

Agreement For The Sale and Purchase Of Coal between Duke Energy Kentucky, Inc. ("Buyer") and Armstrong Coal Company, Inc. ("Seller") effective

**DUKE ENERGY KENTUCKY, INC.**  
**TERMS AND CONDITIONS OF SALE AND PURCHASE**  
Terms and Conditions Applicable to the Purchase of Coal

1. **Definitions.** "Buyer" shall mean Duke Energy Kentucky, Inc. and any other person or entity to whom Buyer may assign or transfer any of its rights and obligations under this Agreement. "Agreement" shall mean the attached Spot Coal Confirmation to Duke Energy Kentucky, Inc. together with these Terms and Conditions of the Agreement for the Sale and Purchase Effective January 1, 2015 through December 31, 2015 "Seller" shall mean the seller under this Agreement and any of its affiliates. "Ton" shall mean a net ton of 2,000 pounds avoirdupois weight. "Shipment" shall mean a unit train for rail loadings and individual barges for barge loadings.

2. **Warranty.** Seller represents and warrants to Buyer that: (a) Seller shall deliver directly from Seller to Buyer good, exclusive and marketable title to the coal free and clear of all liens, security interests, claims, and encumbrances; (b) Seller has sufficient reserves and/or access to a sufficient supply of utility steam coal in the quantity and quality required per Agreement; (c) Title to all coal sold to Buyer shall pass directly to Buyer from Seller; (d) The Shipments of coal delivered to Buyer shall substantially meet the specifications per Agreement and be free flowing and not larger in size than 2" x 0"; provided however, that Seller may deliver coal smaller in size so long as fines do not exceed 66% through a 1/2" screen; (e) Seller shall deliver the coal such that it is delivered within the schedule established per Agreement; and (f) no federal, state, local or foreign statute, law, rule, regulation or order will be violated in the mining, selling or delivering of the coal. Seller shall promptly replace or refund, at Buyer's election, all coal that does not comply fully with this warranty. Each Party represents and warrants to the other that: (a) it is duly organized and validly existing under the law of its place of incorporation or organization; (b) this transaction and confirmation constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"), it is a "Forward Contract Merchant" within the meaning of the Bankruptcy Code; and it is an "Eligible Contract Participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended; and (c) it is a producer, processor, commercial user or merchant, and it is entering into such transaction for purposes related to its business as such.

3. **Shipping; Risk of Loss.** All coal delivered by Seller shall be shipped per Agreement and reasonable instructions of Buyer, otherwise Buyer shall be entitled to reimbursement from Seller for any extra handling charge(s) for coal not shipped per Agreement. All coal delivered by Seller shall be delivered into unit trains or barges, as applicable, as scheduled by Buyer in coordination with Seller. Seller shall be required to load and ship coal twenty-four hours a day, seven days per week. Within 24 hours of the time of shipment, Seller shall fax or electronically mail to Buyer and the receiving stations Seller's Proximate Analysis (i.e., Btu, Ash Moisture and Sulfur/SO<sub>2</sub>) for such coal. Title and risk of loss shall pass from Seller to Buyer as the coal is progressively loaded on Buyer's rail cars or barges, as applicable.

4. **Weighting; Sampling; and Analysis.** See Addendum 1 attached hereto and incorporated herein as if fully set forth in this Agreement.

5. **Inspection; Acceptance.** Upon reasonable notice to Seller, Buyer shall have the right to inspect Seller's mines, preparation and loading facilities, at Buyer's sole risk and expense, during mining and preparation of any coal subject to this Agreement and to inspect all quality assurance and other records relating to the coal. In addition, Buyer shall have the right to inspect all coal at Buyer's facility before accepting it. Buyer will supply documentation for not accepting a Shipment. Buyer shall have one business day after it discovers a defect or nonconformity to the reject coal specifications to reject or to revoke acceptance of the coal, in either event prior to unloading. Seller shall pay all shipping costs for rejected or revoked coal Shipments.

6. **Termination; Cancellation.** In the event; (1) a Coal Shipment per this Agreement fails to conform to the rejection limit coal specifications for any five (5) Shipments during any calendar month for barge loadings or any one (1) Shipment during any calendar month for rail loadings or (2) Seller otherwise fails to perform as required by the Agreement, Buyer shall have the right to: (a) reject or revoke acceptance of such delivery prior to unloading; (b) suspend further deliveries; (c) terminate or cancel all or a portion of further deliveries upon ten days advance written notice; or (d) require Seller to deliver replacement Coal from the Source or (e) terminate the Agreement, in which Seller's rights to make further deliveries terminates immediately upon receipt of such notice of termination from Buyer. Should Buyer terminate or cancel all or a portion of the Agreement as is set forth herein, unless the Agreement expressly provides otherwise, Buyer shall only pay Seller for the quantity of acceptable coal received, plus or minus any purchase price adjustment(s). If the sum of Buyer's prior payments and deposits under this Agreement exceed the cancellation and delay charges and other amounts due under this Agreement, Seller shall promptly refund the balance to Buyer. If Buyer fails to timely pay for coal delivered in accordance with the terms hereof, then Seller shall have the right, in addition to all other rights under this Agreement or otherwise under the law, to suspend further Shipments of coal until all previous Shipments of coal are paid for. Overdue payments shall accrue interest from the date overdue at an interest rate equal to two (2) percent over the prime lending rate as published from time to time in the *Wall Street Journal*, but in no event to exceed the maximum lawful rate.

7. **Purchase Price.** The purchase price for the coal is F.O.B. railcar at the Seller's loadout or FOB barge at the Delivery Point, as applicable. The purchase price includes all federal, state, and local taxes, fees, fleet, harbor services and all other levies, which are required to be paid on coal, delivered hereunder.

8. **Purchase Price Adjustments.** It is recognized by the parties that the calorific value of the coal actually delivered hereunder may vary from the standard "as received" calorific value as specified. Therefore the price per ton of coal shall be adjusted in order to compensate for variations in the calorific value of the coal delivered hereunder. The Btu content shall be determined, on a weighted average "as received" basis for coal received in a delivery month by tests conducted by Seller. The price adjustment per ton to be paid for coal delivered hereunder shall be calculated as follows:

$$[(\text{"as received" Btu} / \text{Standard Btu}) \times \text{Purchase Price}] - \text{Purchase Price} = \text{Btu Price Adjustment Per Ton of Coal}$$

If the "as received" weighted average actual SO<sub>2</sub> content per MMBtu of coal in any month is greater or less than the standard SO<sub>2</sub> content per MMBtu specified, an adjustment decreasing or increasing the price per ton of coal shall be calculated as follows:

$$\text{Per Ton Price adjustment} = (\text{Standard Specification monthly weighted average Lbs. SO}_2\text{/MMBTU} - \text{Actual monthly weighted average Lbs. SO}_2\text{/MMBTU}) \times 116.15/100$$

The amount of any purchase price adjustment shall be added / deducted from any amount otherwise due to the other party or, if such balance is inadequate to compensate therefor, the adjustment amount shall be paid to the other party promptly upon ascertainment of the amount thereof.

9. **Payment.** Payment for coal shipped by Seller the 1<sup>st</sup> through the 16<sup>th</sup> shall be due on the thirtieth day of that month and for coal shipped by Seller the 16<sup>th</sup> through the 31<sup>st</sup> shall be due on the fifteenth day of the following month. Payment shall be by a/c, wire transfer or other mutually agreeable payment method. Seller's weights and coal quality analysis shall govern payments due Seller and any applicable Purchase Price adjustment(s).

ABA Routing Number:  
Account Number:  
Account Name:



10. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys' fees and other professionals' fees and expenses arising out of or relating to: (a) any breach of warranty by Seller; and (b) any act or omission of Seller or its employees, contractors and agents in the performance of services under this Agreement. Buyer shall give Seller reasonable notice of any claim Buyer contends falls within this indemnification.

Buyer shall defend, indemnify and hold harmless Seller and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys' fees and other professionals' fees and expenses arising out of or relating to: (a) any breach of warranty by Buyer; and (b) any act or omission of Buyer or its employees, contractors and agents in the performance of services under this Agreement. Seller shall give Buyer reasonable notice of any claim Seller contends falls within this indemnification.

11. **Force Majeure.** When used herein, "Force Majeure" shall mean a cause beyond the reasonable control of and not due to the fault or negligence of Buyer or Seller, as the case may be, which wholly or partially prevents or delays, mining, processing or loading of coal, or the receiving, transporting, or delivery of coal, or the unloading, storing or burning of coal at the Buyers plant. A change in market conditions (including the ability of Seller to sell coal at a higher price or Buyer or Buyer's customer to buy coal at a lower price), Buyer's inability to economically use or resell the coal, whether or not foreseeable shall not be considered Force Majeure events. Performance of this Agreement shall be suspended and excused to the extent commensurate with such interfering occurrence. When a Force Majeure event ends, the affected party shall resume performance and give written notice thereof. If Seller or Buyer is forced to suspend shipments/performance, in whole or in part, due to Force Majeure, once such Force Majeure event ends, Shipments excused by events of Force Majeure shall not be made up except by mutual agreement of Buyer and Seller on a mutually agreed schedule.

12. **Confidentiality.** Seller and Buyer shall keep confidential and not disclose to any person or entity other than its counsel or auditors any information that the other party designates as being confidential except to the extent required by law or as necessary to comply with this Agreement. Seller shall not use Buyer's name or the fact that Seller is selling Goods or Services to Buyer in any press releases, media statement, or public communications or otherwise publicize this Agreement without Buyer's prior written consent. Seller shall not use Duke Energy's (including its subsidiaries and affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way without Buyer's prior written consent, and Buyer shall not be deemed to have granted Seller a license of, or granted Seller any rights in any of the foregoing by entering into this Agreement.

13. **Compliance with Laws.** Unless Seller or Buyer is exempted by the rules, regulations or orders of the United States Secretary of Labor, both parties shall comply fully at all times relevant to this Agreement with all applicable laws, rules, regulations and court orders, including: (a) Executive Order 11248 issued by the President of the United States on September 24, 1965; (b) the Vietnam Era Veterans Readjustment Assistance Act of 1974 and applicable sections of 41 CFR relating to the employment of veterans; (c) section 503 of the Rehabilitation Act of 1973; (d) regulations of the United States Occupational Safety and Health Act; (e) 15 U.S.C section 637(d)(3) and 48 CFR section 52.219 relating to small and disadvantaged business concerns; (f) all applicable rules.