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MASTER COAL PURCHASE AND SALE AGREEMENTS

A PRACTICAL GUIDE

A perspective by United Power, Inc.

The following is an abstract and outline of the 18-page summary document that highlights the main points within eight MCPSAs that were graciously provided to United Power for reviewed and comment. Please contact Dan Vaughn at 812-473-5810 if you wished to purchase this document.

ABSTRACT:

The U.S. coal market continues its evolution toward increasing commoditization and, more importantly, toward sound transactions in which payment and performance requirements are backed by viable financial assurances governed by parameters, which are growing very near to standardization. In short, despite the many failed efforts to develop a truly financial market for hedging and speculative purposes it is now possible to achieve similar results through a collection of properly structured Master Coal Purchase and Sale Agreements (MPSAs) with a wide array of market players. The industry has previously, through years of negotiation and compromise, reached near consensus on most of the relevant commercial issues, but some discrepancies remain. The pure legal and limitations to liability concerns have been largely resolved with the one exception being issues related to credit and cross default collateral agreements. It is imperative that firms that transact in multiple commodities act swiftly to negotiate some form of Master Collateral and Setoff Agreement that will prevail over any credit/collateralization clauses in the MPSA. The MPSA, while allowing for financially settled book outs, is intended to govern only physical transactions and is not applicable to purely financial derivatives transactions that are governed by the ISDA Master Agreement

INTRODUCTION TO THE MPSA

The MPSA, while potentially daunting to negotiate, is actually quite simple in purpose and structure.

The MPSA is designed to act as a rulebook outlining the conditions under which two parties can agree to conduct coal business. Of course, exceptions may be made at the outset of any transaction and such exceptions will be noted in the confirmation. The MPSA will serve to govern the rules of conduct in the following general areas:

- 1) Procedural requirements governing the confirmation, performance, and payment processes.
- 2) Events substantiating failure to comply and the subsequent remedies available to either party for failure to comply with performance or payment requirements.
- 3) Credit and collateralization requirements and procedures.
- 4) Dispute resolution procedures.

In order to achieve this, the MPSA generally will include the follow sections pertaining to the commercial aspects of the agreement:

- 1) Transaction Procedures
- 2) Obligations of Buyer and Seller
- 3) Specifications, Weighing, Sampling and Analysis
- 4) Quality Adjustments, Rejection and Suspension Rights
- 5) Billing and Payment
- 6) Events of and Remedies for Default
- 7) Force Majeure
- 8) Credit and Security
- 9) Arbitration Procedures
- 10) Miscellaneous

In constructing this summary, several MPSA's of major industry participants ("Samples") were reviewed and compared for required information common to all. The following pages include detailed discussion of the common clauses and points of contention in each of the 10 commercial sections of the MPSA Samples. A brief commentary is also included with the intent of providing suggestions and recommendations pertaining to each section. While seasoned participants would do well to review and consider these comments, they are directed to primarily serve as guidelines for the firm that is just starting the formidable negotiation of its first MPSA.