

CONTRACTOR:	NAME OF THE CONTRACTOR / TRANSPORTER	CONTRACT NUMBER:	L- DAR MEX-2015-XXX
SERVICE:	COPPER TRANSPORTATION TO <input checked="" type="checkbox"/> DAR ES SALAAM	EXPIRY DATE OF CONTRACT:	31/12/2015



Konkola Copper Mines plc

Contractual Agreement

LOGISTICS - SAMPLE CONTRACT

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MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN:-
KONKOLA COPPER MINES PLC
PRIVATE BAG (C) 2000
FERN AVENUE
CHINGOLA, ZAMBIA

(Hereinafter referred to as "KCM")

AND

XXXXXX
XXXXXXXXXX

(Hereinafter referred to as "the Contractor")

WHEREAS:

KCM requires transportation services for the purpose of transporting bundles of copper in cathode, and occasionally in other forms, from various plants on the Copperbelt in Zambia to the Port.

The Contractor is involved in the business provision of trucks for haulage of goods and is desirous of rendering such transportation services to KCM for these destinations.

The Parties hereby record herein the terms and conditions upon which the Contractor will continue to render the aforesaid service to KCM.

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NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this agreement headings embodied in the clauses are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:
- 1.1.1 The singular shall include the plural and vice versa;
- 1.1.2 A reference to any one gender shall be capable of being construed as a reference to any of the others; and
- 1.1.3 A reference to a natural person shall be capable of being construed as a reference to an artificial person and vice versa.
- 1.2 Unless the context clearly indicates a contrary intention, words or phrases defined in this Clause 1 shall have the following meanings assigned to them:
- “Parties” - shall mean KCM and the Contractor
- “Writing” - shall include any manuscript type written, printed or electronic statement under hand or seal.
- 1.3 The following documents shall be deemed to form, and be read as, part of the agreement:
- 1.3.1 The Rates Schedule (Appendix “1”)
- 1.3.2 The KCM Company procedure KCM-CP-18 - MARKETING /LOGISTICS – TRANSPORTATION OF COPPER (Appendix “2”)
- 1.3.3 KCM General Conditions of Transport (Appendix “3”)

2. DUTIES AND OBLIGATIONS OF THE CONTRACTOR:

- 2.1 To ensure that all trucks supplied for the carriage of metal are in roadworthy condition.
- 2.2 To supply clean trucks and without holes at the base, for metal loading and should the metal become contaminated for any reason whilst under the care of the Contractor, the same to be cleaned thoroughly, to KCM’s satisfaction, at the contractor's cost.
- 2.3 To ensure that all KCM copper loads are covered with a tarpaulin/ containerized throughout the transit from point of departure to destination.
- 2.4 To ensure KCM cargo is delivered to Port of Dar es salaam within eight (8) days of dispatch from Copperbelt. A delay will attract a Late Delivery Fee of one hundred United States of America dollars (USD100.00) per day from 15th day.
- 2.5 To be liable for the loss of KCM copper, if there is a ruling of negligence following an investigation by an independent investigator.

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- 2.6 Persistent delivery delays may result in suspension of the contractor further participation in haulage of metal.
- 2.7 To transport the metal using the same equipment on which the metal is loaded at the Mine to the destination port without transshipment unless written consent is provided by KCM or for the purpose stated in 2.8 herein.
- 2.8 To notify KCM immediately in event of an accident or breakdown and to recover the metal from site and arrange for its safe transportation to the designated port. Should a sub-Contractor be required for this purpose, it remains incumbent upon the Contractor to ensure that any Sub-Contractor adheres to his agreement and effects the necessary insurance cover. Should this not occur, then the initial Contractor will be held legally responsible for any incurred loss or damage.
- 2.9 To bear the cost of re-strapping if there is an accident/ incident or transshipment which result in the need for re-strapping.
- 2.10 To ensure it is in possession of valid permits / licences that authorize it to uplift, and transport cargo in Zambia and operate within the requirement of Zambian and transit country.
- 2.11 To deliver any goods in transit, at the rate contained in this contract, prior to termination of the contract. In the event the contract expires or is short-closed all uplifted quantity to be delivered under the terms of the contract.
- 2.12 To provide KCM with information on position of each truck in transit to port on daily basis.
- 2.13 To ensure all vehicles used for copper exports are maintained at all times in a roadworthy condition and that all trucks are fitted with an effective live satellite tracking system approved by KCM.
- 2.14 To ensure all trucks destined to Dar es Salaam to move in convoy of minimum 3 and maximum 6 vehicles from point of leaving the mine after loading, until arrival at designated Port Agent's premises.
- a. To ensure all truck convoys en-route to Dar es salaam have an independent armed escort from Zambian border accompanying them on the entire journey through Tanzania to Purchaser's designated Port Agent's premises.
 - b. To ensure that all Dar es salaam destined convoys of minimum of 3 and maximum of 6 vehicles are escorted by two armed security guards; one in the vehicle at the front of the convoy and the other in the rearmost vehicle.
 - c. To ensure that a security escort vehicle, in addition to the two-armed guards noted in 2.14 (b), accompanies all Dar es Salaam destined convoys of minimum 3 vehicles and that this vehicle shall regularly patrol up and down the convoy.
 - d. To ensure all trucks utilized in transporting metal to Dar es salaam are fitted with pro-active satellite tracking and fleet management system, or to fit own tracking system of a type approved by KCM.
 - e. To ensure that the satellite tracking system utilized has a facility to download a route logic system which alerts the control center should a truck deviate from this route.
 - f. To ensure that all trucks transporting metal to Dar es Salaam are fitted with a panic button close to the driver to allow alerting of the control center in case of emergency.

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- g. To ensure all trucks utilized in transporting metal to Dar es salaam are fitted with a cell-phone and/or two-way radio of high frequency, capable of communicating between driver and control room during the course of transit. The details of the cell phone number of the driver to be always provided to KCM while providing trucks for lifting from KCM.
 - h. To maintain records of and immediately advice KCM in writing of any changes made with regard to vehicles fitted with satellite tracking and drivers cleared to access KCM operations.
 - i. KCM to retain the right to conduct any inspection during the tenure of the contract to confirm that all the above requirements are being provided. In the event that it is found that any or several of such requirements are not being maintained, KCM will have the express right to cancel the contract and /or claim any punitive claims.
- 2.15 To maintain records of and immediately advice KCM in writing of any changes made with regard to vehicles fitted with satellite tracking and drivers cleared to access KCM operations. KCM installed vehicle tracking units damaged through negligence by the transporter shall be replaced at transporter's own cost.
- 2.16 To invoice KCM for all services rendered on a regular basis, as outlined in Clause 3.2, giving details of the consignment number and quantity transported, and a copy of a loading sheet duly endorsed by KCM's Port Agents as having received the metal.
- Invoices and monthly statements must be directed to KONKOLA COPPER MINES, PRIVATE BAG KCM (C) 2000, FERN AVENUE, CHINGOLA, ZAMBIA – LOGISTICS MANAGER, for reconciliation and processing.
- 2.17 Immediate notification to the nearest police station on the highway/town in the vent that the accompanying trucks come to know of the theft/hijack and also to KCM through the transporters office or direct
- 2.18 Any other duties incidental to or otherwise required under normal practice, to give effect to paragraphs 2.1- 2.18.
- 3. DUTIES AND OBLIGATIONS OF KCM**
- 3.1 To notify the Contractor when his services are required, and commit minimum 30 truckloads of copper cathodes per month. KCM does not guarantee the frequency of volume of work which will be assigned to contractor from time to time in case of non-availability of trucks from contractor for loading.
- 3.2 To pay the Contractor for services correctly rendered **30 days** from the date of invoicing, at the rate of **USD XX.00/Metric Tonne (MT)** from Copperbelt (Nkana/Nchanga) to Dar es Salaam as contained in the attached Schedule of Prices Appendix 1.
- 3.3 The basis for rate adjustment shall be the increment or reduction in diesel price and will be based on the assumption that fuel is
- 30%** of the transporters cost of operations. The adjustment will be based on the Energy and Water Utilities Regulatory Authority (EWURA) diesel price movement. For example if there is a - **10%** adjustment in fuel price, the rate adjustment will be **3.0%**.

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If for instance the rate from Copperbelt to Dar es Salaam is **USD90.00/MT**, the new rate after the **-10%** adjustment will be **USD 87.30/MT**

The rate will be reviewed as and when the diesel price increment occurs.

- 3.4 To ensure that the Contractor's equipment is promptly loaded after receipt at the loading plant.
- 3.5 To ensure that all required documentation is provided to Contractor timeously, to avoid unnecessary delays in departure from the loading plant.

4. CONDITIONS OF TRANSPORT

- 4.1. All services rendered to KCM by the Contractor are rendered in terms of and subject to the KCM Company procedure KCM-CP-18 - MARKETING /LOGISTICS – TRANSPORTATION OF COPPER (Appendix "2") and the KCM General Conditions of Transport (Appendix "3") and both of which shall be deemed to form part of this Agreement. In the event of any conflict, between the said Policy and Procedure and KCM General Conditions of Transportation and this Contractual Agreement, the following order shall prevail:-
- The Rates Schedule
 - KCM Procedure
 - General Conditions
 - Vedanta Code of conduct and Vedanta Guidelines - Anti Bribery & Anti-corruption guidelines.
 - The Contractual Agreement

5. FORCE MAJEURE

- 5.1 **Delay or failure to comply with or breach of any of the terms and conditions** of the Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, riot, strikes, lockouts, or other labour disputes, sabotage, accident, blockade, embargo, epidemic, act of any Government or other authority, compliance with Government orders, demands to regulations, or any circumstances of like or difference nature beyond the reasonable controls of the party so failing, shall not be deemed to be a breach of this Agreement nor shall it subject either Party to any liability to the other.
- 5.2 Should either Party be prevented from carrying out its contractual obligations by any of the events referred in Paragraph 5.1 for a continuous period of 30 (thirty) days, the Parties shall consult each other regarding the future implementation of the Agreement, and if no mutually acceptable agreement is arrived at within a period of 14 (fourteen) days thereafter, either Party shall be entitled to terminate the Agreement forthwith on written notice.

6. BREACH AND CANCELLATION OF CONTRACT

- 6.1 The following actions or omissions if committed by the Contractor (including any director/employee of the Contractor and, where applicable, including the Contractor's agent's and any director / employee of such agents) shall constitute a breach of the Contract-
- 6.1.1 Failing to execute the contract in accordance with its' terms and conditions, provided that such failure is not attributable to any of the circumstances set out in Clause No. 5 - "FORCE MAJEURE";

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- 6.1.2 Failure to provide trucks within 03 days of KCM providing an order to place trucks, in such an event KCM shall divert the order to an alternative contractor with all risk purchase costs on the defaulting contractor
- 6.1.3 Delivering or attempting to deliver short masses and/or measures or giving false details in any waybills and/or invoices rendered in terms of the contract;
- 6.1.4 Negligence leading to loss of KCM's metal(s), If there is a ruling, following an investigation by an independent investigator;
- 6.1.5 Paying or offering to pay, or giving any money or other inducement of whatsoever nature whether by way of commission, credit or otherwise or lending or offering to lend, any money or giving, or offering to give, any other valuable consideration to any person or persons in the employ of KCM;
- 6.1.6 Any misuse of access facility in KCM which harms KCM's interest committed by the Contractor.
- 6.1.7 Failure to adhere to any legal requirement of the Law of the land
- 6.1.8 Failing to advise KCM of any occurrence or incidents within its control that results in financial loss on the part of KCM.
- 6.1.9 Circumventing or making any attempt to circumvent any security requirement(s) for safe transit of metal.
- 6.1.10 Committing any breach of any of the other terms and conditions of the contract.
- 6.2 In the event that the Contractor commits any of the breaches described in Paragraph 6.1 above, KCM shall, without prejudice to any of KCM's other rights under the contract and irrespective of any other remedy which might be available to KCM under any of the provisions of the contract or in law, be entitled to-
- a) Immediately cancel and determine this contract and any other contracts and/or undertaking(s) in force between the Parties without payment of any compensation to the Contractor for any damages whatsoever including loss of business and/or profits resulting from such cancellation;
- Or
- at KCM's absolute discretion, give written notice to the Contractor that KCM requires such breach to be remedied. In the event of the Contractor, within seven days of the date of receipt of notice, failing to remedy such breach and failing to furnish assurances acceptable to KCM that such breach will not occur again, KCM shall, at the expiry date of such period of seven days, have the right to cancel and determine the contract and any other contract and/or undertaking(s) in force between the Contractor and KCM without payment of any compensation to the Contractor for any damages whatsoever including loss of business and/or profits resulting from such cancellation.
- 6.3 KCM shall have the right to cancel and determine the contract forthwith without payment of any compensation to the Contractor for any damages whatsoever including loss of business and/or profits resulting from such cancellation in the event that the Contractor being placed under liquidation, either provisionally or finally, whether voluntarily or compulsorily; the Contractor being placed under receivership; a judgement in any competent court being given against the Contractor

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which judgement is not satisfied within a period of fourteen days; the major portion of the assets of the Contractor being disposed of.

- 6.4 KCM shall have the right to recover any loss/costs in the event that loaded trucks are impounded by any agency of government or otherwise.
- 6.5 The cancellation or termination of the Contract in terms of Clause. 6 shall be without prejudice to any claims for damages or other rights, which KCM might have against the Contractor.
- 6.6 The implementation by KCM of any of the provisions of Clause 6 shall be in writing, signed by KCM and shall give the effective date of the Cancellation or Termination.

7. AMENDMENT OF CONTRACT

- 7.1 Should circumstances arise which call for modification of the Agreement, the Parties may, by mutual consent given in writing amend the Agreement.

8. ASSIGNMENT

- 8.1 The contractor shall not cede, assign, or transfer the contract or any portion thereof without the express consent in writing of KCM. KCM shall not be bound to give such consent and may withhold same without assigning any reason therefore or grant such consent subject to such terms and stipulations as KCM may, in KCM's absolute discretion, deem fit.

9. SUB-CONTRACTS

- 9.1 Notwithstanding the provisions of clause 8, the Contractor may with the prior written approval of KCM, enter into sub-contracts with other persons for the rendering of the Services.
- 9.2 Should KCM consent to the Contractor entering into a sub-contract in terms of Clause 9.1, the provisions of the Contract shall be applicable mutatis mutandis to the contract between the Contractor and such sub-contractor. The Contractor hereby warrants and undertakes that sub-contractors to the Contractor shall not breach and shall comply with all obligations of the Contractor in terms of the Contract and that all the provisions of the Contract relating to any sub-contractors shall be expressly reflected in his sub-contracts.
- 9.3 The consent of KCM to the engagement of any sub-contractor shall not relieve the Contractor of his obligations under the Contract or in any way affect the Contractor's direct responsibility to KCM, nor shall it render KCM in any way responsible or liable to such sub-contractor.

10. INDEMNITY IN CASE OF DEATH OR INJURY

- 10.1 The contractor warrants that all its' personnel engaged in and upon the execution of the contract, are adequately covered by the necessary insurance and the contractor hereby indemnifies KCM against any claim or claims which may be made against KCM as a result of the death of, or injury to, any of the Contractor's personnel.

11. LAW AND JURISDICTION

- 11.1 This Agreement and any dispute between the Parties arising from or connected therewith shall be regulated in terms of the laws of the Republic of Zambia.

12. ARBITRATION

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12.1 The Parties hereto shall endeavour to settle all disputes and differences relating to and/or arising out of this Agreement amicably. In the event of failure to resolve any dispute within **20 days** of a dispute, the Parties hereby agree to resolve such dispute by way of arbitration as follows:

- 12.1.1 Each Party shall appoint an arbitrator of its choice;
- 12.1.2 The third arbitrator shall be nominated by the President from time to time of the Law Association of Zambia;
- 12.1.3 The procedure for arbitration shall be determined and agreed upon between the arbitrators. In the event that the arbitrators are unable to agree on the procedure, the Parties hereto agree that the procedure shall be in accordance with the provisions of the Arbitration Act No. 19 of 2000;
- 12.1.4 The Party which raises the dispute ("**the aggrieved Party**") shall furnish the other Party with particulars of the dispute within three (3) days of such dispute being declared by the aggrieved Party;
- 12.1.5 The arbitrators shall be appointed and will adjudicate and conclude the matter within twenty one (21) days of notification of the dispute;
- 12.1.6 The venue of the arbitration shall be Lusaka or such other place as agreed upon between the Parties; and
- 12.1.7 The decision made by the arbitrators shall be final and binding on the Parties hereto.

13. NOTICES AND DOMICILIUM

The Parties choose as their respective domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses

	Haulers Address	Konkola Copper Mines
Physical Address	: XXXXXXXX.	Stand M/1408 Fern Avenue, Chingola, Republic of Zambia
Postal Address	: XXX	Private Bag KCM(C)2000 Chingola, Zambia
Telephone	: XXX	+260 212 XXXXXX
Telefax	: XXX	+260 212 XXXXXX
Attn	:	
Mobile & Email		

provided that a party may change its domicilium to any other physical address, postal address or telefax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicilium.

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13.2 All notices to be given in terms of this Agreement will:

13.1.1 Be given in writing;

13.1.2 Be delivered or sent by prepaid registered post or by telefax/email;

13.1.3 If delivered be presumed to have been received on the date of delivery;

13.1.4 If sent by prepaid registered post to be presumed to have been received within 7 (seven) business days of posting unless the contrary is proved;

13.1.5 If sent by telefax/email be presumed to have been received on the first business day following the date of sending of the telefax/email unless the contrary is proved.

14. TENURE OF AGREEMENT

14.1. This agreement is effective from **1st April 2015** irrespective of date of signature hereof and shall continue until **31st December 2015**, subject to renewal at KCM's discretion.

14.2. KCM shall inform the contractor / transporter by 30th November 2015 in writing to allow for an extension of **90 days** after expiration of Contract.

14.3. Notwithstanding the above, this agreement is subject to cancellation by giving one month's written notice, and no reasons for such notice need be provided.

14.4. In the event of a material breach of this agreement, the party so affected must give written notice of the breach to the defaulting party. If the defaulting party has not remedied the breach within 7 working days after receipt of such notice, the non-defaulting party is entitled to terminate the agreement with immediate effect.

15. GENERAL

15.1 This document constitutes the sole record of this Agreement between the Parties.

15.2 Neither party shall be bound by an express or implied term, representation, warranty, promise, or the like not recorded herein.

15.3 No addition to or variation of this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of the Parties.

15.4 No indulgence which either Party ("the Grantor") may grant to the other Party ("the Grantee") shall constitute a waiver or any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the guarantee which may have arisen.

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Appendix 1

The Rates Schedule

	Route	Commodity	Rate- USD/MT
1.0	Copperbelt to Dar es salaam	Copper/Other Copper Materials	XX.00
2.0	Copperbelt to Dar es salaam	Slimes	XX.00

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FOR AND ON BEHALF OF KONKOLA COPPER MINES plc:

Name:

Signature:

Designation:

Date:

WITNESS

Name:

Signature:

Designation:

Date:

FOR AND ON BEHALF OF XXXXXXXXXXXXXXXXXXXXXXXX

Name:

Signature:

Designation:

Date:

WITNESS

Name:

Signature:

Designation:

Date:

