

SERVICE CONTRACT TERMS AND CONDITIONS

THIS AGREEMENT, entered into this ___ day of _____, A.D. _____ between TOKAI CARBON CB LTD., 301 Commerce St., Suite 500, Fort Worth, Texas 76102, a limited partnership of the State of Texas, hereinafter called "COMPANY", and hereinafter called "CONTRACTOR".

WITNESSETH: THAT,

IN CONSIDERATION of the mutual promises and agreements herein contained, COMPANY engages the CONTRACTOR as an independent contractor to furnish equipment and perform services, hereinafter called "Work"; and,

WHEREAS, CONTRACTOR represents that it has adequate equipment in good working order and fully trained personnel capable of efficiently operating such equipment and performing the requested services;

NOW, THEREFORE, In consideration of the mutual promises and agreements herein contained, the parties hereto mutually agree as follows:

1. This agreement thereupon shall remain in force and effect for a period of five (5) years from the date hereof. During the term of this contract all Work which may be offered by Company and accepted by Contractor shall be done or performed in strict accordance with, and, subject to all the terms and provisions hereof to the same extent and with the same effect as if the terms and provisions hereof were incorporated in the work order of any future agreement (either oral or written) given to Contractor by Company, and agreements or stipulations in any such work order not in conformity with the terms and provisions hereof shall be null and void. Further, it is understood and agreed that either party may cancel this contract by giving the other party thirty (30) days written notice of such cancellation, but neither party hereto shall by the termination of this agreement be relieved of its respective obligations and liabilities arising from or incident to Work performed or services rendered hereunder prior to the time such contract is terminated.

2. Contractor agrees to perform the Work agreed to herein in a good and workmanlike manner, satisfactory and acceptable to Company, and shall keep on forms furnished by Company an accurate report or log of the Work performed under this contract and shall transmit the same promptly and daily to Company.

3. Contractor agrees to accept full and exclusive liability for the payment of any and all premiums, contributions, and taxes for Workmen's Compensation Insurance, Unemployment Insurance, and for old age pensions, annuities and retirement benefits, now or hereafter imposed by or pursuant to Federal and State laws, which are measured by the wages, salaries or other remuneration paid to persons employed by Contractor in connection with the performance of this contract; and Contractor further agrees to indemnify and hold Company harmless against any liability for such taxes or contributions which may be assessed against Company. Contractor further agrees to enter into any agreement that has been or may hereafter be prescribed by any Federal or State governmental body or authority in order to effectuate the foregoing purposes.

4. Neither Company nor Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of Federal or State laws or the rules, regulations or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the use of tools and equipment, or due, occasioned, or caused by strikes, action of the elements, or causes beyond the control of the parties affected hereby, and delays due to the above causes, or any of them, shall not be deemed to be a breach of or failure to perform under this Agreement.

5. In connection with the Work or services performed by Contractor for Company, Contractor shall pay all legal claims for labor and material and agrees that it will not permit any liens of any kind to be fixed against the property of Company or the lease or property of others arising out of claims Contractor's employees, mechanics, cartmen, or materialmen, and upon the completion of Work, Contractor shall, if requested, furnish Company with satisfactory evidence of the payment of all such claims. Contractor agrees to indemnify Company from and against all such claims or liens, and further agrees that any sums due to Contractor by Company may be withheld and applied toward the discharge or payment of any such claims or liens.

6. Delivery tickets covering any materials or supplies furnished by vendors for which Company is obligated to reimburse Contractor, shall be turned in to Company as received. The quantity, description, and condition of materials and supplies so furnished shall be verified and checked by Contractor, and such delivery tickets shall be properly certified as to receipt by Contractor's representative.

7. Insurance Required of Contractor and their Subcontractor

As to all Work provided for herein, Contractor shall secure and maintain during the term of this Agreement at Contractor's sole expense the following insurance with insurance carriers satisfactory to Company and shall furnish evidence of such insurance before any Work is begun:

1) Statutory Worker's Compensation Insurance and Employers Liability Insurance in full compliance with applicable State and Federal laws and regulations where the Work is to be performed. The Employers Liability Insurance shall have a minimum limit of \$1,000,000 per occurrence. The Workers' Compensation policy shall include a waiver of subrogation in favor of the Indemnitees.

2) Commercial General Liability Insurance with minimum limits of \$1,000,000 each occurrence or equivalent. This policy will be endorsed to include the Indemnitees as Additional Insureds, to the extent of the indemnity obligations assumed by Contractor herein, and include the following coverages:

a) Premised Operations

- b) Independent Contractors
- c) Contractual Liability (insuring the indemnity obligation in this Agreement)
- d) Completed Operations Coverage and/or Products Liability Coverage.

3) Comprehensive Automobile Liability Insurance with minimum limits of \$1,000,000 per occurrence or equivalent covering owned, non-owned and hired vehicles. This policy will be endorsed to include Indemnitees as Additional Insureds, to the extent of the indemnity obligations assumed by Contractor herein.

4) Umbrella Liability Insurance as excess coverage above (1), (2) and (3) with minimum limits of \$1,000,000. This policy will be endorsed to include Indemnitees as Additional Insureds, to the extent of the indemnity obligations assumed by Contractor herein.

5) Contractor's Equipment Policy.

Any insurance policy covering owned or rented equipment of the Contractor or their subcontractors (including vehicles, rigs, mobile equipment, platforms, machinery, appliances and tools of any type) against loss by physical damage or theft shall include an endorsement waiving the insurer's right of subrogation in favor of Indemnitees.

Evidence of the above coverage, represented by Certificates of Insurance issued by the insurance carrier, must be furnished to the Company prior to the Contractor's starting Work. Certificates of Insurance shall specify the Waivers of Subrogation and endorsements to include Indemnitees as Additional Insureds. Contractor hereby agrees to notify Company in writing thirty (30) days prior to cancellation, material change or renewal of insurance.

Contractor shall require any subcontractor to maintain similar coverage to that outlined above, including Waivers and Additional Insured status, and whatever other coverage Contractor deems reasonable to protect Contractor and Company.

8. INDEMNITY BY CONTRACTOR

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE COMPANY, ITS AFFILIATED COMPANIES, THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY OF CONTRACTOR'S EMPLOYEES OR ANY EMPLOYEE OF CONTRACTOR'S SUB-CONTRACTORS OF ANY TIER CAUSED BY OR RESULTING FROM THE PERFORMANCE OF THE WORK OR ANY PART THEREOF PROVIDED THAT ANY SUCH LIABILITIES (1) ARE ATTRIBUTABLE TO BODILY INJURY, PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY OF CONTRACTOR'S EMPLOYEES OR ANY EMPLOYEE OF CONTRACTOR'S SUB-CONTRACTORS OF ANY TIER AND (2) ARE CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION, INCLUDING NEGLIGENCE, OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE.

9. Contractor shall be solely liable and responsible at all times for damages to or destruction of the Contractor's owned or rented equipment, materials and tools, regardless of how such damage, loss or destruction occurs. Company shall have no liability to reimburse Contractor for any such loss, and Contractor hereby waives any such claim in favor of the Company.

10. Contractor shall report to Company as soon as practicable all accidents or occurrences resulting in injuries to Contractor's employees or third parties, or damage to property of third parties, arising out of or during the course of Work for Company by Contractor or of any subcontractor of Contractor, and, when requested, shall furnish Company with a copy of reports made by Contractor to Contractor's insurer or to others of such accidents and occurrences.

11. Contractor agrees to pay all taxes, licenses, and fees levied or assessed on Contractor in connection with or incident to the performance of this contract by any governmental agency and unemployment compensation insurance, old age benefits, social security, or any other taxes upon the wages of Contractor, its agents, employees, and representatives. Contractor agrees to require the same agreements and to be liable for any breach of such agreements by any of its subcontractors. Contractor agrees to reimburse Company on demand for all such taxes or governmental charges, State or Federal, which Company may be required or deem it necessary to pay on account of employees of Contractor or its subcontractors. Contractor agrees to furnish Company with the information required to enable it to make the necessary reports and to pay such taxes or charges. At its election, Company is authorized to deduct all sums so paid for such taxes and governmental charges from such amounts as may be or become due to Contractor hereunder.

12. Contractor shall examine all equipment, machinery, tools, or other items furnished by Company, which are directly employed in and would reasonably come to Contractor's attention during the course of operations conducted hereunder. If defects are found therein sufficient to make the use of any such items unsuitable or unsafe, Contractor shall immediately notify Company of such defect or defects and Company shall at once replace the items so found defective. Should Contractor fail to make such examination or fail to report a defect in such item or items, Contractor shall be deemed to have assumed all risk and liability for any mishap which may occur in operations conducted hereunder by reason of failure or defects in such equipment, machinery, tools or other items except for failure due solely to latent defects.

13. Contractor shall be an independent contractor with respect to the performance of all Work hereunder, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of Company in the performance of any Work or service or part thereof in any manner dealt with hereunder. Company shall have no direction or control of the Contractor or its employees and agents except in the results to be obtained. The Work contemplated herein shall meet the approval of Company and be subject to the general right of inspection for Company to secure the satisfactory completion thereof. The actual performance and superintendence of all Work hereunder shall be by Contractor, but Company or its

representatives shall have unlimited access to the operations to determine whether Work is being performed by Contractor in accordance with all the provisions of this contract and the work order.

14. In addition to all other indemnifying provisions contained herein, Contractor represents and warrants that the use or construction of any and all tools and equipment furnished by Contractor and used in the Work provided for herein does not infringe on any license or patent which has been issued or applied for, and Contractor agrees to indemnify and hold Company harmless from any and all claims, demands, and causes of action of every kind and character in favor of or made by any patentee, licensee, or claimant of any right or priority to such tool or equipment, or the use or construction thereof, which may result from or arise out of furnishing or use of any such tool or equipment by Contractor in connection with the Work under this Agreement and applicable work orders.

15. In the event there is a conflict between the provisions hereof and any papers or documents, which may have been executed or passed between the parties hereto in connection with the subject matter hereof, it is understood and agreed that the provisions hereof shall be controlling. It is expressly understood and agreed by the parties hereto that no provision of any delivery ticket, invoice or other instrument used by Contractor in setting forth the operations conducted hereunder shall supersede the provisions of this Agreement.

16. Time is expressly declared to be the essence of this contract. If either party hereto defaults in the performance of this contract, or of Work commenced under work orders as provided for herein, the other party has the option to terminate this contract and the work order involved.

17. In the event Contractor fails or refuses to comply with the terms of this contract, in whole or in part, or shall unreasonably delay the performance of Work, Company, at its election, may terminate this contract or it may, if it so elects, take over the equipment of the Contractor, as well as its crews, and complete the job and pay therefor the reasonable value of said services, which shall not exceed the contractual price agreed upon.

18. No waiver by Company of any of the terms, provisions, or conditions hereof shall be effective unless said waiver shall be in writing and signed by an authorized representative of Company.

19. All notices to be given with respect to this contract and applicable work orders unless provided for shall be given to Company and to Contractor respectively at the addresses hereinabove shown. All sums payable hereunder to Contractor shall be payable at Company's address hereinabove shown unless otherwise specified herein or in the applicable work order.

20. As a part of the consideration for this Agreement, Contractor hereby agrees that the provisions of Paragraph 7. (Insurance) 8. (Indemnity), 9. (Loss of Contractor's Equipment) and 14. (Patent Infringement) shall extend to and be enforceable by and for the benefit of any Owner or Operator for whom Company is performing operations or services.

21. Our payment terms are net 60 DAYS after product acceptance and or service is completed, and receipt of invoices that matches purchase order.

22. **STATUTORY EMPLOYER.** In those jurisdictions where permitted by law, and only with respect to the Workers' Compensation laws of such jurisdictions, Company and Contractor agree that Company is and shall be deemed a Statutory Employer of Contractor's employees. It is also agreed that all Work performed by Contractor and its employees pursuant to this Agreement are an integral part of and are essential to the ability of Company to generate Company's goods, products or services.

In further consideration of the amounts to be received by Contractor pursuant to this Agreement, Company and Contractor agree that Contractor shall be responsible for the payment of all compensation benefits paid to or for the benefit of Contractor's employees. Contractor and/or Contractor's underwriters agree that they shall have no right to seek, and shall not seek, any contributions or indemnity from Company for any compensation benefits paid by Contractor and/or Contractor's underwriters.

23. **RENTED EQUIPMENT.** Physical damage to any equipment rented by Contractor to Company shall be subject to the provisions of the particular rental agreement for said equipment.

24. Added special provisions:

Witness: _____ _____	OWNER: Tokai Carbon CB LTD.
	BY: _____
	Print Name: _____
	Title: _____
	CONTRACTOR: Co. Name: _____
	BY: _____
_____	Print Name: _____
_____	Title: _____