

Sulphur Purchase Contract

This sulphur purchase contract ("Purchase Contract") is drawn between the following Parties (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns):

SELLER:

hereinafter referred to as the "Seller".

and

BUYER:

Foskor (Pty) Ltd, registration number 1951/002918/07 having its office at 21 John Ross Parkway, Richards Bay, 3900, South Africa

hereinafter referred to as the "Buyer".

Phone: +35 902 3111

Each of the Seller and the Buyer is a "Party" to this Purchase Contract and jointly may be referred to as the "Parties".

The Seller agrees to sell, and the Buyer agrees to buy the following product on the following terms and conditions:

1. **Product:** Sulphur in Bulk.
2. **Quantity:** _____ MT +/-10% (Seller's option). Seller has a right to ship this lot as part-cargo with other parcels for same destination, provided that such additional cargo is segregated in separate holds and poses no threat of contamination or degradation to the Buyer's cargo.

3. **Specification:**

Form	Bright yellow Sulphur: Granular/Prilled/Pellets. Free Flowing, Free from Dust, Rust and Lumps
Purity on dry bases	99.80% min
Ash Content	0.02 max
Carbon	0.02% Max
Moisture	1.5% Max
Particle Size, <600 microns	1.5% max
Iron as FE (mg/kg)	20 Max

Additional Discharge port

Acidity	0.02% Max
Chlorides as Cl (mg/kg)	50 Max
Moisture	1.5% Max

- Commercially free from Arsenic, Selenium, Tellurium and Fluoride.
- Moisture over 0.5% to be deducted from Invoice.

4. **Price:** _____ CFR (Incoterms 2020), Free Out, Richards Bay, South Africa.
5. **Origin:** Open at Seller's option (Excluding Iran/Turkmenistan/Russia). The actual country of origin must be stipulated in the Bill of Lading and the Seller will provide the Buyer with a certificate of origin.
6. **Packing:** In Bulk.
7. **Inspection for determining the Quality and Quantity:** The cargo to be inspected for Quality and Quantity at loading port by an internationally accredited independent Inspection Agency such as SGS or Intertek at the Seller's cost and save for fraud or manifest error, such agency's findings will be final and binding on the Buyer and the Seller. Quantity to be determined by survey at the load port and shall be final and binding on both the Buyer and the Seller. The Buyer may in its discretion request a simultaneous independent Quality and Quantity inspection at Buyer's own cost.
8. **Delivery:** Arrival at discharge port is estimated between _____, all going well, weather permitting and without guarantee. In the event that original Bills of Lading are not available at discharge port at the time of vessel arrival, then cargo to be released against Letter of Indemnity issued by the Seller at its cost in wording acceptable to the Owner's P and I Club wordings issued in favor of the vessel's owners or operators. All time lost in presenting such letter of indemnity shall count as detention for the Seller's account.
9. **Port of Discharge:** Richards Bay Port, South Africa.
10. **Cargo Insurance:** Insurance on the cargo shall be taken out and covered by the Buyer.

11. **Penalty:** The Buyer is entitled to impose a penalty in terms of this Purchase Contract. If the Seller fails to timeously deliver the Product by the agreed delivery date, being _____. The Seller shall pay to the Buyer, a penalty in the amount of 1% (one percent) of the total CFR value of the delayed Product per each full week of delay ("Penalty"). The total amount of the Penalty payable by the Seller shall be limited to 5% (five percent) of the total price of the Product under this Purchase Contract. The Buyer shall be entitled, in its discretion, to either set off and deduct the Penalty from the amount payable to the Seller or require that the Penalty be paid directly to the Buyer.
12. **Payment:** To be paid in US Dollars as per the prevailing rate of exchange as published in the Business Day newspaper in South Africa on the date of payment. Payment to be made within 60 (sixty) days from the Bill of Lading date of the subject cargo at the discharge port.
13. **Documents:**
- a) Commercial Invoice issued by Seller.
 - b) Certificate of Quality issued by an independent inspection agency.
 - c) Certificate of Quantity issued by an independent inspection agency.
 - d) Certificate of origin issued by Seller.
 - e) Cargo Manifest issued by Seller.
 - f) Full set of clean shipped on board Bill of Lading marked freight prepaid as per charter party.
14. **Shipping Terms:**
- 14.1 CFR (INCOTERMS 2020 to apply), One Safe Berth, One Safe Port, always afloat, always accessible at all times (protected berth). NOR to be tendered any time, day or night, Sundays and public holidays included. All other Shipping Terms including Demurrage Rate to be as per vessel nomination. Vessel must be clean, seaworthy, in Class and fully insured, suitable for the carriage of the product, and must have a LOA of 180m maximum.
- 14.2 Buyer, on free out terms, to discharge the vessel at 5,000 MT per weather working day of 24 consecutive hours (W.W.D.SHINC) weather permitting, Sunday, charter Party holidays inclusive with the exception of 1st May (Workers Day) when time is not to count from 0600 hours 01st May to 0600 hours 02nd May, 25 December (Christmas Day) when time from 1400 hours 24 December to 0600 hours 26 Dec is not to count and 1 January (New Year's Day) when time from 1400 hours 31 Dec to 0600 hours is not to count. Overtime to be for account of party ordering the same. Once the vessel is on demurrage always on demurrage including Sunday and Charter Party holidays, irrespective of weather condition. Waiting time for berthing to be counted as laytime.
- 14.3 Laytime
- 14.3.1 Commencement of Laytime:
- i. Time to start counting 6 (six) hours from the time of Notice of Readiness ("NOR") is tendered, if tendered before noon, and at 0800 hours the next day

- if the NOR is tendered after noon, or on commencement of discharge, whichever is earlier.
- ii. Subject to i. above, time lost in vessel waiting to berth at discharge port to count as laytime.
 - iii. Buyer to ensure that documents for discharging are ready upon arrival of vessel for immediate discharge. Otherwise, laytime to count.
 - iv. Time taken for shifting between berths to count as laytime.
- 14.4 Demurrage: In case vessel is delayed at discharge port longer than laytime allowed, Buyer shall pay demurrage to the Seller at the rate given when Seller nominates vessel to Buyer, save where any delay is occasioned due to the product being off specification. Buyer remains responsible for berthing of vessel and providing sufficient trucks to maintain discharge rate and bear demurrage if any. Demurrage will be settled within 15 (fifteen) days from receipt of laytime.
- 14.5 Discharge Costs: The cargo will be discharged by the Buyer, free of risk and expense to Seller and vessel.
- 14.6 Save if the Buyer is at fault, the Seller is responsible to pay detention, if any.
- 14.7 The Seller will nominate a suitable vessel to the Buyer. The Buyer is to advise on the acceptability of the vessel to the Seller within 24 (twenty-four) business hours of the vessel nomination by the Seller, however the vessel acceptance should not be unreasonably withheld by the Buyer.
- 14.8 Stevedores to be appointed and paid for by the Buyer and are to work under the supervision of the Master at the Buyer's expense.
- 14.9 The vessel should be geared and should give the free use of winches and power for same, if required and if available, but not exceeding their ordinary capacity and all available gear for discharging, also lights for night work as on board.
- 14.10 Ropes, slings, grabs, discharging equipment and draft survey at discharge port to be arranged and paid for by the receivers and a copy of the report to be handed over to the receivers and the vessel.
- 14.11 Demurrage/dispatch rate (half of demurrage rate) will be advised to the Buyer at the time of vessel nomination. The Seller is to pay the Buyer dispatch money for the laytime saved in discharge of the cargo or the Buyer is to pay to the Seller demurrage for the excess time taken. Waiting for berthing to count as laytime used. Demurrage/dispatch to be settled between the Buyer/Seller with statement of facts duly signed by all the parties concerned within 30 (thirty) days upon completion of discharge. The statement of facts signed by the Master and vessel agent should be termed as final for the purpose of calculation of laytime.

15. Other terms and conditions

- a. Third party documents except Commercial Invoice, Drafts and Beneficiary certificates are acceptable.
- b. Charter party Bill of Lading and B/L signed by the Disponent Owners or Charterers should be acceptable.
- c. Plus or Minus 10% in quantity and value should be acceptable.

- d. All Taxes, Duty (Actual custom duty), wharfage and the like at discharge port on cargo shall be to Buyer's account.
- e. Non-negotiable set of documents to be emailed to Buyer within 12 (twelve) days of shipment.
- f. The Seller will make every endeavour to negotiate the documents at the earliest but in any case, if the same is not available before the arrival of the vessel, then the Buyer must arrange the discharge of cargo immediately against their Letter of Indemnity duly signed by Banker.
- g. Co-shipment and co-mingled documents acceptable.
- h. Abbreviation "PCT" and "%" shall have the same meaning.
- i. Typographical error and spelling mistakes should be waived off at the time of Negotiation except Value and Quantity, Unit price and Quality.
- j. Shipment from more than one port is acceptable.
- k. On or before signature of this Purchase Contract, the Seller shall provide the Buyer with a safety data sheet (detailing compliance with the Global Harmonisation System of Classification and Labelling of Chemicals) and basic information for training on the use and handling of the sulphur.
- l. The Seller will provide the Buyer with a copy of the underlying charter party if requested to do so.

16. **Notices:**

Any notices required to be given by Buyer to the Seller in terms of this Purchase Contract shall be given in writing and shall be deemed to be properly forwarded if sent by e-mail to the following addresses of the Seller and Buyer respectively:

Seller

Buyer

FOSKOR (PTY) LIMITED

Hertford Office Park, 90 Bekker Road, Vorna Valley, Midrand, Building K, 2nd Floor, Gauteng, 1684 South Africa

Tel: + 27113470600

Email: roganim@foskor.co.za

Attention: Rogani Moodley, VP: Legal, Risk and Compliance.

17. ***Force Majeure:***

- 17.1 Both Buyer and Seller shall not be liable for delay or non-performance in whole or in part of their contractual obligations due to circumstances which are beyond their reasonable control, including war (whether declared or not declared or war like situation), blockades, revolution, insurrection, civil commotion, riot, strikes or lockouts at the shippers or suppliers mines or factory, on railways, trucks or at the ports of loading or discharging, mobilization, act/restraint of Government or act/restraint of an authority of Government, or public enemy, act of God, plague or other epidemic or threat of disease, breakdown on stoppage or breakdown at the road or port of the shippers or suppliers now or hereafter under contract, stoppage or destruction of goods in transit, unavoidable accidents to machinery or equipment or other unavoidable hindrances or delays in mining, manufacturing, transporting, loading, discharging or receiving the material goods, fire, flood, sabotage, quarantine, restriction, explosion or embargo, including any changes made by the government of exporting country such as changes in taxes, duties, imposition of restriction on export and the like, inability of the port to receive the vessel at the berth, any change/modification in commercial laws rules and regulations by the Government (each a "*Force Majeure Event*").
- 17.2 Subject to Clause 17.1, if a Party is affected, or likely to be affected, by a *Force Majeure Event* that Party must give the other Party written notice within 5 (five) Business Days of the occurrence of a *Force Majeure Event*, of that fact, which notice shall include:
- (a) full particulars of the *Force Majeure Event*;
 - (b) an estimate of its likely duration;
 - (c) the obligations affected by it and the extent of its' effect on those obligations; and
 - (d) the steps taken to rectify the effect on the Parties' obligations or to mitigate or avoid the effect of the *Force Majeure Event*.
- 17.3 The obligations under this Purchase Contract of the Party giving the notice are suspended to the extent to which they are affected by the relevant *Force Majeure Event* for as long as such *Force Majeure Event* continues.
- 17.4 Liabilities accrued to both Parties, in terms of this Purchase Contract, prior to receiving the notice of the *Force Majeure Event* shall not be affected in any manner.
- 17.5 To the extent that the affected Party is prevented by the *Force Majeure Event* from complying fully with its obligations in terms of this Purchase Contract, the other Party shall not have any claim for damages, compensation or loss of any nature against the affected Party arising by reason of the affected Party's non-performance as a result of the *Force Majeure Event*, provided always that the other Party shall have a claim for damages against the affected Party in the event that the non-performance by the affected Party is due to the gross negligence or willful action of the affected Party.

17.6 The affected Party shall at all times -

- (a) use its reasonable endeavors to prevent, reduce to a minimum and mitigate the effect of any delay in the performance of this Purchase Contract occasioned by any *Force Majeure* Event;
- (b) use its reasonable endeavors to ensure resumption of normal performance after the termination of any *Force Majeure* Event and perform its obligations to the maximum extent practicable; and
- (c) keep the other Party informed at regular intervals, in writing, of the circumstances concerning any *Force Majeure* Event, with reasonable estimates as to its likely continuation and what measures or contingency planning such Party is taking to mitigate and/or terminate the *Force Majeure* Event.

If a Party is affected by a *Force Majeure* Event for a continuous period in excess of 60 (sixty) days, the “unaffected Party” shall be entitled to terminate this Purchase Contract on written notice to the other Party.

18. **Arbitration:** A dispute, if any, arising out of or in connection with this Purchase Contract shall be first resolved through mutual discussion to arrive at an amicable settlement. If the dispute is not so resolved, then the dispute shall be resolved by arbitration in Johannesburg, South Africa, in accordance with South African law and in accordance with the rules of the Arbitration Foundation of South Africa Rules, but not under their auspices. The arbitration shall be dealt with by a single arbitrator and the Parties must agree on the identity of the single arbitrator. If the Parties cannot agree on an arbitrator within 14 (fourteen) days, then the Chairman of the Johannesburg Bar Council will nominate a suitable arbitrator. The arbitrator’s written decision will be final and binding. The venue of the arbitration will be Johannesburg, South Africa.

19. **Risk and Title:** The Seller shall retain title to and ownership of the Product until payment for such Product has been received in full by the Seller in accordance with the terms and conditions of this Purchase Contract.

The risk of loss or damage to the Product shall pass from the Seller to the Buyer progressively as the Product passes the ship’s rail at the port of loading.

20. **Governing Law:** This Purchase Contract shall be governed and construed as per South African law and the place of jurisdiction is Johannesburg, South Africa.

21. **Broker:** N/A

22. **Warranty:** Unless otherwise specified, the Seller warrants that the Product will be fit for the ordinary purposes for which such products are normally used. Seller does not warrant that the Product is suitable for any particular purpose for which they may be required, whether or not Seller has reason to know of any such requirements. There are no warranties, which extend beyond the description of the face hereof. Except as expressly set forth herein, Seller makes no warranties, express or implied. Seller will assist in obtaining compliance with any warranties of the Manufacturer and in effecting prompt settlement of any just claims, but without responsibility

or liability for any such compliance or effecting such settlement. Neither Party shall not be liable for consequential damages.

23. **Off-specification Product:** If the product is off-specification, the Buyer shall have the right to cancel the Purchase Contract forthwith. If so, the Seller will be liable to reimburse Buyer for all costs incurred for the discharge costs, transportation and storage of the off-specification product, and any ancillary costs incurred ("Off-Specification Product Costs"). The Seller bears the obligation to deal with such off-specification product once discharged and indemnifies and holds the Buyer harmless in respect of any consequences should it fail to do so. The Buyer shall be entitled, in its discretion, to set off and deduct all Off-Specification Product Costs incurred by the Buyer, from the amount payable to the Seller or require that the Off-Specification Product Costs be paid directly to the Buyer.
24. **Entirety:** The entire Purchase Contract between the Parties is contained in this written Purchase Contract and no representation, no oral agreement, nor understanding not contained in this Purchase Contract, shall affect or alter same unless reduced to writing and agreed between the Buyer and the Seller.
25. **Confidentiality:** This Purchase Contract and information related thereto, shall be held strictly confidential by the Parties and shall not be disclosed by the Buyer/Seller to any third party unless specifically authorized in writing by the Seller/Buyer respectively, or required/requested by Law or Arbitration/Competent Authority in the case of a dispute.
26. **Trade Definitions:** This Purchase Contract shall be subject to the international rules for the interpretation of trade terms known as Incoterms 2020 or the latest published version and as amended from time to time (known as the "Incoterms"), which will apply hereto to the extent that if the Incoterms conflict with this Purchase Contract, this Purchase Contract shall prevail.
27. **Sanctions:** Each Party warrants to the other that it is not subject to any sanctions. The Seller agrees and undertakes to the Buyer that the goods will not directly nor indirectly: (a) originate from (b) be provided by or (c) be transported on a vessel or by a carrier owned, flagged, chartered, managed or controlled, directly or indirectly, by any country, person, entity, or body, or for the purpose of any commercial activity, that would cause Buyer or a person subject to U.S. jurisdiction to be in violation of or exposed to applicable Sanctions and/or export or re-export controls.

Email of this Purchase Contract to serve the purpose of original in all respects unless followed by the originals.

Kindly sign and return this Purchase Contract to the address stipulated above.

FOSCO-RFP-[INSERT]: FOR THE ONCE OFF SUPPLY OF BULK SULPHUR OF 35 000 TONS [+10% SELLERS OPTION]

AS BUYER

AS SELLER

Foskor (Pty) Ltd

Shantell Mackay

General Manager – Procurement

Date:

Date:

Jubilant Speckman
Chief Financial Officer
Date:

Seller Witness:
Date:

Jullian Theodore Palliam
President and CEO
Date: