter into this **Iron Ore concentrate** Supply Agreement to set out the rights and obligations of the parties and the terms and conditions of the **Iron Ore concentrate** Supply .

**The Parties (Buyer and Seller) hereby agree as follows :**

The **Seller's** hereby agrees to sell to the **Buyer's** as the **Buyer's** agrees to buy from the **Seller's** , **Philippine Iron Ore concentrate** subject to the following terms and conditions set out below :

## **Article 1 : Definition**

The following terms when used in this agreement shall have the meaning stated below :

a. "**USD**" US Dollars and Cents: means respectively dollars and cents in lawful money of the United States of America.

b. "**MT**" shall mean metric ton (s)

c. "**CFR**" Cost and Freight INCOTERMS 2000; (i.e. means that the seller must pay the cost and freight necessary to bring the goods to the named port of destination but the risk of loss or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel is transferred from the seller to the buyer when the goods pass the ship's rail in the port of shipment).

d. "**ORE**" shall mean Copper Ore produced in Philippines by the Seller/Traders

e. "**WMT**" wet metric ton (s)

f. "**PARTIES**" means Buyer and Seller

## **CLAUSE 2: PRODUCT**

Country of Origin: Philippines

Commodity: iron ore concentrate, 62% basis, reject below 60%

Loading Port: Jose Panganiban Port, Camarines Norte

GPS: Gps coordinates : Latitude: 14° 17'N

Longitude: 122° 42'E

Port of Destination :

Pack : in bulk

## **CLAUSE 3: DELIVERY PERIOD AND QUANTITY**

Total Quantity: 1.200.000mt/year available.

10,000 M(-30.000mt+/-10%) trial buyer option(will be stated in the contract)

Delivery Period: within 30 days upon receipt of buyer's irrevocable, non-transferrable and negotiable, divisible Letter of Credit.

Partial Shipment: not allowed.

Trans shipments: Not allowed

Packing: In bulk

#### **CLAUSE 4: SPECIFICATIONS**

##### **SPECIFICATIONS OF IRON FINES**

Chemical Composition	Guaranteed (% by weight)
Fe	62% basis, reject below 60
SiO <sub>2</sub>	1.5% max, reject above 2.00%
Al <sub>2</sub> O <sub>3</sub>	3.00% max, reject above 4.50%
Phosphorus (P)	0.06% Max ☐ reject above 0.08%
Sulphur (S)	0.06% Max ☐ reject above 0.08%
TiO <sub>2</sub> (Ti)	1.50% Max ☐ reject above 2.00%
Moisture loss At 105 degree centigrade.	35% Max
Physical Composition (Fines)	finer: 0-10mm 90% Min, 10 mm up 10%

#### **CLAUSE 5: PRICE**

A) Price term is CFR

B) Price offer is **67.00 USD/MT** for the trial buy price will be adjusted every other shipment

C) Buyer shall be responsible for insurance after loading and before discharging.

#### **CLAUSE 6: PRICES ADJUSTMENT**

A) For Fe Content : Fe:

In respect of any shipment of iron fines, the Base and Final Price as referred to in Clause 5 of this Contract shall be adjusted in accordance with Fe content as determined pursuant to the provisions of Clause 7 as follows:

**1.** The Base Price shall be increased USD 2.00/MT for 1.0% Fe content above 60.0% Fe content, fractions pro rata.

2. The Base Price shall be decreased by USD 2.00/MT for 1.0% Fe content below 60% Fe content. Fractions pro rata.

3 ☐ The buyer has the rights to reject the cargo if Fe below 59%.

## **B) For other elements**

If the shipment does not meet any of the chemical specifications other than Fe provided in clause 3 as finally determined in accordance with the provisions of the clause 8, the base price shall be decreased as follows:

### **(1) For excess of Silica (SiO<sub>2</sub>)**

At the rate of USD0.5/ MT for each 0.10% in excess of 1.5%: If SiO<sub>2</sub> content is excess of 2.0%, buyer has the right to reject the cargo.

### **(2) For excess of Alumina (Al<sub>2</sub>O<sub>3</sub>)**

At the rate of USD0.5/MT for each 0.10% in excess of 3.0%: If Al<sub>2</sub>O<sub>3</sub> content is excess of 4.50%, buyer has the right to reject the cargo.

### **(3) For excess of Titanium (TiO<sub>2</sub>)**

At the rate of USD0.5/MT for each 0.10% in excess of 1.50%: If TiO<sub>2</sub> content is excess of 2.00%, buyer has the right to reject the cargo.

### **(4) For excess of Phosphorus (P)**

At the rate of USD0.5/ MT for each 0.01% in excess of 0.06%: If P content is excess of 0.08%, buyer has the right to reject the cargo.

### **(5) For excess of Sulphur (S)**

At the rate of USD0.5/ MT for each 0.01% in excess of 0.06%: If S content is excess of 0.08%, buyer has the right to reject the cargo.

## **C).Size**

If the shipment does not meet the physical specifications, penalty shall be as follows:

US\$0.05 per MT fraction pro-rata shall be applied to the quantities of ore above 10mm exceeding 10%.

## **D) Moisture**

In case free Moisture loss at 105 degrees centigrade, as finally determined pursuant to the certificate of quality issued by CIQ, would be above 35%, the excess moisture above 35% must be deducted from the total weight of the cargo pursuant to the CIQ weight certificate and seller must pay back the shipping cost of the excess moisture above 35%.

## **CLAUSE 07: TERMS OF PAYMENT**

A)The Buyer and the Seller complete this agreement, initial each page, sign and seal and return to the other party.

B) The buyer should provide the seller with company LC draft and the seller shall provide the buyer Performance Bond format after this contract is signed. And the Performance Bond text shall be agreed by the buyer before issuance.

C) Seller shall issue a Performance Bond same as 2% of L/C draft value to buyer's confirmation within 7 working days after the seller received the draft LC from Buyer, certainly the LC draft checked with seller.

D) Within 5 working days after buyer receives seller's Performance Bond, the Buyer's Bank will issue an Irrevocable, Non transferable, revolving, divisible, negotiable Letter of Credit at sight payable to Seller's Bank. The Performance Bond will be in a form of Bank Guarantee.

D1. Irrevocable, transferable, revolving, divisible, negotiable Letter of Credit at sight payable to Seller's Minus \$2.00/mt for Transferable DLC

E) Letter of Credit is to be valid for thirty (30) days from the issuing date of it. The documents should be presented to the issuing bank within fifteen (15) days after shipment.

F) The Seller shall load the vessel at the loading port and pay all fees associated with the loading. The Buyer shall be responsible for unloading the vessel at the discharge port and all fees associated with the unloading.

G) All bank charges related to the issuing of the financial instruments are on the buyer's account. Bank charges related to the negotiation of either document are for the respective beneficiary's accounts.

## **CLAUSE 8 DOCUMENTS**

For the purpose of getting payment under the Irrevocable, Confirmed and Non-transferrable letter of credit at sight, Seller shall present the following documents:

### **Shipping Documents for 98% provisional payment**

A) A full set of Clean-on-Board Bill of lading in 3/3 Three Originals negotiable and Three non-negotiable Copies, made Out to order, blank endorsed, marked "Freight prepaid" or "Freight Payable as per Charter Party Agreement" and notify "To order". Charter Party Bills of Lading acceptable.

B) Provisional Invoice in 1 (one) original and 1 (one) copy indicating contract number, L/C number, name of carrying vessel. The invoice shall be in English.

C) Certificate of Quality in 1 (one) Original and 2 (two) Copies issued and signed by SGS or INTERTEK or CCIC Philippines, showing the name of the carrying vessel and actual result of name of the carrying vessel and the chemical composition and all other tests Called for in this Contract.

D) Certificate of Weight in 1 (one) Original and 2 (two) Copies issued and signed by SGS or INTERTEK or CCIC Philippines.

E) Certificate of Origin in 1 (One) Original and 2 (Two) Copies to be issued and Signed by the local Chamber of Commerce in and detailing loaded Quantity, Commodity, Carrying Vessel and Exporter's Name and Address

F) Seller's certified copy of telex/fax/email sent to Buyer within 5 (Five) working days after shipment date advising shipment details including the contract number, name of vessel, name of commodity approximate invoice value, gross weight, loading and sailing date, and Bill of Lading No. and date.

**For Final 2% Payment:**

A) Signed final commercial invoice in 1 (one) original and 1 (one) copy, based on the certificate of analysis (quality) and certificate of weight issued by CIQ. The final price shall be increased or deducted as per the price adjustment clause of this contract, and must show the balance value. Final invoice must indicate the date of arrival of goods at the discharging port. Photo copy and carbon copy of the final invoice are not acceptable.

B) Certificate of Quality in 1 (one) original and 2 (two) copies, issued by CIQ at the discharge port. Fax copy/photocopy acceptable.

C) Certificate of Weight in 1 (one) original and 2 (two) copies, issued by CIQ at the discharge port.

Fax copy/photocopy acceptable.

D) Documents must be presented within L/C validity.

E) Buyer shall provide copies of the certificates of analysis and of weight from CIQ to Seller within 15 days after completion of discharge at the Discharging Port. In the event that such copies are not delivered within this time frame, then Seller has the right to negotiate the final invoice based on Loading Port Certificate of Quality and Certificate of Weight issued by SGS or INTERTEK or CCIC Philippines. In such a case a written declaration by the Seller of non-receipt of CIQ certificate, and the photocopy of Loading Port weight and quality results are to accompany Seller's claim.

**F. Overpayment**

If the 98% of the total final value of cargo based on Certificate of Weight and Certificate of Quality issued by CCIC Philippines at supplier stockyard is less than the 98% of the amount of the Bank L/C when provisional payment amount the BUYER has already made, then the SELLER shall refund such over payment to BUYER within five (5) working days after receipt of BUYER'S Debit Note through Telegraphic Transfer (TT).

If the retention of 2% of the total final value of cargo based on Certificate of Weight and Certificate of Quality issued by CIQ China at discharging port is less than the 2% of the amount of the Bank L/C when provisional payment amount the BUYER has already made, then the SELLER shall refund such over payment to BUYER within five (5) working days after receipt of BUYER'S Debit Note through Telegraphic Transfer (TT).

**G. Under Payment**

If the 98% of the final value of cargo based on Certificate of Weight and Certificate of Quality issued by CCIC Philippines at supplier stockyard is more than the 98% of the amount of the Bank L/C when provisional payment amount the BUYER has already made, then the BUYER shall pay such underpayment to SELLER within five (5) working days after receipt of SELLER'S notice to pay through Telegraphic Transfer (TT).

If the retention of 2% of the final value of cargo based on Certificate of Weight and Certificate of Quality issued by CIQ China at discharging port is more than the 2% of the amount of the Bank L/C when provisional payment amount the BUYER has already made, then the BUYER shall pay such underpayment to SELLER within five (5) working days after receipt of SELLER'S notice to pay through Telegraphic Transfer (TT).

#### **CLAUSE 9: WEIGHT**

A) At the loading port, Seller at Seller's expenses shall appoint SGS or INTERTEK or CCIC to determine the weight of shipment of ore by draft survey. The weight of ore as ascertained and certified together with SGS or INTERTEK or CCIC Philippines analysis certificate shall be basis of provisional invoice.

B) The Buyer may, at Buyer's expense, have its representatives or another inspection agent present at the time of such inspection at loading port.. The seller must ensure the cooperation of SGS or INTERTEK or CCIC Philippines and the representatives of the buyer.

C) At the discharging port, Buyer at Buyer's expense shall apply the Entry-exit inspection & Quarantine of the People's Republic of China (CIQ) for weighing at the port of destination. The Seller shall appoint SGS or INTERTEK or CCIC Philippines optional for conducting the draft survey for determination of weight as well as determination of moisture jointly with CIQ at the port of destination. Buyer to ensure that CIQ extends all co-operations to SGS or INTERTEK or CCIC at the port of discharge.

D) The weight of shipment at the discharging port is to be ascertained by draft survey. The weight thus determined by CIQ shall be final for purposes of the issuance of Seller's final invoice as to wet quantity in shipment.

E) If no draft survey is performed at the discharging port within 60 days after completion of discharge, CCIC weight certificate at the loading port will be regarded as final.

#### **CLAUSE 9 SAMPLING AND ANALYSIS**

A) At the loading port Seller shall at Seller's expense, appoint SGS or INTERTEK or CCIC Philippines to determine the specification of ore content in shipment, and shall provide a certificate showing details of the determination and also the percentage of free moisture loss at 105 degrees centigrade.

The Buyer may, at Buyer's expense, have its representatives be present at the time of such inspection at loading port.

B) At discharging port, the Buyer shall, at Buyer's expense, appoint CIQ to take sample and conduct analysis of the shipment cargo and determine the specifications stipulated in Clause 4. CIQ shall take samples from the shipment and divide it into three parts, one for Buyer, the second for possible need of

Seller and the third for possible umpire analysis which shall be sealed and kept by CIQ. The certificate of quality thus issued by CIQ at discharging port shall be final and basis for Seller's final invoice.

The Seller may, at Seller's expense, have its representatives (optional) be present at the time of such inspection at discharging port.

C) If the sampling analysis for Fe content exceeded one percent (1%) between at loading port and the discharging port, the Seller and Buyer may consult, to settle the differences. If no agreement could be reached after consultation, both party will appoint the third analysis party (SGS or INTERTEK or CCIC in China) to analyze the sample for umpire kept by CIQ.

D) The Analysis result of Fe content, other elements from the third analysis party will be final. Cost of umpire analysis is for the account of the party whose own analysis differs further from the re-sampling analysis and if the results of such re-sampling is the mean of the analysis of Buyer and the analysis of Seller then such cost shall be equality borne by both parties.

E) CIQ shall analyze the sample for Buyer within 15 days after discharge, and issue and promptly forward to Seller by air mail a certificate showing the percentage of chemical content, the percentage of free moisture loss at 105 degrees centigrade and the relevant screen analysis. CIQ's analysis shall be final for 2% retention and the 98% will be based on the loading report certificate of weight and analysis purposes of the issuance of Seller's final invoice.

F) If no determination of analysis is exercised at the discharging port, SGS or INTERTEK or CCIC Philippines Analysis certificate at the loading port shall be conclusive as to specification of ore for purposes of the issuance of Seller's final Invoice.

## **CLAUSE 10 DISCHARGING TERMS**

A) Seller shall arrange for the master of the vessel to notify Buyer or Buyer's agent at discharging port 5 (five) notices of the estimated time of arrival (ETA) of the vessel at the discharging port. The 1<sup>st</sup> of such notice will be given 7 (seven) days, the 2<sup>nd</sup> to be 5 (five) days, the 3<sup>rd</sup> to be 3 (three) days, the 4<sup>th</sup> to be 48 (forty-eight) hours and the 5<sup>th</sup> to be 24 (twenty-four) hours prior to the ETA of the vessel.

B) Discharge Rate: For first shipment the discharge rate should be 12,000MT/day (24 hours per day, Saturday, Sunday, and holiday excluded), demurrage will be USD12,000/day, 50% of demurrage for dispatch. The discharge rate, demurrage and dispatch from second shipment afterwards to be negotiated by mutual party. When the cause of the delayed was at the loading port dispatch shall be by the SELLER's account. If the cause of the delayed was at the discharge port after the vessel has arrived then demurrage will be by the BUYER's account. These demurrage and dispatch charges shall be remitted by the Seller and the Buyer by T/T within 10 days after end of the date of discharged.

C) NOR at discharge port to be tendered ATDN SHINC customary terms i.e. A notice of readiness may be tendered WWWW, and to be accepted on any day at any time in or out of office hours, after vessel has arrived at the notified discharge port anchorage area and is in every respect ready to discharge the intended cargo. Lay time to commence 12 hrs after the NOR tendering, unless discharging sooner commences. NOR to be tendered by master through agents by EMAIL/FAX to SHIPPERS/CHTRS/RECVRS.

- (D) Time used for initial and final draft surveys shall not be counted as Lay time.
- (E) Shifting time and expense for shifting of vessel from anchorage point to unloading place shall be for the account of the vessel.
- (F) Time used for shifting of the vessel if ordered by the master of the Vessel shall not be counted as laytime and the cost of such shifting to be borne by ship owners.
- (G) Time lost when discharging stopped due to bad weather shall not count as lay time.
- (H) Statutory holidays to be excluded unless worked. If worked actual time to count as laytime used

#### **CLAUSE 11 ADVISE OF SHIPMENT**

- A) The Seller shall, before the loading starts and upon the date of completion of loading, advise the Buyer by fax/EMAIL, the advising document shall indicate the Name of Commodity, Contract Number, Name of Vessel, ETA Date, Bill of Lading Date, Bill of Lading Number and Bill of Lading Weight at the loading port and vessel agency at discharging port.
- B) Seller shall nominate a suitable vessel for loading which shall be duly accepted by Buyer within one working day of such nomination. The Vessel age should not be more than 25 years old.
- C) The vessel to be consigned to the buyer's recommended ship agent at SELLER's expenses at the discharge port provided it is at contemporary competitive rates. Any consequences of delays incurred due delay in recommendation of agents by buyers shall be on buyers account.

#### **CLAUSE 12 INSURANCE**

- A) Insurance to be covered by Buyer from the time when the shipment advise arrived and ore is loaded into vessel.

#### **CLAUSE 13: LIQUIDATED DAMAGE**

- A) In case of non-performance of the contract by the Seller/the Buyer (excluding Force Majeure condition) the Seller/the Buyer shall compensate to the Buyer/the Seller all costs of cancellation charges including but not limited to bank costs, or port charges as applicable.

#### **CLAUSE 14: Performance Guarantee**

- A) Within 7 working days after receipt of the draft Letter of Credit, The Seller shall issues Performance Bond same as 2% of face value of the draft LC. Certainly, the LC draft should be checked with seller. This Performance Bond is unconditional, but can only be en-cashed in the event of non-delivery of the commodity at the loading port by the Seller within the shipment period stipulated in the contract. The Seller shall issue the Performance Bond as per the format requested by the Buyer with expiry date of not less than 90 days from the issuing date of this Performance Bond. The performance bond is failure automatically when buyer receive payment documents.

The PB is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No.758.

#### **CLAUSE 15: LICENSE & TAXES**

A) Sellers should, at seller's own cost, arrange export license or other relevant documents if required for the ore export, failure of which Sellers shall be fully responsible for all losses or damages incurred to the Buyers.

B)Buyers shall, at buyer's own cost, arrange import license or other relevant documents if required for the ore import, failure of which Buyers shall be fully responsible for all losses or damages. All taxes & tariffs and dues levied on the cargo at loading port and on the vessel to be for Sellers' account. All taxes & tariffs and dues levied on the cargo at discharging port to be for Buyers' account.

#### **CLAUSE 16: FORCE MAJEURE**

A)If and any time during the existence of this contract either party is unable to perform whole or in part any obligation under this contract because of war, hostility, military operation of any character, civil commotions, sabotage, quarantine restriction, acts of Government, fire, floods, explosions, epidemics, strikes or other labor trouble, embargoes, then the date of fulfilment of any obligation shall be postponed during the time when such circumstances are operative.

B)Any waiver/extension of time in respect of the delivery of any instalment or part of the goods shall not be deemed to be waiver/extension of time in respect of the remaining deliveries. If operation of such circumstances exceed one and half month, either party will have the right to refuse further performance of the contract in which case neither party shall have the right to claim eventual damages. The party which is unable to fulfil its obligations under the present contract must within fifteen (15) days of occurrence of any the causes mentioned in this clause shall inform the other party of the existence of termination of the circumstances preventing the performance of the contract. Certificate issued by a Chamber of Commerce or any other competent authority connected with the cause in the country of the Seller or the Buyer shall be sufficient proof of the existence of the above circumstances and their duration. Non-availability of material and non-availability of export license will not be an excuse to Seller for not performing his obligations under this Contract.

C)Seller shall be responsible for obtaining any export license and/or quotas required in the origin country and failure to obtain such license and/or quotas shall not constitute Force Majeure.

#### **CLAUSE 17 ARBITRATION AND GOVERNING LAW OF THIS CONTRACT**

A)The parties hereby agree to settle all disputes amicably. If settlement is not reached, Any

dispute arising from or in connection with this contract shall be submitted to and finally resolved by SINGAPORE International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The losing party will pay the arbitration fee.

#### **CLAUSE 18 TITLE AND RISK**

A) The title with respect to the shipment shall pass from Seller to Buyer when Seller receives payment.

B) All risk of loss, damage or destruction respecting the ore delivered shall pass to Buyer upon loading thereof onboard the carrying vessel at the load port.

#### **CLAUSE 19 LOSS OF CARGO**

A) In the event of partial loss of cargo, the Bill of lading weight and the analysis carried out by buyer on the cargo discharged shall be treated as final and shall form the basis of final invoicing and payment. In the event of total loss of cargo, the analysis and the weight as determined at the Loading Port shall be treated as final and shall be used for final invoicing and payment.

#### **CLAUSE 20 AMENDMENT OF THE CONTRACT**

A) Any amendment and or annex to this contract shall be made in written form and signed and seal by both Parties. If any amendment is not signed and seal by both Parties, it shall be construed null and void and of no legal effect.

#### **CLAUSE 21 OTHER TERMS AND CONDITIONS**

A) This contract made out in two originals, one to be held by each party and shall have the equal force. This contract is used in English, two languages are both available, but if have any conflict, English version shall prevail. The Fax of the contracts is available before the both parties receive the origin version of the contract.

B) The terms and conditions of this Contract are not intended to form any Precedent for any other Contract.

C) Both the Buyer and the Seller shall execute and sign this Contract.

D) The language of the contract and the correspondence, notices, invoices, certificates shall be English.

E) IN WITNESS WHEREOF, both parties hereto have executed this Contract as of the day and year first above written. This Contract will take effect immediately upon both parties' signature and stamp.

SELLER:

BUYER:

**By:**

**By:**

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(Sign & seal with company chop)

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(Sign & seal with company chop)

**Date:**

**Date:**