



4<sup>th</sup> January 2010

Tender for Purchase of Zinc concentrate

**TENDER NO: HZL/CONC/ZNV01/110**

**Quantity**

10,000 dmt of Zinc Concentrate in lots of 5000dmt (+/-10% in Seller's option)

**Quality**

Seller to provide quality details along with complete Chemical and Physical/Sieve analysis with range and typical values along with the bid

**Shipment**

During Jan – Feb 2010 for arrival in March 2010

**Delivery**

DES FO Vizag

**Quotational Period**

The quotational period shall be the Average of month after month of arrival (1 MAMA)

**Payable Metals**

Zinc: The Zinc to be paid for each DMT of Zinc concentrate shipped hereunder shall be 85% (Eighty-five percent) of the full Zinc content, subject to a minimum deduction of 8.00 (Eight) units/DMT, at a price equal to the daily official LME Settlement Quotation for Standard Zinc in US Dollars, as correctly published in the "London Metal Bulletin" and averaged over the applicable Quotational Period.

No other metals shall be payable.

**Penalty**

Applicable as per international standards

**Assays**

Seller to provide Assays of the concentrate as per LME Approved Laboratory and the WSMD shall be done at HZL Smelter

Assays to be exchanged in the customary manner by crossing courier i.e. Buyer and Seller certificates. Buyer to furnish assay results on the letterhead of LME registered laboratory. Splitting limit for Zinc shall be 0.25%.

**Payment**

First payment on the 61<sup>st</sup> day from date of NOR

**Information to bidders**

HZL reserves the right to accept any bid or reject any or all the bids, received.

Should the buyer for any reasons refrain from concluding a contract with the successful bidder, the latter shall have no right to claim any damages in this connection.

HZL Contract Draft attached for reference.

The bids to be submitted by 1500 hrs Indian time on 8<sup>th</sup> January 2010, at the fax no +91 22 6643 4652 and email to [exportzinc@vedanta.co.in](mailto:exportzinc@vedanta.co.in) and [sundeep.prasanna@vedanta.co.in](mailto:sundeep.prasanna@vedanta.co.in).

The bids shall be valid till 1700 hrs IST Wednesday, 13<sup>th</sup> January 2010

**ZINC CONCENTRATE PURCHASE AND SALES AGREEMENT**  
**[DRAFT]**

**THIS AGREEMENT**

**Between**

**HINDUSTAN ZINC LIMITED** India, hereinafter referred to as “**the Buyer**” (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the One Part;

**And**

*Seller Name*, hereinafter referred to as “**the Seller**” (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the Other Part.

**AND WHEREAS** the parties are desirous of recording the terms of supply and sale of Concentrates and have accordingly agreed to execute this agreement.

**NOW THIS AGREEMENT WITNESS AS UNDER:**

**DEFINITIONS AND INTERPRETATIONS :**

**1.1 Definitions:**

For the purpose of this Agreement, the following definitions shall apply:

Banking Day - shall mean any day except a Saturday or Sunday on which banks in the City of New York - USA, London – UK, Mumbai and Vizag – India, generally open for the conduct of Business

Business Day - shall mean any day except a Saturday, Sunday and a day that is Bank or Public Holiday in the City of New York - USA, London – UK, Mumbai - India.

Concentrates - shall mean Zinc concentrates as described in Clause 3.

Day - shall mean calendar day.

Discharge Port - shall mean Vizag Port, India

Incoterms 2000 - shall mean International Rules for interpretation of the most commonly used trade terms in international terms, published by the International Chambers of

Commerce in 1936 and as amended from time to time in the latest version of the year 2000.

Metal Bulletin - shall mean the publication known as Metal Bulletin and published in London by Metal Bulletin Journals Ltd. (a subsidiary of Metal Bulletin plc).

Month - shall mean a calendar month.

Month of arrival (MOA) - in respect to any shipment of Concentrates shall mean the month during which the master of the vessel on which the shipments of Concentrates are shipped and registered arrival of the vessel with the port authorities for the purpose of discharging of the Concentrates and which date is stated in the Statement of Facts (Notice of Readiness = NOR) prepared at the port of discharge.

Month of Actual Shipment – Shall be deemed as the calendar month in which shipment takes place as evidenced by the Bill of Lading.

DES - as per Incoterms 2000 shall mean "Delivery Ex-Ship"

FO - shall mean "Free Out"

Office Hours - shall mean 09:00 hrs to 17:30 hrs Monday through Friday and 09:00 hrs to 13:00 hrs on Saturday. Office hours shall not include national holidays, customary local and smelter holidays and any other such mutually agreed upon holidays.

Weather Working Day (WWD) - shall mean a day of 24 consecutive hours without counting the bad weather periods

## **1.2 Interpretation:**

- References in the singular shall include references in the plural and vice versa. All fractions shall be calculated on pro rata basis.
- References to a particular Clause, sub-Clause shall, except where the context otherwise requires, be a reference to that Clause, or sub-Clause.
- The headings are inserted for convenience and are to be ignored for the purposes of construction.
- The words “include” and “including” are to be construed without limitation.
- Whenever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified such notice, approval or consent shall be in writing and the words “notify” and “approve” shall be construed accordingly.

## **SCOPE OF AGREEMENT AND DURATION :**

- 2.1 The Seller shall during the Term of this Agreement supply and sell to the Buyer and the Buyer shall purchase from Seller ..... DMT (with +/-5% (Five percent) shipping tolerance) of Zinc Concentrates of Specifications as attached in Annexure-1 and at Price as hereunder written and on other terms and conditions specified in this Agreement.

- 2.2 The Duration of this Agreement shall be from the date on which this agreement is entered into until the final settlement is completed for the shipment contemplated herein.

## **QUANTITY AND QUALITY**

- 3.1 In lots of ..... DMT each, plus/ minus 5% (Five percent) shipping tolerance for shipping purpose only:
- 3.2 Name of Quality
- The detailed specifications of each concentrate as per Annexure- I.
- 3.3 The Concentrates shall be shipped in accordance with the IMO Regulations.
- 3.4 The Concentrates shall be free from deleterious impurities that would prevent the Concentrates from being treated with the smelting and refining process that the Buyer will employ. The Concentrates shall be physically homogenous in nature without any lumps or agglomerates. The material shall be mined, sulphide floatation concentrates.
- 3.5 **Non-Conforming Concentrates:**  
In the event of non-conformity of the Concentrates with the expected analysis as set forth in Annexure I which materially affects the smelting and refining process of the Buyer or the Buyer's product, the Buyer shall report such non-conformance to the Seller. The Buyer and the Seller shall seek in good faith to agree upon an appropriate remedy for any Financial or Technical disadvantage, which the Buyer may or may have suffered.

## **SHIPMENT AND DELIVERY**

### **4.1 Delivery Schedule**

As per tender

Origin of each lot shall be declared by Seller no later than 75 (seventy five) days prior to beginning of the Month of Scheduled Shipment. The quality shall be declared by Seller no later than 45 (forty-five) days prior to beginning of the Month of Scheduled Shipment.

### **4.2 Delivery**

#### **DES FO, Port of Discharge, Vizag, India**

Arrival draft (Max) – Upto LOA 210 m, draft 10.2 m, with 0.20 m of tide

LOA (Max) – LOA upto 200 m, with draft 11.0 m / LOA 210 m, draft 10.7 m, with tide 0.71 m

Beam (Max) – 32.5 m

- 4.3 **Alternate Port:** If the discharge of a cargo of concentrates at the port of Discharge is affected by a strike or walk-out or by damage, whether from natural or other causes, to such Port of Discharge and the same has not been settled or repaired within 48 hours, Buyer shall notify the Seller within 12 hours after the expiration of such 48 hour period, as to whether the Buyer desires that (a) such Vessel wait until such strike or walk-out is at an end or such damage is repaired, or (b) such Vessel to proceed to an alternate safe port (an “Alternate Port”) where it can safely unload the Concentrates. Promptly upon the receipt of such notice from Buyer, Seller shall direct the Vessel to comply with such notice, provided that the master of the Vessel judges such port to be safe. If the Vessel proceeds to the alternate port, there shall be no additional freight payable by Buyer, unless such distance between the original Port of Discharge and the alternate port exceeds 150 nautical miles, in which event the additional freight in respect of the distance in excess of 150 nautical miles shall be payable by the Buyer.

The time taken for the vessel to move from the original port to alternate port shall not count in laytime or demurrage time.

- 4.4 **Discharging Berth** – It shall be the responsibility of the Buyer that any discharging berth be safe and suitable for Vessels provided the Vessel adheres to the Port characteristics mentioned above about the Arrival draft, beam and LOA. Buyer shall be responsible for all arrangements as customary in the Port of Discharge (including the nomination of stevedores) and expenses (including stevedoring expenses) for discharging each cargo shipped hereunder.
- 4.5 **Vessel Characteristics** – Shipment shall be effected in Vessels suitable for normal grab discharge. Vessel shall be normal type single deck bulk carriers, seaworthy in all respects with clear holds, sufficiently wide to be opened for normal grab discharge. Vessel shall not have shaft tunnels in the holds nor shall concentrates be loaded in deep tanks, in tween-decks, in bridge space or in any space not easily accessible to grabs. Such Vessel shall be suitable for berthing as per clause 4.2 and shall have gears rated for minimum 15metric tons capacity.

Such Vessels shall unless otherwise agreed, be classed 100 A1 at Lloyds or equivalent and shall be not more than 20 years of age and be insurable in London, New York or any other internationally recognised Insurance market that is acceptable to Buyer.

If the gears of the Vessel are not working in accordance with the specifications provided by the Vessel’s Owner, Buyer shall appoint a competent independent surveyor to assess the additional costs incurred in completing the discharge, and Buyer shall provide the Seller with the Surveyor certificate while making the claim for the additional expenses incurred. Any such amount claimed by the Buyer will be settled by the Seller within 30 days from the date of such invoice.

In no event shall any cargo other than Zinc concentrate be stowed in the same hold. The Vessel shall confirm to International Safety Management Code (ISM Code) standards. Seller shall not charter a Vessel from any shipping company as

to which the Seller reasonably believes that, because of its financial condition, there is reasonable doubt about the ability of such company to carry out the normal execution of its shipping obligations.

**4.6 Rate of Discharge** – Buyer shall discharge the cargo on each Vessel as follows

**4.6.1** 3000 WMT per weather working day of 24 running hours basis minimum two working holds/hatches and if the cargo is loaded in 1 hold then discharge rate shall be 1500 WMT per weather working day.

Sundays, Holidays and bad weather periods always excluded, if used actual time used to count. Sundays and Holidays mean an effective day beginning at 17:00 hours the previous day till 8:00 hours of the day following the Sunday or the Holiday. Once the Vessel is on demurrage, she is always on demurrage.

**4.6.2** If more than one cargo is loaded on to the same Vessel from any other supplier and discharged at the same time, time for discharging of all cargoes shall be calculated on a pro rata basis for each cargo for the purpose of Discharge and Laytime calculations.

**4.7 Notice of Readiness (NOR)** - shall be tendered to the Buyer or its nominated agent at the Discharging Port during office hours when the Vessel is ready in all respects to discharge the cargo.

**4.8 Laytime** – shall start at 8:00hrs the next working day, if NOR is tendered within the normal office hours. If discharge commences sooner, actual time used to count.

Office hours for submission of NOR shall be 8:00 hours to 17:00 hours Monday through Friday and 8:00 hours to 13:00 hours on Saturday (Sundays, Charter Party and other Holidays always excluded).

If after, berthing, the Vessel is not ready in all respects to discharge, actual time lost until Vessel is ready in all respects to discharge is not to count as laytime. Shifting time from anchorage to the berth shall not count as Laytime.

Similarly time lost in moving on or off berth or from one berth to another shall not count as Laytime and also shifting time from Berth to Anchorage for Port convenience shall not count as Laytime, if required for Port convenience.

Each Vessel shall open and close hatches and remove and replace beams at the Vessel's risk and expense and the time used for such purpose shall not count as Laytime.

Any time lost in discharging due to repairing Vessel's equipment or by the fault of the Vessel, its owner, master or their agents shall not count as Laytime or time on demurrage.

Any stoppages/disturbances attributable to vessel and its crew shall not count in demurrage time.

- 4.9 Demurrage and Despatch** –If each cargo is not discharged from the Vessel within the allowed Laytime, demurrage shall be payable by Buyer to Seller calculated per running day of 24 hours (fractions pro rata) as per Agreed terms.

Seller shall pay Buyer despatch money for Laytime saved at the Port of Discharge calculated per running day of 24 hours (fractions pro rata) at half of the Demurrage rate. The applicable Despatch/Demurrage rates shall be inline with those applicable for similar vessels performing similar voyages and limited to US\$10,000/ WWD. In case of any dispute, the applicable Demurrage/ Despatch rate shall be as per governing charter party.

Any calculations indicating payment with respect to Demurrage or Despatch money owed to Seller or Buyer, as the case may be shall be prepared by the Buyer/Seller in case of Despatch/Demurrage respectively within 1 week after the discharge completion of the Vessel at the Port of Discharge and shall be agreed upon within 2 weeks from such date of presentation of calculations and supporting documents including Time sheet and Statement of Facts. The Despatch or Demurrage amount shall be adjusted in the final invoice.

The Bill of Lading weight in wet metric tonnes shall be used when calculating time allowable for discharge.

- 4.10 Over Time** – shall be for the account of the party ordering the same. Officer's and Crew's overtime shall always be for the Seller's account. If overtime is ordered by the port authorities or their representatives, Buyer shall pay all expenses incurred as a result thereof, except that crew's and officer's overtime shall be for Seller's account. If local labour regulations at Port of Unloading prevent the Vessel's Crew from opening/closing hatches and removing/replacing beams, such duties will be performed by agents for Buyer and the time so used shall not count as Laytime.

**4.11 Charges not to Buyer's account**

Port Charges – Seller will hold Buyer free and harmless from all port charges, harbour dues, pilotage, Crew's expense, light dues and all other charges and dues customarily paid by a Vessel at Port of Discharge. Seller will ensure that without cost to Buyer

(i) each Vessel provides all necessary on board lights for Vessel for night discharging and

(ii) hatches are opened and closed and any beams are removed or replaced at the Vessel's risk as necessary for or in, connection with discharging, provided local regulations permit so.

**4.12 Stevedore Damages**

Damages caused by Stevedores nominated and/or appointed by Buyer shall be settled directly between the Stevedores and the Vessel Owners. Buyer and Seller

shall have no responsibility for such damages. However, both Buyer and Seller shall endeavour to resolve the issue with the Owners.

- 4.13 Nomination of Vessel** – At the time of Vessel nomination the Seller shall notify the Buyer of the following
- a) The name of the Vessel nominated for transportation of such cargo
  - b) The expected dates of arrival and departure of such Vessel at and from Port of Loading
  - c) The expected tonnage to be loaded in each Vessel
  - d) The dimensions and draft of the Vessel
  - e) Gear capacity, number of hooks and other details of the Vessel
  - f) Estimated time of arrival of the Vessel at the Port of Discharge
  - g) Despatch and Demurrage rates.

Seller shall obtain acceptance of the nomination of the Vessel from Buyer in writing prior to finalising the Vessel. The Vessel acceptance/rejection to be given within 1 working day from the nomination. Once the Vessel acceptance is given, any change of the terms should be again put forth with the Buyer for acceptance. Vessel substitution shall not be done without the prior acceptance of the Buyer. Such acceptance shall not be unreasonably withheld.

- 4.14 Notice** – Not later than three (3) working days after departure of each Vessel from the Port of Loading, Seller shall notify Buyer of the tonnage of concentrates loaded as per Bill of Lading, the stowage plan and the estimated arrival at the Port of Discharge. Seller shall instruct the Master/Vessel agent of the Vessel to give Buyer notice of the Estimated Time of Arrival (“ETA”), at the Port of Discharge 10 days, 5 days, 72 hours, 48 hours and 24 hours prior to the ETA.

- 4.15 Letter of Indemnity (LOI)** – Seller shall instruct master to issue a delivery order against Buyer's Letter of Indemnity should one original Bill of Lading not be available at the opening bank 3 (three) working days prior to the ETA of the vessel at discharge port, the Seller as Charterer to ensure that delivery order is given by the owner's agent against the receiver's simple Letter of Indemnity as per ship owner P&I Club format signed by the Buyer as receiver. The Opening Bank shall release 1/3 Original Bill of Lading to the Buyer upon either a) receipt of swift from the negotiating bank confirming negotiation of documents and value date of amount claimed or b) issuing banks acceptance of discrepancies noted if any, sent by authenticated swift to the negotiating bank. Any delay in commencement of Discharge due to delay in communicating such Instructions by the Seller to the Owners/Master of the vessel shall not count as Laytime.

## **5. PRICE**

The total price payable for each shipment of concentrates shall be equal to the sum of (a) the payments for all payable metals specified in clauses 5.1 , less (c) Treatment and Refining charges and penalties as specified in clause 5.5.

**5.1** Zinc – The Zinc to be paid for each DMT of Zinc concentrates shipped hereunder shall be 85% (eighty-five percent) of the full Zinc content, subject to a minimum deduction of 8.00 (eight) units per DMT, at a price equal to the daily official LME Cash Settlement Quotation for Standard Zinc in US Dollars, as correctly published in the "London Metal Bulletin" and averaged over the applicable Quotational Period

**5.2. Deductions :**

**Zinc:**

Treatment Charge

US Dollars ....( U.S. Dollars) per DMT of payable Zinc concentrates, DES FO, Vizag, India

**Penalties:**

The following penalties shall apply under this contract:

As applicable

All fractions pro rata.

Except for Zinc and Lead penalty, if any other element is found to breach the international penalty triggers, then penalty for the same shall be mutually discussed between Buyer and Seller in line with the standard industry penalty terms.

**5.6 Alternate Pricing**

Pricing Basis No longer Published or No Longer Representative – In the event that (i) Metal Bulletin ceases to be published, or ceases to publish any quotation referred to in this Article for determining the prices for Zinc, or publishes and does not later correct an erroneous quotation for Zinc, or (ii) the quotations are no longer representative of the value then being obtained by non-integrated mines for Zinc, contained in Zinc concentrates, then, upon written notice by Seller or Buyer to the other, Seller and Buyer shall promptly consult with each other with a view toward determining a new pricing basis consistent with the previous method for determining the payable Zinc Price, with respect to the concentrates sold here under.

**5.7 Interim Invoicing**

If Seller or Buyer gives notice in accordance with the clause 5.6, (i) Seller shall have the right by written notice to Buyer to invoice provisionally at the applicable price(s) applied to the previous consignment sold hereunder prior to such written notice (the Interim Price) until (i) the Seller and Buyer shall agree on a new pricing basis for the metal concerned or (ii) the Referees have finally determined the price as hereafter provided, whichever first occurs. For the very first shipment should a situations contemplated above shall arise, then the pricing shall be done on the latest publicly available LME Details.

In the event of the inability of the Buyer and Seller to agree to such an alternate pricing method within a reasonable period after such quotations are no longer published or representative, an alternate price method shall be determined through arbitration in accordance with section 15 hereof.

## **6. QUOTATIONAL PERIOD**

The Quotational period for all payable metals shall be average of the First Month after the Month of Arrival of the performing Vessel at the Discharge Port.

## **7. PAYMENT**

**7.1 Manner of Payment** – At least 3 (three) weeks in advance of the estimated ETA of the delivery Vessel at the Load Port, Seller shall submit to Buyer a Proforma invoice that shall state

- a) Expected tonnage to be shipped (DMT).
- b) Estimated metal assays of the material to be shipped.
- c) Metal prices based on the average of 10 (Ten) LME days prior to the date of the proforma invoice.

**7.2** At least 15 (Fifteen) days prior to the ETA of the delivery Vessel at the load port as advised by Seller to Buyer, Buyer shall establish a Letter of Credit for one hundred percent of the proforma invoice value with a tolerance of plus or minus ten percent (10%).

The said letter of credit shall be

- a) Irrevocable.
- b) Opened through an Indian/International bank in India

## **7.3 First provisional payment**

The Letter of Credit shall allow for 90% (ninety percent) provisional payment in US Dollars as per provisional invoice which will indicate Zinc, contents, less contractual deductions, 60th day after the date of the actual arrival of the Vessel at the discharge port as evidenced by the NOR against Seller's presentation of the following documents:

1. Seller's Provisional Invoice based on Seller's provisional weights and assays and LME quotations for the last ten (10) working days prior to the Bill of Lading date.
2. 2/3 original clean on board charter party Bills of Lading marked "Freight Prepaid" or "Freight payable as per charter party" and consigned to Order and blank endorsed. If the Bills of Lading are marked freight payable as per charter party, then Seller will provide a certificate outside the Letter of Credit certifying that the goods shall be delivered on DESFO basis with freight payable by Seller.

3. Seller's weight certificate showing dry weight in DMT, wet weight in WMT and moisture content.
4. Seller's provisional assay certificate showing Zinc, and impurities, if any as per the contract.
5. Certificate of Origin issued by Seller stating the Mine and Country of Origin.
6. A fax copy of Notice of Readiness evidencing the date of arrival of the Vessel at Discharge Port issued by the carrying Vessel's master or agent.
7. Seller's certificate stating that 1/3 Bill of Lading has been sent to the opening bank within seven (7) working days from the B/L date by Courier and specifying the courier company and date of courier. Copy of courier airway bill to accompany the documents.
8. A certificate from the Vessel owner or agent certifying the age and classification of the Vessel.
9. Certificate of Insurance in duplicate covering all risks for 110% (one hundred and ten percent) of the provisional value. The copy of the Insurance certificate (unendorsed) shall be faxed to the Buyer along with the other documents

On Buyer's request and on best effort basis, Seller shall provide the provisional weight and/ or assay certificate on Mine's certificate outside the Letter of Credit.

#### **7.4 Second Provisional Payment**

A second provisional payment for 100% (one hundred percent) of the second provisional invoice value of the Concentrate less the value of the first provisional payment, shall be effected by the owing party 60 calendar days after the arrival of carrying vessel at discharge port, based on latest known information and in case, the applicable prices for the QP are partially known, the same shall be used and following documents are to be presented at counters of the advising bank :

1. Seller's second provisional invoice based on receiving smelter weights, moisture and latest known assays.
2. Fax Copy of NOR

#### **7.5 Final Payment** – The final payment for the balance due to the Seller or the Buyer shall be made within 3 (three) working days after the final weights, moisture, assay and prices are known and the following documents have to be submitted by the Seller to the Negotiating Bank. ( But not before 60 calendar days from the date of NoR )

- a) Seller's final invoice in quadruplicate.
- b) Seller's Certificate of final weight showing dry weight and moisture content.
- c) Seller's certificate of final assay showing Zinc, Silver and Gold and impurities, if any.
- d) Buyer's fax certificate confirming the final invoice value mentioned by the Seller. Such fax to be sent by the Buyer within 2 (two) working days after the receipt of Seller's final invoice calculation.

The Letter of Credit shall be operative and subject to the “uniform customs and practices for documentary credits (2007 revision, ICC Publication No 600)”.

- 7.7 Payment Adjustment** – In respect of any shipment of the Concentrate, if at any time following the Seller’s receipt of the first provisional payment and prior to Final Settlement, the difference between the sum of all provisional payment amounts paid, including any payment adjustments made up to that time, and the current value of the Concentrate exceeds US\$ 1,000,000 (US\$ one million), the Party owed such amount shall have the right to issue a Payment Adjustment Invoice for the amount of the difference and the owing Party shall pay this amount within 5 (five) Business Days in US\$ by telegraphic transfer outside of any letter of credit in place for the shipment.

The current value of the Concentrate to be used in the Payment Adjustment Invoice shall be based on the latest known (or final if known) weights, moisture, and assays and the applicable metal quotations applicable as follows:

- either, if more than 10 LME market days of the contractual Quotational Period have passed: The average of the LME market days from the first LME market day of the contractual Quotational Period until and including the date of the Payment Adjustment Invoice.. or
- if the contractual Quotational Period has not started or is running for less than 10 LME market days: The average of 10 LME market days prior to the date of the Payment Adjustment Invoice

Payments made by either party under any Payment Adjustment Invoices shall attract interest at 3-month LIBOR (or other suitable mutually agreed rate should LIBOR cease to be functional) on the date of the Payment Adjustment Invoice plus 1.5% per annum for the period of advancement. The interest shall be calculated from the value date of payment (as evidenced by swift copy) until the date of final invoice.

- 7.8** Buyer agrees to amend the Letter of Credit to increase its amount or extend the period of validity and make other appropriate modifications if necessary to provide for the full final payment. Request for amendment for period of validity should be notified by the Seller to the Buyer 5 (five) working days in advance of such due payment date. In case of increase in amount of Letter of Credit for final payment, after the final invoice amount is arrived at, a 5 (five) working day notice should be given to the Buyer to carry out such enhancements. In lieu of the above, subject to Seller’s prior approval, the Buyer may remit the amount of final payment directly to the Seller’s account within three working days instead of enhancing the Letter of Credit. Also if the amount is due to the Buyer, the Seller will remit either through the Letter of Credit channel or any account to which Buyer directs the Seller for such remittance within 3 (three) working days after the final invoice value is known. All the necessary original documents in case of such direct remittances will be directly sent to the Letter of Credit opening bank

or to any address as the Buyer advises. The Seller shall within 10 (ten) working days send all such original documents to the address advised by the Buyer.

For purposes of Proforma, Provisional and Final Invoices, Zinc, Silver and Gold contents will be represented upto 3 (three) decimal places. The price of Zinc will be represented upto 2 (two) decimal places. The weights in WMT and DMT will be represented upto 3 (three) decimal places. All other values derived in the invoice including the final value so derived in the invoice shall be presented to the 2nd decimal place.

## **8. WEIGHING, SAMPLING AND MOISTURE DETERMINATION**

**8.1** For purpose of final settlement, weighing, sampling and moisture determination shall be carried out at receiving smelter with such costs for Buyer's account in accordance with standard international practices. The final weight is to be determined by weighing facilities at Buyer's smelter at Vizag, India

**8.2** The sample lot size shall be approximately 500 (five hundred) WMT and each lot shall form a separate and complete delivery for the purpose of settlement of weight. Representative samples shall be taken from each lot and distributed in the following manner

4 sets of samples to Buyer

4 sets of samples to Seller

4 sets of samples to be held by independent Surveyor/ for purposes of umpire and reserve in case of loss

Similarly 12 (twelve) sets of composite samples shall be prepared and distributed as above.

Each sample shall be prepared in an internationally acceptable manner with a minimum sample weight of 250 (two hundred and fifty) gms.

Seller shall have the right to be represented at such operations, at its own expense. The samples prepared shall be delivered to the Seller's representative.

## **9. ASSAYING**

**9.1** From the samples taken in accordance with clause 8.2, Buyer and Seller shall assay for Zinc, and impurities, if any which shall be exchanged in the customary manner within 60 (sixty) calendar days from the date of sealing of samples. Assays for Zinc, shall be exchanged on lot by lot basis and for impurities on Composite basis. Seller shall exchange the assays on the letterhead of any one of the LME registered laboratories as named in clause 9.3 below, in Seller's option and the Buyer shall provide the assays on Buyer's letterhead. All assays (including umpire assay) shall show Zinc content to the 1/100 of one percent... The mean of such results shall be final and binding for the parties hereto; if such results show that the differences between the Seller's and Buyer's assays are within the following limits

Zinc – 0.25% (zero decimal twenty-five percent)

In the event the aforesaid splitting limits are exceeded, an umpire assay shall be performed, unless otherwise agreed, on the corresponding lot sample held in reserve for that purpose by one or two of the Umpire Laboratories as in clause 9.3.

## **9.2 Determination of Final assay using umpire Assay**

If either the Seller or Buyer shall so refer the matter to the umpire, the umpire's assay shall be made on the basis of the umpire's samples. The umpire shall be instructed to advise both the Seller and the Buyer of the results of the umpire assay by facsimile and mail.

If the umpire results falls in between the Seller's and Buyer's assay, the umpire assay shall be final.

If the umpire assay falls outside the Seller's and Buyer's assay then the middle of the three assays shall be final.

The cost of the umpire will be borne by the party whose assay is the farthest from the umpire assay, unless if the umpire assays is the mean of the Seller's and Buyer's assay, wherein the cost of umpire shall be equally shared by the Seller and the Buyer.

All instructions to the Umpire will be sent by the Buyer after mutual agreement with copy of the instructions marked to the Seller.

## **9.3 Umpire Laboratories:**

Alex Stewart (Assayers) Ltd.,  
Caddick Road  
Knowsley Industrial Estate  
Knowsley, Merseyside  
L34 9HP, England

Or  
Alfred H Knight  
Eccleston Grange  
Prescot Road  
St.Helens, Merseyside  
L34 9ER, England

Or  
Laboratory Services International  
Pittsburghstraat 9,  
3047 BL, Rotterdam, Netherlands

Or

Inspectorate International Limited,  
2 Perry Road  
Witham, Essex, CM8 3TU  
England

Laboratories, which have performed supervision at the loadport or discharge port and/or party analysis, shall not be appointed to perform umpire analysis, unless otherwise mutually agreed.

## **10. TITLE AND RISK**

- 10.1** Title to the Concentrates shall pass from the Seller to the Buyer upon Seller's receipt of the first provisional payment (i.e. 90% of the provisional invoice value) as set out in 7.3.
- 10.2** Risk passes from Seller to Buyer upon opening of the hatches of the carrying vessel at discharge port, Vizag, India.

## **11. INSURANCE**

Insurance shall be covered by the Seller in US Dollars through a first class Insurance company. It will be effective from the time the Concentrates are progressively loaded on board vessel at loadport and are through to Buyer's receiving smelter warehouse (as long as it is within 30 (thirty) calendar days after discharge from the ocean going vessel at the port of destination) for 110% (one hundred and ten percent) of the full provisional invoice value, subject to later adjustment to the 110% (one hundred and ten percent) of final invoice value calculated in accordance with the terms of this Agreement and against all risks, including riots, civil commotions, inherent vice, spontaneous combustion, fire, and malicious damage, including Institute Cargo Clauses (A), Institute War Clauses (Cargo), Institute Strike Clauses (Cargo).

The claims shall be payable in India in US Dollars without any deductions. The name, address and contact details of the local claim settling agent should be mentioned on the certificate of insurance.

## **12. TOTAL/PARTIAL LOSS**

### **12.1 Total Loss**

In the event of total loss before the vessel arrives at discharge port, i.e prior to opening of the hatches, then no payment will be required from Buyer. Insurance settlement in this case shall accrue to Seller.

From the time when the carrying vessel has arrived at discharge port and the material has been placed at the disposal of the Buyer, in case of total loss provisional payment shall be made in accordance with Clause 7 – Payment and final settlement shall be made as soon as all necessary details are available based

on shipped weights, moistures and assays and otherwise in accordance with the terms of this contract. Insurance settlement in this case shall accrue to Buyer.

## **12.2 Total Damage**

Damage to cargo, meaning either total or partial cargo being rendered unsuitable for smelting purpose, deemed to have occurred by either party, shall be intimated to other party during WSMD operation at receiving smelter and shall be determined in extent by a certificate issued by an independent inspection agency mutually appointed. The cost of issuing such certificate is to be conjointly borne by the Buyer & Seller.

In the event of Total damage occurring before the carrying vessel has arrived and the material has been placed at the disposal of the Buyer at discharge port, Vizag, India, no payment shall be required from Buyer. In this case, insurance shall accrue to Seller. In case 90% (ninety percent) of provisional invoice value has already been drawn, the entire paid value shall be claimed by the Buyer by raising a Debit note for the same. This shall be refunded by the Seller within two (2) bank working days of Buyers Debit Note being faxed to Seller. In case Total damage occurs after carrying vessel has arrived and the material has been placed at the disposal of the Buyer at discharge port, provisional payment shall be made in accordance with clause 7 - Payment. Final settlement shall be made as soon as all necessary details are available based on shipped weight, moisture & assays & otherwise in accordance with the terms of this contract. Insurance settlement in this case shall accrue to Buyer.

## **12.3 Partial Loss**

Partial Loss shall mean any losses declared due to attributable reasons, by the Master of the vessel, prior to arrival of the carrying vessel and the material being placed at the disposal of the Buyer at discharge port, Vizag, India.

Buyer shall pay for the quantity actually received at its smelter, as ascertained by Clause 8-Weighing/Sampling/Moisture Determination. In case of declared partial loss as mentioned above, value of material lost should be established from the provisional invoice value by prorating. In case 90% (ninety percent) of provisional invoice has already been drawn, the value of the material lost shall be claimed by the Buyer by raising a Debit Note for the same. This shall be refunded by the Seller within two bank working days of Buyer's Debit Note being faxed to Seller for the same amount of the provisional amount drawn.

In case of not declared partial Loss prior to arrival of the carrying vessel and the material being placed at the disposal of the Buyer at discharge port, provisional payment shall be made in accordance with clause 7- Payment. If after the arrival of the carrying vessel and the material being placed at the disposal of the Buyer there is a partial loss of material, the value of the material lost shall be claimed by the Buyer under the insurance certificate provided by the Seller.

Final settlement shall be made as soon as all necessary details are available based on received weight, moisture & assays & otherwise in accordance with the terms of this contract.

#### **12.4 Partial Damage**

In case of partial damage determined to have occurred by a mutually appointed inspection agency (as under Total Damage), prior to arrival of the carrying vessel and the material being placed at the disposal of the Buyer at discharge port Vizag, India, Buyer shall pay for the quantity of sound cargo received in usable condition. The value of the material damaged shall be established from the provisional invoice value by prorating. In case 90% (ninety percent) of provisional invoice value has already been drawn, the value of material damaged shall be claimed by the Buyer by raising a Debit note for the same. This shall be refunded by the Seller within two (2) bank working days from date of Buyer's Debit Note being faxed to Seller for the same amount of the provisional amount drawn.

In case of Partial Damage determined to have occurred after arrival of the carrying vessel and the material being placed at the disposal of the Buyer at discharge port Vizag, provisional payment shall be made in accordance with Clause 7 – Payment. Final settlement shall be made as soon as all necessary details are available based on received weights, moisture and assays, and otherwise in accordance with the terms of this contract. Insurance settlement in this case shall accrue to Buyer.

#### **13. TAXES, DUTIES, CHARGES AND COMMISSIONS**

All taxes, duties, commissions and charges outside India shall be for the Seller's account and taxes, duties, commissions and charges in India shall be for the Buyer's account.

#### **14. FORCE MAJEURE**

- 14.1. The Seller shall not be liable to the Buyer, nor shall the Buyer be liable to the Seller, for any delay or failure in the event of any strike, Act of God, war, lockout, fire, earthquake, flood, storm, tempest, accident, or any other causes whatsoever reasonably beyond the control of the parties to this Agreement, which prevents or hinders, as the case may be, the Seller from giving delivery or the Buyer from receiving the Concentrates, under this Agreement. To the extent it is so prevented or hindered, the affected party may postpone delivery / receipt, as the case may be; until such time that the delivery / receipt can be made / taken.
- 14.2. It is understood that a condition for a relief from performance by reason of force majeure is that the party claiming force majeure shall provide the other party with immediate notice by letter and/or fax of Force Majeure to be followed as soon as reasonably possible with written particulars thereof by registered mail. Any party hereto suffering an event of force majeure shall use all reasonable efforts to remove such event as soon as possible and resume, with the least possible delay, the performance of its obligations under this agreement.
- 14.3. In case such delay, due to force majeure, exceeds 60 (sixty) calendar days, the party not declaring Force Majeure shall have the right to cancel the tonnage so affected. If the force majeure conditions exceed 180 (one hundred and eighty)

calendar days then either party shall have the right to cancel the tonnage so affected.

- 14.4 This clause shall not apply for any material for which pricing has commenced/ has been completed and / or vessel space has been booked.

## **15. ARBITRATION**

15.1 All disputes arising out of or in connection with this Agreement (including the question regarding its existence, validity or termination) shall be referred to and finally settled by arbitration venue in London, United Kingdom and in accordance with the Rules of the London Court of International Arbitration in effect on the date of invocation of this clause and which Rules are deemed to be incorporated by reference into this clause. The Arbitration shall be conducted in English Language by Arbitral Tribunal consisting of three arbitrators, one to be appointed by each party and third to be appointed by President of London Court of International Arbitration. Any decision or award shall be final and binding on both the Buyer and the Seller. Arbitration Tribunal shall state in its award the facts of the case and the reasons for its decision. The parties shall comply in good faith with the decision.

15.2. All costs of arbitration, including without limitation, witness fees, legal fees and expenses shall always be borne by the parties incurring such costs. The costs of the arbitrators shall be borne equally by the parties unless awarded by the decision of the arbitrators.

### **GOVERNING LAW:**

The Construction and validity of this Agreement shall be governed by the Law of England and Wales, excluding the United Nations Convention on Contracts for the International Sales of Goods of 11 April 1980 (CISG).

### **RELIEF FROM ECONOMIC HARDSHIP:**

The provisions of this agreement are intended by Buyer and Seller to operate fairly over the term of this agreement. Buyer and Seller recognise that it is impracticable to make provision for every contingency which may arise during the term of this agreement. In the future, should circumstances arise which were unforeseeable at the time this agreement was made and which are anticipated to cause or are disclosed to have caused material economic difficulties to either Buyer or Seller from the continued operation of this Agreement then Buyer and Seller agree to promptly consult together and review the provisions of this Agreement and consider possible modifications thereof which will relieve such economic difficulties.

No amendment of this agreement shall be made except by mutual agreement of the parties hereto in writing and such economic difficulties shall not be cause of termination of this Agreement or relieve any party from its obligations under this Agreement.

It is not intended that this article be invoked to deprive a party of savings or advantages arising from the efficiency of the party which contributes to the profitability of its operations nor is it intended that this article be invoked as a result of the availability of more attractive sources of concentrates supply for Buyer or more attractive markets for Seller.

**CONFIDENTIALITY:**

Each party shall use its best efforts to assure that the provisions of this Agreement and all information disclosed to it concerning the other party and its assets and businesses and not otherwise publicly available shall be kept confidential and shall, unless otherwise required by law, not be disclosed without the consent of other party to anyone other than (a) to the shareholders and their affiliates, directors, officers, employees, accountants, consultants, counsel and representatives of each party, the Trustee and the Senior Lenders or prospective lenders, (b) to any proposed transferee, (c) in connection with legal proceeding or required filings with Government agencies, courts, stock exchanges or other regulatory agencies, excluding specific references to the commercial terms of this Agreement. If such information is so disclosed to any such person or entity, each party agrees to use its best efforts to cause such person or entity to keep such information confidential.

**WAIVER:**

No waiver of any of the terms and conditions of this contract shall be binding or effectual for any purpose, unless expressed in writing and signed by the party giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on that part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

**20. ASSIGNMENT:**

Each of Seller and Buyer shall be entitled to grant, transfer, and assign this Agreement to a successor in interest, by merger, consolidation, sale or transfer or otherwise, in which in interest acquires all or substantially all of the assets and business (including the assets and business necessary to perform this agreement) of the transferring party and in the case of such merger, consolidation, sale and transfer, this Agreement shall be transferred and assigned to such successor in interest.

Except for the above clause, this agreement shall not be assignable by any of the parties hereto without the prior consent of the other, which consent shall not be unreasonably denied.

**21. AMENDMENT:**

No amendment or variation of this Agreement shall be permitted nor relied by either party unless such amendments or variation is expressed in writing and signed by each Party.

## **22. NOTICE**

**22.1** Any notice, request or other communication required or permitted by any provision of the Agreement shall be in the English language and shall be given in writing by prepaid mail, cable, facsimile, telex or e-mail and addressed

In the case of the Seller to:

And in case of the Buyer to:

Hindustan Zinc Limited Industries (India) Ltd.,

Or at such other address that may be designated in writing, respectively, by the Seller and the Buyer as a proper address to which such communication should be directed.

**22.2** Any such notice, request or communication given in writing shall be deemed to have been given on the 7<sup>th</sup> (seventh) business day following the day of mailing, or the next business day after telex, cable, facsimile or e-mail communication.

## **23. ENTIRE AGREEMENT:**

This Agreement along with the Addenda agreed to and signed from time to time by both parties to the Agreement shall set forth the entire understanding of the parties with respect to the subject matter hereof. Neither this Agreement taken together with its Addenda nor any provision hereof can be waived, changed, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of any waiver, change, discharge or termination is sought.

## **24. COUNTER PARTS:**

This Agreement may be executed in any number of counterparts and shall become effective when executed by the Seller and by the Buyer. Each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

BUYER

SELLER