

DRAFT

BUY _ BACK CONTRACT

This contract is made on this ____th day of _____, 200_ between _____ hereinafter called the SELLER on one side and _____ hereinafter called the BUYER on the other side, on the basis of **CONFIRMATION LETTER dated “_____” “___”, 200_** and on the conditions and terms set forth hereunder.

ARTICLE 1

SCOPE OF THE CONTRACT

Whereas the SELLER purchased from _____ a processing plant, as per contract N__, dated “_____” “___” 200_ for an amount of EUR _____, for the production of _____ (The PRODUCT)

Whereas the SELLER intends to sell the manufactured PRODUCT for export outside Georgia

Whereas the BUYER declared its capability to buy back the product produced by this installation to ensure economic balance between these two distinct operations and marketing the product from the new line during the most critical stage of entering the International market.

Whereas the BUYER and the SELLER have discussed the basis of such co-operation.

The Parties have agreed as follows:

ARTICLE 2

The SELLER undertakes to manufacture the PRODUCT reserved for export in a sound, loyal, internationally merchantable quality according to the specification stated in the Annex 1, which forms an integral part of this Contract.

The SELLER also undertakes to manufacture the PRODUCT reserved for export in a quantity sufficient to cover the amount provided for Article 3.

ARTICLE 3

The SELLER undertakes to sell the BUYER which undertakes to purchase, for 5 years, or for such period as may be extended mutually every year under the conditions hereafter mentioned, a quantity of the PRODUCT, F.O.B., equivalent to the maximum value of financing of the plant as per Purchase Contract No. dated 200_

ARTICLE 4

The SELLER shall keep the BUYER continuously informed about the quantity, quality and the specifications of the PRODUCT under production by submitting the data sheets during all the Campaign.

The SELLER undertakes to supply to the BUYER upon its first request and in any case not later for the first one than 30 days after the end of each Campaign several representative samples of the production.

The representative samples will be analyzed by a specialized laboratory.

The BUYER will not have any obligation to purchase the product if the quality is not as mentioned in the Annex 1.

However, the BUYER will try his best to purchase the PRODUCT, eventually not corresponding to the specifications mentioned in the Annex 1, at the best possible price.

ARTICLE 5

The BUYER undertakes to give a price based on the international market average price of quotation coming from the SELLER for the product corresponding to the analyzed samples and to the specifications indicated in Annex 1 within 30 days from the receipt of the representative samples.

The sample will be analyzed by the respective laboratories, and if any discrepancies are found the test should be repeated.

The price is valid during 3 (three) weeks from the date of submission of the offer, for the quality and quantity mentioned in the offer, subject to extension on mutual agreement.

The SELLER must reply within these three weeks, and, if the offer is approved, the SELLER shall have to deliver the PRODUCT to the BUYER or his nominees.

If the SELLER receives better offer from another BUYER it should advise the BUYER within the said three weeks and the BUYER will have the priority to purchase the product at that price, or the SELLER will be free to sell this BUYER after the refusal of the BUYER; the amount of such trade shall be deducted from the yearly engagement of the BUYER.

ARTICLE 6

The SELLER will provide the BUYER with all necessary export documents required by the BUYER such as quality and quantity, phytosanitary, origin, non radiation and customs certificates.

All taxes or duties payable in Georgia shall be for the SELLER account.

ARTICLE 7

The BUYER will open through Credit Suisse a not operative irrevocable, revolving, not cumulative, at sight buy-back Letter of Credit, in favor of _____ for the purchase of the PRODUCT produced on the equipment obtained under the Contract No __, dated “_____” “__” 200_ and payable at site against presentation of the following documents:
- Order Form signed by SELLER and BUYER, sent from BUYER to SELLER through bank channel

- Commercial invoices (6 copies)
- Set Bill of Lading
- Certificate of competent authority proving that the products are in conformity to the specification state in Annex 1.
- Certificate of Origin
- Phytosanitary Certificate
- Non radiation Certificate

The Buy-back Letter of Credits, will come into force and become operative simultaneously with the equipment purchase Letter of Credit, upon receipt the confirmation from the appropriate Banks by duly tested swift/telex.

ARTICLE 8

The BUYER shall bear no responsibility whatsoever with regard to the quality or the quantity of the PRODUCT delivered FOB, Georgian Port. (INCOTERMS 2000)

The BUYER or its purchaser with the confirmation of the SELLER and for the SELLER's expense appoints SGS or appropriate inspection service for pre-shipment inspection of the product for quality (the compliance with the specifications stated in Annex I of the contract & compliance with the representative samples provided), quantity to be shipped and proper pre-shipment handling.

Should any claim be lodged against BUYER by his purchaser of the PRODUCT, for delay in execution or in case of non execution imputable to SELLER, SELLER shall indemnify BUYER against such claim and hereby authorizes BUYER to deduct the amount paid to his purchaser as a consequence of such claim from the following payment to SELLER.

ARTICLE 9

The SELLER hereby grants to the BUYER the priority for its products for export in the international market.

The SELLER however shall be free to sell goods to third parties, at price which shall not be below the prices offered by the BUYER.

ARTICLE 10

This contract is valid for the PRODUCT specified in the Annex 1 and produced on the equipment purchased, but may be extended to other products manufactured by the SELLER, following to a written Contract to that effect between the BUYER and the SELLER.

ARTICLE 11

In case the SELLER is unable or has no interest, during any of the contractual Campaign to supply to the BUYER the PRODUCT in a quantity and quality as per specifications mentioned in the Annex 1, sufficient to cover the amount mentioned in Article 1, then both parties will be deemed to have however fully executed their undertakings under this Contract for this contractual Campaign, even if the amount referred to the Article 2 is not reached during this Campaign, without penalty or claim for either party determined in Article 14.

ARTICLE 12.

Should the occurrence of any adverse events or circumstances render the execution of this Contract in all cases impracticable for either party they will inform each other by telex or fax within 10 (ten) days and then the BUYER and the SELLER will meet and discuss remedies.

If they cannot find a viable solution, this Contract may be subject to early termination, any way if not decided together the contract will terminate only after the decision of Arbitration.

ARTICLE 13

The present Contract will come into force simultaneously with the equipment purchase Contract upon coming into force of the Letters of Credit for the purchase of the equipment and buy back of the Product, with confirmation from appropriate Banks by duly tested swift/telex.

This contract shall be terminated 7 years after the shipment of the machinery.

The parties may also extend its validity by a written Contract for a period to be then determined.

Such written Contract shall be signed not latest as two months before the expire of the present Contract.

ARTICLE 14

Arbitration.

Should any disagreement occur between the parties, they will try to settle it amicably.

If they cannot solve the matter, all disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in London, England, by one or more arbitrators appointed in accordance with the said rules.

Done in English in Three originals on “_____” “___”, 200_

Attachments/Appendix of the present Contract are integral parts of the Contract and have the same force as the Contract itself.

ARTICLE 15

LEGAL ADDRESSES

The BUYER:

The SELLER

For BUYER

For SELLER

Mr
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Mr
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