



COAL INDIA LIMITED  
MARKETING DIVISION  
Apeejay House, A-Block, 6<sup>TH</sup> Floor,  
15, Park Street, Kolkata 700 016.

Phone : 033-22263301

TeleFax : 033-22170495

E-Mail : cilcontract@gmail.com

CIL/CMO/S&M/47252(NewPol)/ 266

Date: 02-04-2013

To  
General Manager(S&M)  
ECL/BCCL/CCL/SECL/MCL/WCL/NCL/NEC

CGM/NEC

Dear Sirs,

Sub : Minor modifications in the Model FSA applicable for  
a) New Power Plants  
b) New Non Power Consumers (LoA route)

In the monthly Coordination Meeting of GM(S&M) s of coal companies held on 29.12.12 at Kolkata it was discussed that suitable modification in respect of certain provisions of the New Power FSA models are required to impart more clarity and remove some ambiguities. References were also received in this regard from the subsidiary coal companies. The issues have since been examined at this end and accordingly certain provisions in the model FSAs applicable to New Power Plants are modified. Further, a minor correction in the Model Applicable to New Non Power Consumers has also been made. The above modifications have been approved by the competent authority.

The existing provisions vis-à-vis the corresponding modified provisions indicating the relevant FSA Models are furnished in the enclosed Statement.

This is for your taking further necessary action in the matter.

Encl: As above

Yours faithfully  
  
2/4/13  
General Manager(S&M)

Copy to:-  
General Manager (QC), S&M, CIL  
General Manager (Commercial), S&M, CIL  
General Manager (Operation), S&M, CIL  
Chief Manager (Finance), CIL  
TS to D (M)

### Modifications/ Amendments in the FSA Models for New Power plants

Sr. no.	Clause	Existing Provision	Clause	New Provision
1	<b>2.8.2.2</b>  <b>(both for New SEB &amp; IPP)</b>	“The Purchaser shall have completed the construction, as per the implementation schedule specified in detailed project report/ techno-economic feasibility report submitted during the validity of Letter of Assurance (LoA), and the completion of such construction along with readiness of the power plant for lighting up has been certified by an Independent Engineer within the Condition Precedent Period”	<b>2.8.2.2</b>  <b>(both for New SEB &amp; IPP)</b>	“The Purchaser shall have completed the construction and the completion of such construction along with readiness of the power plant for lighting up has been certified by an Independent Engineer within the Condition Precedent Period”
2	<b>3.5.5 (SEB)/ 4.5.5 (PPU)</b>	In no case shall there be any variation permitted in respect of QQ either by the Purchaser or Seller.	<b>3.5.5 (SEB)/ 4.5.5 (PPU)</b>	Normally variation shall not be permitted in respect of QQ either by Purchaser or Seller pursuant to 3.5.2, 3.5.3 and 3.5.4 (SEB)/ 4.5.2, 4.5.3 and 4.5.4 (PPU) except with mutual consent of the Purchaser and the Seller. However, variation in QQ with corresponding variation in the SQs of the quarter concerned over and above permitted under sub clause 3.5.2, 3.5.3 and 3.5.4 (SEB)/ 4.5.2, 4.5.3 and 4.5.4 (PPU) can be made with mutual consent of the Purchaser & the Seller expressed in writing.
3	<b>3.5.6 (SEB)/ 4.5.6 (PPU)</b>	The sum total of SQ during any Quarter, including any revision allowed hereof, shall not exceed the QQ of the concerned Quarter.	<b>3.5.6 (SEB)/ 4.5.6 (PPU)</b>	To be deleted
4	<b>3.5.7 (SEB)/ 4.5.7 (PPU)</b>	The above schedule of supply is in respect of supply of coal from indigenous sources. Supply of imported coal shall be made as per its availability, which is depending upon many uncontrollable factors and hence no restrictions shall be applicable for quarterly distribution. The aggregate of the supply of coal from indigenous sources as well as through import shall not exceed the ACQ	<b>3.5.7 (SEB)/ 4.5.7 (PPU)</b>	The above schedule of supply is in respect of supply of coal from indigenous sources. Supply of imported coal shall be made as per its availability, which is depending upon many uncontrollable factors and hence no restrictions shall be applicable for quarterly distribution.
5	<b>3.12.4 (SEB)/ 4.12.4 (PPU)</b>	The quantity offered by the company from imported coal and not accepted by the Purchaser shall be added with the actual delivered quantity as deemed delivered quantity for the purpose of determining the Additional Deliveries.	<b>3.12.4 (SEB)/ 4.12.4 (PPU)</b>	The quantity offered by the company from imported coal and not accepted by the Purchaser shall be added with the actual delivered quantity as deemed delivered quantity for the purpose of determining the Actual Deliveries.

Sr. no.	Clause	Existing Provision	Clause	New Provision
6	<b>3.12.5 (SEB)/ 4.12.5 (PPU)</b>	Not existing	<b>3.12.5 (SEB)/ 4.12.5 (PPU)</b>	Supply of coal in excess of ACQ shall be with mutual consent
7	<b>14.4 (SEB)</b>	In the event of expiry of validity of the PPA(s) (executed either directly with the DISCOM or through a PTC) and the renewed/revalidated PPA not submitted before its expiry date, supply of coal shall be suspended and remain under suspension till the renewed/revalidated PPA is submitted. The Quantity during the Suspension period shall be considered as Deemed Delivered Quantity (DDQ).	<b>14.4 (SEB)</b>	To be deleted
8	<b>16.1.6 (SEB)</b>	In the event the Purchaser fails to submit the renewed/revalidated PPA pursuant to suspension of coal supplies as per clause 14.4 within a period of Six (6) months from the date of expiry of the validity of the PPA, the Seller shall have the right to terminate this agreement by issuing a prior notice of thirty (30) days and in such case the SD shall be liable to be forfeited.	<b>16.1.6 (SEB)</b>	To be deleted
9	<b>14.1 (e) (PPU)</b>	Adjust the outstanding amount against the Security Deposit or by invoking the Security Deposit BG maintained in terms of Clause 3 or such portion of it as available; and/or	<b>14.1 (e) (PPU)</b>	Adjust the outstanding amount from any amount of the Purchaser lying with Seller including payments made for coal supplies; and/or
10	<b>14.3 (PPU)</b>	In the event of suspension of Coal supplies pursuant to the Clause 14.1(a), the Seller shall have the right to continue the suspension for as long as the interest-free Security Deposit, has not been fully replenished. The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount together with interest as full replenishment of Security Deposit.	<b>14.3 (PPU)</b>	In the event of suspension of Coal supplies pursuant to the Clause 14.1(a), the Seller shall have the right to continue the suspension for as long as the outstanding payment has not been adjusted/ paid The Seller shall resume the Coal supplies within three (3) days of payment of the outstanding amount together with interest.
11	<b>16.2.3 (PPU)</b>	The Seller, in the event of encashment of Security Deposit/ Bank Guarantee pursuant to Clause 14.1, shall have the right to terminate this Agreement provided that the Purchaser has not replenished the Security Deposit/ Bank Guarantee with the forfeited amount within the aforesaid said notice period of thirty (30) days.	<b>16.2.3 (PPU)</b>	The Seller, in the event of continuation of suspension for a continuous period of 6 months pursuant to Clause 14.1, shall have the right to terminate this Agreement by providing a notice period of thirty (30) days.

Sr. no.	Clause	Existing Provision	Clause	New Provision
12	<b>16.2.5 (PPU)</b>	In the event the Purchaser fails to submit the renewed/revalidated PPA pursuant to suspension of coal supplies as per clause 14.1(c) and 14.5 within a period of Six (6) months from the date of expiry of the validity of the PPA, the Seller shall have the right to terminate this agreement by issuing a prior notice of thirty (30) days and in such case the SD shall be liable to be forfeited.	<b>16.2.5 (PPU)</b>	In the event the Purchaser fails to submit the renewed/revalidated PPA pursuant to suspension of coal supplies as per clause 14.1(c) and 14.5 within a period of Six (6) months from the date of expiry of the validity of the PPA, the Seller shall have the right to terminate this agreement by issuing a prior notice of thirty (30) days
13	<b>2.8.3.4 (SEB &amp; PPU)</b>	If within the Condition Precedent Period, the Purchaser does not fulfill the Condition Precedent set out in clause 2.8.2 due to any reasons other than Force Majeure, or the said Condition Precedents in clause 2.8.2 have not been jointly waived by the parties in writing, the Seller shall have the right to forfeit the Security Deposit amount submitted by the Purchaser without any further notice to Purchaser.	<b>2.8.3.4 (SEB &amp; PPU)</b>	If within the Condition Precedent Period, the Purchaser does not fulfill the Condition Precedent set out in clause 2.8.2 due to any reasons other than Force Majeure, or the said Condition Precedents in clause 2.8.2 have not been jointly waived by the parties in writing, the Seller shall have the right to forfeit the Security Deposit amount submitted by the Purchaser without any further notice to Purchaser. In case of FSAs applicable for more than 1 unit of a power plant, Security Deposit shall be forfeited in proportion to the number of units failed to achieve condition precedent.
14	<b>2.11.2 (SEB)</b>	<p>The Purchaser shall deposit with the Seller a sum of [Rs. _____ (Indian Rupees _____)] equivalent to six percent (6%) of the Base Price of such Grade of Coal, as described in Schedule-II to this Agreement, prevalent on the date of deposit multiplied by ACQ, as Security Deposit (SD), in cash / Bank Guarantee on or before the signing of this Agreement. In case of multiple Grades indicated in Schedule-II, the highest Grade shall be considered for the purpose of calculation of SD without any commitment whatsoever to supply such Grade of Coal. Such Security Deposit shall be non-interest bearing. Accordingly, the Purchaser has furnished Rs. [•] (Indian Rupees _____) towards the Security Deposit amount.</p> <p><i>[In case the SD is in the form of a bank guarantee the same shall be provided in the enclosed format ("SD Bank Guarantee") with this Agreement at Schedule- II.]</i></p>	<b>2.11.2 (SEB)</b>	<p>The Purchaser shall deposit with the Seller a sum of [Rs. _____ (Indian Rupees _____)] equivalent to six percent (6%) of the Base Price of such Grade of Coal, as described in Schedule-III to this Agreement, prevalent on the date of deposit multiplied by ACQ, as Security Deposit (SD), in cash / Bank Guarantee on or before the signing of this Agreement. In case of multiple Grades indicated in Schedule-III, the highest Grade shall be considered for the purpose of calculation of SD without any commitment whatsoever to supply such Grade of Coal. Such Security Deposit shall be non-interest bearing. Accordingly, the Purchaser has furnished Rs. [•] (Indian Rupees _____) towards the Security Deposit amount.</p> <p><i>[In case the SD is in the form of a bank guarantee the same shall be provided in the enclosed format ("SD Bank Guarantee") with this Agreement at Schedule- II.]</i></p>

Sr. no.	Clause	Existing Provision	Clause	New Provision
15	<b>2.11.3 (SEB)/ 3.3 (PPU)</b>	The SD Bank Guarantee submitted by the Purchaser, as per Clause 2.11.2 above, shall remain valid till thirty (30) days from the First Delivery Date under this Agreement. Purchaser shall extend the SD Bank Guarantee and submit such letter of extension/ extended SD Bank Guarantee to the Seller one month in advance of the expiry date thereof, failing which the Seller shall have the right to terminate this Agreement.	<b>2.11.3 (SEB)/ 3.3 (PPU)</b>	The SD Bank Guarantee submitted by the Purchaser, as per Clause 2.11.2 above, shall remain valid till thirty (30) days from the First Delivery Date under this Agreement. Purchaser shall extend the SD Bank Guarantee and submit such letter of extension/ extended SD Bank Guarantee to the Seller one month in advance of the expiry date thereof, failing which the Seller shall have the right to terminate this Agreement. In case of multiple units of a Power plant, thirty (30) days from FDD of the last unit.
16	<b>2.11.5 (SEB)/ 3.5 (PPU)</b>	The Security Deposit shall be refundable to the Purchaser at the end of 30 days from the First Delivery Date.	<b>2.11.5 (SEB)/ 3.5 (PPU)</b>	The Security Deposit shall be refundable to the Purchaser at the end of 30 days from the First Delivery Date. In case of multiple units of a Power plant, thirty (30) days from FDD of the last unit.
17	<b>4.6.3(e) (SEB) / 5.6.3(e) (PPU)</b>	Compensation for oversized stones shall be payable by the Seller to the Purchaser month-wise, Power-station wise, in terms of weighted average Base Price of the analysed Grade of indigenous Coal for the equivalent quantity of stones actually verified/ removed, as above for such coal supplied progressively in a Year by the Seller from the CIL sources to the concerned Power Station by rail after accounting for the weight reduction towards destination end, weighment in terms of Clause 5.2 (SEB)/ 6.2 (PPU) and moisture compensation in terms of Clause 9.2 (SEB)/ 10.2 (PPU). However, such total quantity of oversized stones actually verified/removed shall be restricted up to a ceiling of 0.75% of the total quantity of indigenous coal supplied during the year for the purpose of compensation if supply of indigenous coal during the year has also been made from any other source(s) including captive block besides CIL sources.	<b>4.6.3(e) (SEB) / 5.6.3(e) (PPU)</b>	Compensation for oversized stones shall be payable by the Seller to the Purchaser month-wise, Power-station wise, in terms of weighted average Base Price of the analysed Grade of indigenous Coal for the equivalent quantity of stones actually verified/ removed, as above for such coal supplied progressively in a Year by the Seller from the CIL sources to the concerned Power Station by rail/ MGR after accounting for the weight reduction towards destination end, weighment in terms of Clause 5.2 (SEB)/ 6.2 (PPU) and moisture compensation in terms of Clause 9.2 (SEB)/ 10.2 (PPU). However, such total quantity of oversized stones actually verified/removed shall be restricted up to a ceiling of 0.75% of the total quantity of indigenous coal supplied during the year for the purpose of compensation if supply of indigenous coal during the year has also been made from any other source(s) including captive block besides CIL sources.
18	<b>11.6 (SEB)/ 12.6 (PPU)</b>	In the event of due date of any payment obligation under this Agreement falling on Sunday or a gazetted holiday, the next first working day shall be the effective due date for the purpose	<b>11.6 (SEB)/ 12.6 (PPU)</b>	In the event of due date of any payment obligation under this Agreement falling on Sunday or a gazetted holiday or Nationwide strike affecting banking services, the next first working day shall be the effective due date for the purpose

Sr. no.	Clause	Existing Provision	Clause	New Provision
19	<b>5.2 (SEB)/ 6.2 (PPU)</b>	Only in the absence of weighment of Coal on electronic weighbridge at the loading end, the weight recorded at the Purchaser's electronic weighbridge with an electronic print-out facility at the Unloading Point, if in proper working order, shall be taken as final. In respect of unweighed consignments at the Delivery Point on electronic weighbridge and weighed on electronic weighbridge at the Purchaser's end, the Purchaser shall submit the associated electronic printout to the Seller within thirty (30) days from the date of Railway Receipt, beyond which time the weight of the consignment shall be considered on Railway Receipt basis.	<b>5.2 (SEB)/ 6.2 (PPU)</b>	Only in the absence of weighment of Coal on electronic weighbridge at the loading end, the weight recorded at the Purchaser's electronic weighbridge with an electronic print-out facility at the Unloading Point, if in proper working order, shall be taken as final. In respect of unweighed consignments/ wagons at the Delivery Point on electronic weighbridge and weighed on electronic weighbridge at the Purchaser's end, the Purchaser shall submit the associated electronic printout to the Seller for such consignments/ wagons within thirty (30) days from the date of Railway Receipt, beyond which time the weight of the consignment shall be considered on Railway Receipt basis.
20	<b>9.2(ii)(SEB)/ 10.2(ii)(PPU)</b>	The Seller shall give regular credit note on account of excess Surface Moisture, as per Clause 9.2(i) above, calculated at the rate of Base Price of analysed Grade of Coal.	<b>9.2(ii)(SEB)/ 10.2(ii)(PPU)</b>	The seller shall give regular credit note on account of excess Surface moisture, as per clause 9.2(i)(SEB)/ 10.2(i)(PPU) above, calculated at the rate of Base Price of Analyzed Grade of coal and other charges, pursuant to clause 8.2 (SEB)/ 9.2 (PPU) but excluding statutory charges pursuant to clause 8.3 (SEB)/ 9.3 (PPU), if any, and railway freight for the quantity of excess Surface Moisture

Note: Modifications/ Amendments in the Non tapering model proposed as above shall have similar effect in the corresponding FSA Models for consumers having Tapering linkages/ coal blocks.

**For Tapering Model**

21	<b>2.5 (SEB – Tapering Model Only)</b>	In the event the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, in terms of clause 2.3 within a period of three (3) months from expiry of each five (5) year term, the Parties shall refer the matter to the Govt. of India and until a decision from the Government of India is received, the Agreement shall continue to be in force. The decision of the Govt. of India on the subject matter shall be final and binding on both the Parties.	<b>2.5 (SEB – Tapering Model Only)</b>	In the event the Parties are unable to arrive at a mutually agreed position with respect to the subject matter of review, in terms of clause 2.3 within a period of three (3) months from expiry of each one (1) year term, the Parties shall refer the matter to the Govt. of India and until a decision from the Government of India is received, the Agreement shall continue to be in force. The decision of the Govt. of India on the subject matter shall be final and binding on both the Parties.
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**Clarification on PPA related clauses for Model Applicable to SEB/State Gencos**

In respect of requirement of long term PPA certain clarifications had been issued by MOC vide. F.No 23011/97/2012-CPD dated 29.11.12 which was circulated to coal companies by this office Vide No. CIL/S&M/FSA-Action/380 dated 4-12-12. In view of the said clarifications wherever the reference for long-term PPA appeared in the Model FSA applicable to New SEB/State PUs, a footnote may be kept mentioning the reference of the clarifications as the overriding condition for PPA related requirements, while signing the FSA with such State/Government Power Units.

**Modification in the FSA Model for New Non Power Consumers (coming through LOA route)**

Sr. no.	Clause	Existing Provision	Clause	New Provision																								
1	<p><b>4.5.1 (Model A)</b></p> <p><b>4.5.1 (Model B)</b></p> <p><b>4.6.1 (Model C)</b></p>	<p>If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 100% with respect to that Year, the defaulting Party shall be liable to pay compensation to the other Party for such shortfall in the Level of Delivery or Level of Lifting, as the case may be, ("<b>Failed Quantity</b>") in terms of the following:</p> <table border="1" data-bbox="348 646 1110 1198"> <thead> <tr> <th data-bbox="348 646 415 899">Sr. No</th> <th data-bbox="415 646 615 899">Level of Delivery / Lifting of Coal in a Year</th> <th data-bbox="615 646 894 899">Rate of compensation for the Failed Quantity in terms of Base Price of the highest Grade, as shown in Schedule II</th> <th data-bbox="894 646 1110 899">Formula for calculation of compensation</th> </tr> </thead> <tbody> <tr> <td data-bbox="348 899 415 1024">1</td> <td data-bbox="415 899 615 1024">Less than 100% but upto 50% of ACQ</td> <td data-bbox="615 899 894 1024">NIL</td> <td data-bbox="894 899 1110 1024">NIL</td> </tr> <tr> <td data-bbox="348 1024 415 1198">2</td> <td data-bbox="415 1024 615 1198">Below 50% of ACQ</td> <td data-bbox="615 1024 894 1198">10%</td> <td data-bbox="894 1024 1110 1198">0.1 x P x [(100-LD or LL) – 50]/100] x ACQ)</td> </tr> </tbody> </table> <p>where P shall be the simple average of base prices grades as shown in the Schedule II.</p>	Sr. No	Level of Delivery / Lifting of Coal in a Year	Rate of compensation for the Failed Quantity in terms of Base Price of the highest Grade, as shown in Schedule II	Formula for calculation of compensation	1	Less than 100% but upto 50% of ACQ	NIL	NIL	2	Below 50% of ACQ	10%	0.1 x P x [(100-LD or LL) – 50]/100] x ACQ)	<p><b>4.5.1 (Model A)</b></p> <p><b>4.5.1 (Model B)</b></p> <p><b>4.6.1 (Model C)</b></p>	<p>If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below 100% with respect to that Year, the defaulting Party shall be liable to pay compensation to the other Party for such shortfall in the Level of Delivery or Level of Lifting, as the case may be, ("<b>Failed Quantity</b>") in terms of the following:</p> <table border="1" data-bbox="1306 646 2013 1198"> <thead> <tr> <th data-bbox="1306 646 1373 899">Sr. No</th> <th data-bbox="1373 646 1539 899">Level of Delivery / Lifting of Coal in a Year</th> <th data-bbox="1539 646 1797 899">Rate of compensation for the Failed Quantity in terms of Base Price of the highest Grade, as shown in Schedule II</th> <th data-bbox="1797 646 2013 899">Formula for calculation of compensation</th> </tr> </thead> <tbody> <tr> <td data-bbox="1306 899 1373 1024">1</td> <td data-bbox="1373 899 1539 1024">Less than 100% but upto 50% of ACQ</td> <td data-bbox="1539 899 1797 1024">NIL</td> <td data-bbox="1797 899 2013 1024">NIL</td> </tr> <tr> <td data-bbox="1306 1024 1373 1198">2</td> <td data-bbox="1373 1024 1539 1198">Below 50% of ACQ</td> <td data-bbox="1539 1024 1797 1198">10%</td> <td data-bbox="1797 1024 2013 1198">0.1 x P x [(100-LD or LL) – 50]/100] x ACQ)</td> </tr> </tbody> </table> <p>where P shall be the Base Price of the highest grade as shown in the Schedule II.</p>	Sr. No	Level of Delivery / Lifting of Coal in a Year	Rate of compensation for the Failed Quantity in terms of Base Price of the highest Grade, as shown in Schedule II	Formula for calculation of compensation	1	Less than 100% but upto 50% of ACQ	NIL	NIL	2	Below 50% of ACQ	10%	0.1 x P x [(100-LD or LL) – 50]/100] x ACQ)
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