

Memorandum of Understanding:
Ash Sale and Purchase

Dated 15 July, 2010

Between

Vung Ang II Thermal Power JSC (VAPCO)

and

Nghi Son Cement Corporation (NSCC)

Ash Sale and Purchase Contents

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Memorandum of Understanding

Details

| Parties | VAPCO and NSCC | |
|--------------------------|-----------------------|---|
| VAPCO | Name | Vung Ang II Thermal Power JSC |
| | Address | 2 nd Floor, Lilama 21 Tower 124 Minh Khai Street Hanoi Vietnam |
| | Telephone | +84 (0)4 3624 8478/79/80 |
| | Fax | +84 (0)4 3624 8485 |
| | Attention | Chief Executive Officer |
| | <hr/> | |
| NSCC | Name | Nghi Son Cement Corporation |
| | Address | Hai Thuong Commune Tinh Gia District Thanh Hoa Province Vietnam |
| | Telephone | +84 (0)3 7386 2020 |
| | Fax | +84 (0)3 7386 2015/2278 |
| | Attention | Plant Director |
| | <hr/> | |
| Recitals | A | VAPCO is seeking the required approvals under the Laws of Vietnam (the Required Approvals) for the development, construction, financing, operation and maintenance by it, on a build, own and transfer basis, of a 1,200 MW imported coal-fired power plant (the Power Plant) located at Ha Tinh Province, Vietnam (the Project). |
| | B | NSCC owns a cement plant located at Nghi Son, Vietnam. |
| | C | The parties agree to pursue the possibility for selling and purchasing fly ash and bottom ash produced by the Power Plant. |
| <hr/> | | |
| Governing law | Vietnam | |
| <hr/> | | |
| Date of agreement | See signing page | |

Memorandum of Understanding

General terms

1 Definitions

These meanings apply unless the contrary intention appears:

Ash Pond Site means the site that will be used by VAPCO for the deposit of fly ash and bottom ash.

Ash SPA has the meaning given in clause 2.

BOT Contract means the agreement that VAPCO intends to enter into with the MOIT in respect of the award of the Project pursuant to Decree 108.

Decree 108 means Decree 108/2009/ND-CP issued by the Government on 27 November 2009 regulating investments in the form of Build-Operate-Transfer Contracts, Build-Transfer-Operate Contracts and Build-Transfer Contracts (as such terms are defined therein).

EVN means Vietnam Electricity, a state owned enterprise organised and existing under the Laws of Vietnam.

Government means the Government of Vietnam.

Government Body means all bodies with state authority in Vietnam including the National Assembly, the Standing Committee of the National Assembly, the President, the Government, including the Prime Minister, all ministries (including the MOIT) and Government agencies at central or local levels such as the People's Committee of Ha Tinh Province and Vung Ang Economic Zone Authority, the courts, enforcement bodies, procuracy offices and subdivisions as well as any company, enterprise or entity which is, on the date of signing this Agreement, owned or controlled by any of the foregoing;

Investment Certificate means the investment certificate to be issued by the Ministry of Planning and Investment pursuant to which VAPCO becomes a BOT enterprise (as defined in Decree 108) and the Project is approved.

Laws of Vietnam means all legal instruments including laws, ordinances, decrees, resolutions, regulations, decisions, circulars, guidelines, rules, codes (including grid codes), treaties issued, authorised or concluded by any Government Body having legal effect and any interpretation or application of the foregoing. For the avoidance of doubt, this includes Decree 108.

MOIT means the Ministry of Industry and Trade.

Power Purchase Agreement means the agreement that VAPCO intends to enter into with EVN, for the sale of electricity by the Power Station.

Power Station has the meaning given in the Recitals.

Project has the meaning given in the Recitals.

Required Approvals has the meaning given in the Recitals. For the avoidance of doubt, this includes the Investment Certificate.

Facility Site means the main site where the Power Plant will be located.

2 Agreement for Sale and Purchase of Ash

2.1 Good faith negotiations

The parties agree to enter into good faith negotiations with each other as regards the possibility for selling and purchasing fly ash and bottom ash produced by the Power Plant.

2.2 Intention to Enter Agreement

Subject to clauses 2.3 and provided the parties can reach agreement on the terms and conditions therefor, VAPCO and NSCC will enter into a long term sale and purchase agreement (the **Ash SPA**) under which VAPCO shall sell to NSCC and NSCC shall purchase from VAPCO, certain quantities of fly ash and bottom ash produced by the Power Station during operation.

2.3 Conditions Precedent

Any Ash SPA entered into by the parties shall not become effective unless and until:

- (a) VAPCO obtains all of the Required Approvals;
- (b) the BOT Contract and the Power Purchase Agreement (or similar agreements) are executed;
- (c) VAPCO successfully attains financial close under any non-recourse project financing that is made available to it for the Project;
- (d) the Power Station commences commercial operations pursuant to the Power Purchase Agreement; and
- (e) the Power Station will use imported coal.

3 Ash SPA Key Provisions

3.1 General

Key Provisions such as term, quantities, delivery point, quality of fly ash and bottom ash and other conditions for the sale and purchase of fly ash and bottom ash will be defined through discussions among the parties.

3.2 Commencement

Sales and purchases of fly ash and bottom ash will only commence on a date to be agreed, such date being no earlier than the date on which the Power Plant commences commercial operations pursuant to the Power Purchase Agreement.

3.3 Delivery Point

At the election of VAPCO, VAPCO shall deliver fly ash and bottom ash at either the Facility Site or the Ash Pond Site.

4 Term

This memorandum of understanding will terminate on the earlier of:

- (a) mutual agreement by the parties;
- (b) The date falling five (5) years after the date of this memorandum of understanding;
- (c) receipt by NSCC of a letter from VAPCO certifying that any of paragraphs (a) to (e) in clause 2.3 will not be fulfilled; and
- (d) execution of a binding Ash SPA (or similar arrangement) between the parties.

5 Announcements

No party may make any public announcement save as required by the Laws of Vietnam (or any other law to which a party may be subject) in relation to this memorandum of understanding, the Project, or the matters contained in this memorandum of understanding without the prior written approval of the other party, which approval must not be unreasonably withheld or delayed.

6 Confidentiality

All information exchanged between the parties under or in connection with this memorandum of understanding or during the negotiations preceding this memorandum of understanding is confidential to them and may not be disclosed to any person except:

- (a) to employees, legal advisers, auditors or other consultants of the party or its related entities requiring the information for the purposes of this memorandum of understanding;
- (b) with the consent of the party who supplied the information;
- (c) if required by Laws of Vietnam (or any other law to which a party may be subject);
- (d) if strictly and necessarily required in connection with legal proceedings related to this memorandum of understanding; or
- (e) if the information is generally and publicly available other than as a result of a breach of confidence by the person receiving the information.

7 Binding Memorandum of Understanding

It is understood that execution of this memorandum of understanding will constitute a legal and binding agreement between the parties in accordance with its express terms (but not otherwise).

8 Relationship of the Parties

This memorandum of understanding shall not be interpreted or construed to create an association, joint venture, partnership or agency among the parties or to impose any partnership obligation or liability upon each party with respect to the other party. Nothing in this memorandum of understanding shall be construed as creating any relationship between the parties other than the rights and obligations set out in this memorandum of understanding.

9 Authority to Bind

Neither party shall have the authority to bind the other party in connection with any matters arising pursuant to this memorandum of understanding.

10 Assignment

Neither party may assign this memorandum of understanding or any of its rights and interests thereunder other than by mutual agreement between the parties in writing..

11 Notices

Notices or other communications given by a party in connection with this memorandum of understanding shall be written in English and shall be sufficiently given if delivered by courier or hand delivered against written receipt, or by facsimile transmission against a successful transmission report sent to the addresses or numbers as set out above or such other address or number that a party may designate by notice given in accordance with this clause.

12 Language

This memorandum of understanding is written in Vietnamese and English in two (2) original copies in each language. One (1) copy of each language text shall be retained by each party. The two language texts shall have equal validity, but if there is any discrepancy between the two texts, the English text shall prevail. English shall be the working language of this memorandum of understanding and all documents, notices, waivers and all other communication written or otherwise among the parties in connection with this memorandum of understanding shall be in English.

13 Governing Law

This memorandum of understanding is governed by the law in force in the place specified in the Details.

14 Costs

Each party is responsible for its own costs in connection with the negotiation and preparation of this memorandum of understanding and any Ash SPA or similar arrangement entered into by the Parties.

15 Limitation of Liability

Neither party shall be liable to the other party in contract, tort, warranty, strict liability or under any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. Neither party shall have any liability to the other party except pursuant to, or for breach of, this memorandum of understanding; provided, however, that this provision is not intended to constitute a waiver of any rights of one party against the other with regard to matters unrelated to this memorandum of understanding or any activity contemplated by this memorandum of understanding.

16 Counterparts


This memorandum of understanding may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this memorandum of understanding.

EXECUTED as an agreement on the date set out below.

Memorandum of Understanding

Signing page

DATED: 15 July, 2010

VUNG ANG II THERMAL POWER JSC

By: 
Name: **TỔNG GIÁM ĐỐC**
Title: *Honda Zenshiro*

NGHI SON CEMENT CORPORATION

By: 
Name: **T/L TỔNG GIÁM ĐỐC**
Title: **Giám đốc nhà máy**
KOGA AKIHISA