

**Contract between parties relating to purchase of Jet A-1 and D6 Diesel
utilizing the ICC-769 standard form of contract:**

**THE ICC MODEL NCND - NON-CIRCUMVENTION &
NON-DISCLOSURE AGREEMENT
(OCCASIONAL INTERMEDIARY CONTRACT)**

Seller's Offer Code (FCO Ref.):	
Buyer's ICPO Ref.:	
Seller's Transaction Code:	
Contract period:	
Product:	
Contract Quantity:	
Price:	

Buyer name signature & date:	Seller name, signature & date:
Intermediary Signature & date: PLATZ INTERNATIONAL CONCEPTS	

This contract is based entirely upon the following ICC document:

The ICC Model NCND - Non-Circumvention & Non-Disclosure Agreement (occasional intermediary contract)

Copyright © 2015

International Chamber of Commerce (ICC)

All rights reserved.

ICC holds all copyright and other intellectual property rights in this collective work.

No part of this collective work may be reproduced, distributed, transmitted, translated or adapted in any form or by any means, except as permitted by law, without the written permission of ICC.

Permission can be requested from ICC through publications@iccwbo.org

ICC Services

Publications Department

33-43 avenue du Président Wilson

75116 Paris

France

ICC Publication No. 769^E

THE ICC MODEL NCND (NON-CIRCUMVENTION & NON-DISCLOSURE) AGREEMENT (OCCASIONAL INTERMEDIARY CONTRACT)

INTRODUCTION

1. Purpose of the model

For several years a growing number of documents called “Non-circumvention & Non-disclosure Agreements”, “NC&ND Agreements”, “Commission Protection Guarantee”, or similar names, have been circulating among business firms engaged in international trade. Such agreements mainly cover situations where an **occasional intermediary**, who undertakes to provide certain services (e.g., communication of potential customers’ names, promotion of business), desires to be protected against the risk of being “circumvented” by the other party (and, consequently, not being paid for his services).

Since it appeared that there is need for a model contract covering this situation, the International Chamber of Commerce (ICC) decided in 1999 to draft a “Model occasional intermediary contract - Non-circumvention & Non-disclosure Agreement” (Publication 619) to which parties engaged in international trade could make reference for contracts of this type.

This initiative intended at the same time to react against an abusive practice consisting in presenting certain NCND agreements ICC products, such as, for instance, “ICC Covenant for Non-circumvention & Non-disclosure”, “ICC Non-circumvention & Non-disclosure Agreement” or “ICC NCND”. In certain cases reference has been made to non-existent ICC rules said to govern such an agreement (e.g., “ICC non-circumvention and non-disclosure rules”, “ICC 400 rules”, “International Chamber of Commerce Convention”). Most of these model agreements which can be found on the Internet are poorly drafted and do not adequately protect the respective interests of the parties.

By publishing, in the year 2000, the ICC Model Occasional Intermediary Contract (Non-circumvention & Non-disclosure Agreement) which contains in part B a set of rules named “ICC General Conditions for Non-circumvention & Non-disclosure Agreements”, the ICC has officially established its own NCND Rules which automatically replace those of any document NCND agreement which refers to the ICC. This may give parties who inadvertently sign one of the above “fake” agreements, the possibility of invoking the application of to the ICC rules, which provide a fair and balanced contractual framework.

When updating this model contract it has been decided to take into account the growing diffusion of the term “NCND” and thus to change the main title of this model from “Occasional Intermediary Contract” to “Non-circumvention & Non-disclosure Agreement” and to put the term “Occasional Intermediary Contract” in the second part of the title. This inversion of title and sub-title should make the NCND agreement more recognizable, but does not change the substance of the matter, since a party providing a service under an NCND agreement is and remains an occasional intermediary.

2. The Model NCND contract and other ICC models

The ICC model NCND agreement is part of a set of model contracts in the field of international distribution, which at present cover the following situations:

- **Commercial Agency**, i.e., a contract with an intermediary who promotes business in a continuing way in a certain territory: ICC Model commercial agency contract (publication no. 496);

- **Occasional Intermediary**, i.e. a contract with an intermediary who occasionally promotes business: ICC Model Non-circumvention & Non-disclosure Agreement (publication no. 619);
- **Distributorship**, i.e., a contract with a buyer-reseller responsible for marketing the supplier's goods within a certain territory: ICC Model Distributorship contract - Sole importer - distributor (publication no. 518); and
- **Franchising**, i.e., a contract with an independent buyer-reseller (normally acting at the retail level) who obtains the right to exploit a package of industrial or intellectual property rights and continuing commercial or technical assistance: ICC Model Franchising Contract (Publication n. 712)).
- **Selective distribution**, i.e., a contract with an independent buyer-reseller who is part of a closed network of selected retailers having certain characteristics (image, service, etc.) (Publication n. 657)

Both the occasional intermediary and the commercial agent act as a middle-man, i.e., they promote the conclusion of contracts between a principal and a third party (while the distributor acts in his own name and for his own account as buyer-reseller). However, while the agent undertakes to actively and continuously promote business within the territory or toward a group of customers for which he is responsible, the occasional intermediary has in principle no such obligation: he may agree to promote a specific business or to inform the counterpart about business which may come to his notice, **without any continuing obligation to develop the market**. Moreover, the activity of an occasional intermediary may be limited to the simple **supply of information** about a possible business (names of potential customers, indication of a particular deal, etc.), while the commercial agent's activity comprises necessarily the negotiation of contracts (in view of collecting orders) on behalf of the principal.

Considering these factors, there should be no difficulty in choosing between the model agency contract and the model NCND agreement. In case of doubt (e.g., when the intermediary, although not contractually bound to develop the market, in fact appears to promote business on a continuing basis), parties should check attentively if the rules on commercial agents (which in many countries have mandatory character) are applicable, and in case of a positive answer, they should prefer the agency model.

The model NCND agreement has been prepared on the assumption that it would apply to a **cross-border** relationship. However, this does not prevent parties from using the model with reference to **domestic agreements**, provided they check accurately to what extent it is compatible with the applicable national law and provided they make the necessary amendments (e.g., deleting provisions not applicable to domestic contracts).

3. Division in two parts: special conditions and general conditions

The ICC Model NCND Agreement is divided into two parts:

- A. Special Conditions, setting out the terms which are special to a particular NCND agreement, and which must be filled in by the parties according to their particular needs; and
- B. General Conditions, setting out standard terms common to all contracts incorporating the ICC General Conditions for Non-circumvention & Non-disclosure Agreements.

The main purpose of this division in two parts is to concentrate in the Special Conditions all (or almost all) aspects which need to be specified by the parties or which require a choice between different alternatives. This should make it easier for the parties to define the contents of their particular deal, without needing to modify any particular clause of the General Conditions.

The model has been designed on the assumption that parties would normally use both Parts A and B, with each part being drafted with the other part in mind.

On the other hand, it is open to the parties to incorporate into their contract only Part B, the General Conditions. This will be the case whenever the parties make reference to the “ICC General Conditions for Non-circumvention & Non-disclosure Agreements” or, more generally, to ICC rules governing occasional intermediaries, NCND or similar agreements.

Of course, whenever Part B is applicable on its own (i.e., without Part A), any reference in Part B to the clauses in Part A would be deemed to refer instead to relevant specific terms, if any, agreed by the parties in their special contract; see Article 1.1 of the General Conditions (Part B).

4. The general clauses: good faith and fair dealing - Modifications to be made in writing

Before describing the rights and obligations of the parties under this particular model contract, two principles of a more general character should be mentioned.

The first one, contained in Article 2, imposes upon the parties the obligation to perform the contract in accordance with **good faith and fair dealing** (Art. 2.1) and, furthermore, provides that the agreement and the statements made by the parties in connection with it are to be interpreted in good faith.

The second principle, contained in Article 1.2, provides that modifications to the contract must be made in writing. This rule, which has the obvious advantage of ensuring maximum certainty regarding the terms agreed between the parties, is however not absolute. In order to avoid abuses which may result from a strict application of this rule, the second sentence of Article 1.2 (which was taken from Article 29(2) of the 1980 Vienna Convention: United Nations Convention for the International Sales of Goods (CISG) goes on to say that a party may be precluded from invoking the requirement of writing if he has agreed to a modification of written terms orally or by conduct and the other party has relied on such oral agreement or conduct.

5. The services to be provided by the intermediary

The very first point to be defined by the parties (after the indication of their names and addresses, of course) is the type of service that the intermediary is to provide. In fact it is essential that the parties clearly state whether or not the intermediary must supply names of possible customers or contacts, provide information about one or more specific deals, put the counterpart in contact with a third party, or negotiate a contract for the counterpart with such third party.

Box A of the Special Conditions is intended to guide the parties through a number of possible alternatives, such as:

- supplying information about a third party, a particular deal or other information (A-1.1);
- putting into contact with a third party and, as the case may be, assistance during negotiation and performance (A-1.2); or
- other (A-1.3).

It is impossible to foresee all the different types of services the intermediary may agree to provide to the counterpart. We will try to describe here some of the main situations which have been taken into account when preparing this model.

(a) Simple communication of information

This first alternative is intended to cover the case where the intermediary's activity is limited to a **simple supply of information** about one or more third parties (e.g., names and addresses of potential customers) or a particular deal (e.g., a tender), a service which does not necessarily imply direct contact between the intermediary and the third party.

In this context problems may arise with respect to the **quality** of the information communicated by the intermediary. Should the information be selected so that it meets the particular needs of the counterpart? Should the intermediary be obliged to give information which is not easily accessible (excluding, for example, names which can be found in standard publications)?

If the information appears to be useless or trivial, it would be unfair to request the counterpart to pay for it and/or to be bound to respect possible exclusive rights of the intermediary. On the other hand, a general rule requiring the information to have a certain "quality level" would probably leave too much leeway to counterparts seeking excuses not to pay the intermediary.

Considering all this, it was thought inappropriate to state a general rule on the characteristics (quality) of the information, trusting that the principle of good faith and fair dealing contained in Article 2.1 would offer sufficient guidance in cases where the level of the information is clearly inadequate.

Of course, if the parties want more precise rules on this matter, they may provide further specifications in Box A-10 (Other).

As regards the intermediary's **remuneration**, if its obligation is limited to the supply of information, a lump sum – payable against the supply of such service, independently of the conclusion of a contract with the third party – may be an appropriate solution (see Box A-5.1 and A-5.2-A). However, parties may also agree on a commission with respect to the contract (if any) concluded with the third party introduced by the intermediary (see Box A-5.2-B).

(b) Putting into contact with a third party

This second alternative implies a more active involvement of the intermediary, who agrees to **establish actual contact** between the third party and the counterpart: the simple information that the third party could be interested in business with the counterpart would not amount to an actual "putting into contact": see Article 4.4 of the General Conditions.

Parties may indicate whether or not the contact should be established merely for possible **future business** or for a **particular deal** with respect to which the NCND agreement is made (see Box A-1.2-A).

As concerns the **remuneration**, in this case, the normal solution will be to pay the intermediary only if the contract with the third party is concluded (but the parties may agree otherwise; see Box A-5.1).

(c) Assistance in the contract negotiation

If the parties have agreed that the intermediary should assist the counterpart during negotiation (see Box A-1.2-B), it is assumed that the intermediary can actually help the counterpart in negotiating the contract with the third party, due to the intermediary's knowledge of the third party, its good name or other means. According to Article 4.4 of the General Conditions, the intermediary's obligation to assist the counterpart during contract negotiation implies that the intermediary undertakes reasonable efforts to help the counterpart until conclusion of the contract.

Also in this case, the **remuneration** will normally depend upon the conclusion of a contract with the third party, although the parties may agree otherwise.

(d) Assistance during performance of the contract

In certain cases, the intermediary agrees to assist the counterpart also **after conclusion** of the contract, during its performance (see Box A-1.2-C). This solution may be agreed especially when the intermediary can, due to its relations with the third party or its particular knowledge of the local market, help the counterpart overcome possible problems arising during such stage. According to Article 4.4 of the General Conditions, the intermediary's obligation to assist the counterpart during performance of the contract implies that the intermediary undertakes reasonable efforts to help the counterpart in overcoming problems which may arise during such stage. Of course, if the parties have in mind which actual services the intermediary should perform in this context, they should specify this in a more detailed way, if necessary by using Box A-10 (Other).

In this case, it is reasonable to expect that the intermediary's right to remuneration will depend (at least partially) upon the performance of the contract by the third party.

Article 4.2 of the General Conditions provides that the type of services to be supplied by the intermediary must be clearly stated and that, if they are not **sufficiently identified** in the agreement, no obligation will arise on the side of the counterpart. The reason for this choice is that, if it appears impossible to clearly establish, on the basis of the contract or other written documents, what the intermediary is actually expected to do¹, it would be unfair to request the counterpart to undertake the corresponding obligations (not to circumvent the intermediary, not to disclose the information received, to pay for the service, etc.)².

Articles 4.3 and 4.4 provide, furthermore, for the **integration of incomplete clauses**, e.g., by stating that the simple indication that the intermediary is to supply information means it is not to give further services, such as assistance during negotiation (Article 4.3), and that the obligation to put the counterpart into contact with a third party means the intermediary must actually establish direct contact between the counterpart and the third party (Article 4.4).

The **type of service** to be provided by the intermediary must not be confused with the **service itself**, which will normally be made available only after conclusion of the contract, according to the conditions that may be agreed between the parties (particularly under A-2). For instance, if the intermediary is to supply the counterpart with a list of names of potential purchasers, the parties will first indicate the type of service to be provided³ (e.g., "a list of 10 potential German customers for the shoes manufactured by the Italian counterpart"), and the parties will furthermore agree⁴ how and when such information will be transmitted (e.g., the list will be handed over within 10 days after signature of the NCND agreement). And finally, after the agreement is signed, the list will be actually handed over to the counterpart.

Another example: an intermediary accepts to assist the counterpart in negotiating the contract with a customer of the intermediary's country, the name of whom is already known to the seller. In this case, the parties will state in the NCND agreement the obligations of the intermediary (assistance during negotiation) but will not need to reserve the indication of the customer's name for a later stage.

6. Exclusive rights of the intermediary - Customer protection

When appointing an intermediary, the counterpart will normally accept to grant him a certain level of exclusivity with respect to the business he agrees to promote: this is, in a certain sense, the essence of his

¹ Numerous examples of clauses which do not sufficiently identify the services to be supplied by the intermediary are found in NCND agreements available on the Internet, e.g., "any business transaction whatsoever, done through, via and/or with the cooperation of either parties to this agreement".

² Moreover, in many jurisdictions a contract which does not sufficiently define the obligations of the parties may be considered unenforceable.

³ Under A-1.1, first alternative, if the Special Conditions are used.

⁴ Under A-2, if the Special Conditions are used.

obligation not to “circumvent” the intermediary. However, the extent of such obligation (if any) may vary from case to case and should therefore be clearly defined by the parties.

In principle, by granting an exclusivity to somebody, the counterpart agrees to deal only with that party with respect to the activity entrusted to it. However, it is normal to agree upon exclusivity clauses having a more limited extension, such as clauses whereby the counterpart retains the right to have direct dealings within the ambit reserved to the intermediary (with or without payment of commission to the latter). In certain countries a distinction is made between granting a **sole** right (which means that the counterpart agrees not to appoint other intermediaries, but retains the right to deal on its own with respect to the activity entrusted to the intermediary) and an **exclusive** right (which implies that the counterpart should not at all interfere with the activity of the intermediary). Since this distinction is not universally accepted (and may be unknown in many jurisdictions), the ICC working party has preferred to use the term “exclusive”, it being understood that such term also covers situations where the exclusivity is not absolute, such as a “sole right”⁵.

With regard to exclusivity, the model contract provides several options in Box A-4 of the Special Conditions, as well as the “default rules”, contained in Article 7 of the General Conditions, applicable to the extent the parties have made no choice.

When choosing among the various options, a distinction should be made among three different aspects, each of which leaves room for several alternatives:

- the **ambit to which the exclusivity refers**: the intermediary's promotional activity in general, a particular customer or a particular deal;
- the **type and extent of protection** granted to the intermediary: an absolute obligation to refrain from any dealings without the participation of the intermediary, an obligation not to appoint other intermediaries with the same task, etc.; and
- the **remuneration** (if any) for business falling under the intermediary's exclusivity.

In setting out the various options in Box A-3 of the Special Conditions, a basic division has been made with respect to the first aspect (i.e., the scope to which the exclusivity refers) by distinguishing the following situations:

- the exclusivity refers to the intermediary's promotional activity in general (Box A-3.1);
- the exclusivity refers to a particular deal for which the NCND agreement is entered into (Box A-3.2); and
- the exclusivity refers to a third party introduced by the intermediary (Box A-3.3).

Within these three basic alternatives further options have been worked out, particularly as regards the extension of the exclusive rights and the intermediary's remuneration. Of course, considering the great number of possible combinations, it has been possible to cover only the most common solutions. Parties wishing to choose further alternatives can have recourse to the option “other”, which has been provided in most cases as a further alternative.

(a) Exclusivity with respect to the intermediary's promotional activity in general.

In the context of contracts with occasional intermediaries, the common rule is **not to grant** the intermediary an exclusivity with respect to the promotional activity it is to perform. So, for example, if a manufacturer appoints an intermediary to look for customers in a certain country, the manufacturer will normally assume that the intermediary is non-exclusive and that he will

⁵ See Article 7.5 of the General Conditions. This means that, when the model contract makes reference to a situation where the intermediary is “exclusive”, it also covers cases where the protection granted to the intermediary is not absolute, e.g., where the counterpart retains the right to deal directly in competition with the intermediary. So, for instance, the rule contained in Article 5.6 of the General Conditions according to which the intermediary is entitled to remuneration on direct sales by the counterpart if the intermediary has been granted an exclusive right, will also apply to the case of a “sole” intermediary, i.e., when the counterpart has retained the right to make direct deals (unless the parties have agreed otherwise, by expressly excluding the right to remuneration with respect to such direct sales).

remain free to appoint other intermediaries for the same type of business as well as to take direct contact with customers of that country⁶.

For this reason the “default rule” in Article 7.1 of the General Conditions says that, unless otherwise agreed, the intermediary is appointed on a non-exclusive basis, i.e., that the counterpart remains free to appoint other intermediaries and to act on its own with respect to the activity the intermediary is to perform. In other words, if the parties do not complete Box A-3.1, the alternative under A-3.1-A will automatically apply, by virtue of Article 7.1 of the General Conditions.

The parties may, of course, agree otherwise, for example by stating in general terms that **only** the intermediary is entrusted with a certain task (for instance, to contact buyers for the counterpart's products in Argentina, or to find a purchaser for a specific product of the counterpart anywhere in the world). In this case the counterpart agrees not to entrust other intermediaries with the same task (i.e., contacting buyers in Argentina or looking for a purchaser for the specific product the counterpart wishes to sell) and/or to refrain from taking the same action on its own.

In such a case the parties may fill in alternative B of Box A-3.1 and further state in the boxes under A.3.1-B the **extension of the exclusive right**, i.e., if the counterpart only agrees not to appoint other intermediaries for the same task or if the counterpart also undertakes not to act on its own for the same business.

Moreover, the parties may expressly state, under Box A-3.1-C, if the intermediary is entitled to remuneration for possible direct business by the counterpart falling within the scope of the activity entrusted to the intermediary. If the parties do not expressly agree on this point, the general rule of Article 5.6 will apply, according to which the intermediary is entitled to remuneration for direct deals made by the counterpart which fall under the intermediary's exclusivity.

(b) Exclusive rights with respect to the specific deal promoted by the intermediary

If the intermediary is to promote a specific deal with a given third party, it will normally be appointed to act **on an exclusive basis** as middle-man **for such deal**.

There may, however, be exceptions: for example, if the role of the intermediary is only to inform the counterpart about the deal or to establish a first contact, the counterpart may prefer to retain the right to appoint other intermediaries and/or to negotiate on its own with the third party.

Box A-3.2 takes into account the following alternatives with respect to this point:

- The counterpart may deal directly or through other intermediaries with the third party (non-exclusivity); and
- The counterpart may deal with the third party only through the intermediary, i.e., no direct contact is allowed.

Of course, between these two extremes there are many other solutions, which can be agreed by the parties, e.g., the counterpart may deal directly with the third party but may not appoint other intermediaries, and/or the intermediary must be kept informed about direct negotiation. In this case Box A-3.2-C (Other) can be used.

As regards the intermediary's right to **remuneration**, since in this case the deal promoted by the intermediary is the very purpose of the agreement, there should be no doubt about its right to be paid for such business (to the extent remuneration has been agreed in general terms, of course).

⁶ This is a typical difference between occasional intermediaries and commercial agents. A commercial agent is normally responsible for promoting business on a continuing basis within a given territory or toward a particular group of customers and will therefore be granted a sole or exclusive rights (as well as a commission on direct sales) with respect to business made by the principal in the area for which the intermediary is responsible.

It may, however, be open to discussion if the remuneration should be a lump sum⁷ or a commission on the contract made with the third party and, in the latter case, if the right to remuneration should arise as a consequence of the conclusion of the contract as such or because of the intermediary's actual intervention to this effect. For this reason, Box A-3.2 offers the choice between these two alternatives (A-3.2-i and A-3.2-ii).

(c) Exclusive rights with respect to third parties introduced by the intermediary (customer protection)

As concerns possible exclusive rights of the intermediary with respect to third parties it has introduced to or put into contact with the counterpart, also sometimes called “customer protection”, Box A-3.2 offers the following alternatives:

- The intermediary **enjoys no customer protection**: the counterpart has no obligation whatsoever toward the intermediary with respect to possible future contracts with the third party introduced by the intermediary. This solution may be appropriate if the intermediary's task is limited to the indication or introduction of the third party (in exchange for a lump sum or a commission on the first contract with such third party) or, more generally, if the parties wish to limit the scope of the NCND agreement to a specific deal without incurring in any further obligations for the future; and
- The intermediary **enjoys customer protection**, i.e., it has certain rights with respect to further business with the third party for which it obtains protection.

If the parties choose the second alternative, they should decide if the customer protection should apply to all third parties introduced by the intermediary or only to third parties with whom the intermediary has created an actual contact (see Box A-3.3-B-1 for the two options).

Furthermore, parties should define in detail the **actual extension** of such exclusivity/protection with respect to **direct dealings** with the third party: the two extreme solutions set out in Box A-3.3-B-2 are, on one side, that the counterpart may **deal directly** with the third party⁸ or, on the other side, that it may deal with the third party **only through the intermediary**. Of course, other options may be considered (for example, requesting that the intermediary be informed in advance).

Also with regard to the **remuneration** for direct business with “protected customers”, two options are proposed under Box A-3.3-B.3: remuneration **for all future contracts** with the “protected” third party, or only **on contracts concluded through the intermediary's actual intervention**. Other possible options (to be put under “Other”) may be envisaged with regard to further aspects, such as, for example, the amount of remuneration (which could be different on successive deals or be subject to agreement on a case-by-case basis).

The “default rules” applicable in the absence of a specific agreement are the following:

- If the intermediary's task is simply to inform the counterpart about possible business or to indicate names of potential customers, it is assumed that it is not granted exclusive rights with respect to such customers; this means that the counterpart may deal with the third party without any limitation (see Article 7.2.1 of the General Conditions).
- If the intermediary is to actually put the counterpart in contact with a third party, it is assumed that it is granted an exclusive right with respect to that third party (Article 7.2.2 of the General Conditions), unless the NCND contract is entered into for a specific deal (see Article 7.2.3).

⁷ This option is rather unlikely, and has therefore not been expressly indicated in A-3.2. However, it cannot be excluded in principle, e.g., if the parties prefer to agree in advance on remuneration payable independently of the result of the intermediary's intervention (in this case parties may have recourse to Box A-3.2-iii (Other)).

⁸ This solution is not necessarily in contradiction with the protection of the intermediary, if he is granted remuneration on contracts with such third party.

The reason for choosing these principles as a standard solution is that it appears reasonable to grant a customer protection to the extent the intermediary's involvement in creating a contact with the third party is of a certain importance and provided the purpose of the NCND agreement is not limited to a single deal. But, of course, these are mere presumptions which leave the parties free to make a different choice if they consider the standard solution inappropriate.

As regards the actual significance of the notion of "customer protection" with respect to the right of the counterpart to deal with the "protected" third party, the "default solution" set out in Article 7.3 of the General Conditions is that the counterpart is **free to make direct contact** with the third party, provided it pays the remuneration which may be due to the intermediary on the business made with the third party. This solution seems more appropriate (as a general rule) than the stricter one, which prohibits any contact without the actual participation of the intermediary in the negotiation.

7. Undertaking not to compete

Another important aspect, which the parties should discuss in advance, is whether and to what extent the intermediary should refrain from **acting for competitors** of the counterpart.

Of course, the right solution can be found only by the parties themselves, taking into account the particular circumstances of their agreement. So, for instance, there may be situations where it would be inappropriate to let the intermediary make contact with competitors of the counterpart (particularly if the actual situation implies that the intermediary will come to know confidential information, which should not be passed to competitors, or if the activity of the intermediary cannot be carried out correctly in the interest of two competing counterparts), while in other cases this aspect may be of no particular importance for the counterpart.

Box A-4 contains the two main alternatives:

- the intermediary accepts a non-competition obligation (Box A-4-A); and
- the intermediary remains free to act for competitors of the counterpart (Box A-4-B).

If the first alternative is chosen, Box A-4-B provides several further options regarding the extent of the non-competition obligation, which may cover the intermediary's promotional activity in general or only certain third parties or deals.

If the parties do not expressly agree on the intermediary's non-competition obligation, the general rule, contained in Article 8, says that the intermediary will be bound not to act for competitors of the counterpart **to the extent it has been granted an exclusive right** on certain business.

This means, for example, that:

- if the intermediary has been appointed as exclusive intermediary for promoting certain business, it may not act for the benefit of competitors of the counterpart in respect of such business;
- if the intermediary has exclusive rights with respect to a third party or a specific deal with such third party, it may not act for the benefit of competitors of the counterpart in respect of business with such third party or in respect of such specific deal; and
- if the intermediary has been appointed on a non-exclusive basis for promoting business or for introducing or contacting third parties, it will be free to render the same services for the benefit of third parties (including competitors of the counterpart).

However, even when the intermediary may act for competitors of the counterpart, such freedom is not unlimited, because it must in any case respect certain **minimum requirements** as to confidentiality and fair dealing. In order to clarify this point, Article 8.2 of the General Conditions expressly states that the intermediary must in any case refrain from using confidential information obtained from the counterpart or from otherwise taking advantage of its relationship with the counterpart when dealing with the latter's competitors.

8. The intermediary's remuneration

With respect to the intermediary's remuneration, the parties may choose between several alternatives, which have been indicated in Box A-5 of the Special Conditions with the purpose of helping the parties to select the most appropriate solution.

(a) Type of remuneration

A first option regards the type of remuneration. Although the most common type of remuneration is a **commission** on the value of the business (contract) entered into through the intermediary's intervention, parties can also agree on a **lump sum**. The latter may be appropriate in cases of simple communication of information and, more generally, when the parties wish to limit the extent of their collaboration to a very first stage (e.g., simple introduction of a third party).

Box A-5-1 gives a choice between the various alternatives: lump sum, commission, other.

(b) Amount of remuneration

As to the amount of the intermediary's remuneration, parties may fill in the spaces left open in Box A-5-1 (lump sum, fixed rate of commission) or state that the remuneration is to be agreed upon case by case. The latter solution has the advantage of being flexible; however, it may give rise to substantial problems if the parties do not agree on the remuneration, and should therefore be further specified⁹.

As far as the rate of commission is concerned, Box A-3.1 only provides for a fixed rate. However, this does not prevent parties from agreeing on more sophisticated solutions, such as different rates of commission according to the amount of the contract. So, it is usual for big deals to agree upon a variable commission (e.g., 5% up to 500,000 USD; 3% from 500,000 to 2,000.000 USD; 2% on the amount exceeding 2,000.000 USD). If the parties choose this solution, they should clearly define which situations should be considered as a single deal and which are to be considered separately for the purpose of such calculation.

It is very unlikely that the parties would not agree on the amount of the remuneration, or at least on a system for determining it. In order to prevent uncertainty, Article 5.1 of the General Conditions states that if no amount of remuneration (or at least the criteria for determining it) is agreed in writing, the intermediary will not be entitled to payment. In fact, in the very unlikely case that the parties do not fix the amount of remuneration (or the criteria for its future determination), it is reasonable to assume that the intermediary does not expect to be paid by the counterpart for its services (for example, because it will be paid by the third party, or because it expects other economic benefits from the deal).

(c) Conditions for the intermediary's right to remuneration

It is important that the parties decide whether the intermediary should be paid for the simple fact that it has performed certain services (e.g., to communicate information, to put the counterpart into contact with a third party), independently of the result obtained, or if, on the contrary, it should be paid only if and to the extent its activity has led to the conclusion of a contract with a third party.

If the parties choose the first solution, they should complete the first alternative in Box A-5-2 (remuneration for the performance of services as such). In this case the remuneration will be due even if no contract has been concluded with the third party, provided the intermediary has fulfilled its obligations under the NCND agreement.

If the parties choose the second alternative (remuneration depending on the conclusion of a contract with a third party), which is by far the most common solution for agreements of this type,

⁹ E.g., by fixing an amount applicable in case of disagreement, or by leaving its determination, in case no agreement can be reached, to a neutral third party (or arbitrator).

they should complete option B under A-5-2. In this case the intermediary will be paid only if and to the extent a contract with the third party introduced by it has been concluded.

If the parties have not made an express choice, the following presumptions shall apply according to article 5.2 of the General Conditions:

- if they have agreed upon a lump sum, payment will be due on completion of the services the intermediary has agreed to supply, independently of the actual conclusion of business with a third party; and
- in all other cases the remuneration will be due only if and to the extent a contract has been concluded with the third party introduced by the intermediary.

The parties may, of course, also choose intermediate solutions, e.g., that payment will be due only if the contract has been concluded through the **actual intervention** of the intermediary (see Boxes A-3.2-ii and A-3.3-B-3). They may also agree on mixed solutions, for instance by providing for payment of a commission if the contract with the third party is concluded and reimbursement of certain expenses if no result is obtained. In this case they should draft an appropriate clause, which may be put in Box A-10 (Other).

(d) Time limit for the conclusion of the contract with the third party

When the remuneration is due with respect to a contract concluded with a third party, the parties may wish to put a time limit within which such contract must be concluded.

For this purpose, Box A5.2-A offers a choice between several alternatives: conclusion of the contract within a period of time from signing of the NCND agreement, before expiration of the NCND agreement, other.

If no choice is made, the general rule contained in the last sentence of Article 5.5 of the General Conditions will apply, according to which the right to remuneration will expire any case the contract with the third party has not been concluded **before the expiration or termination** of the NCND agreement.

Moreover, in order to prevent abuses, Article 5.5 of the General Conditions states that the commission shall be due even if the contract has been concluded after the above-mentioned time limit, if it appears that the conclusion of the contract with the third party has been intentionally delayed by the counterpart for the purpose of avoiding payment to the intermediary. Of course, in such an exceptional case, it will be for the intermediary to prove that the delay has been intentional.

(e) Remuneration on contracts with a third party indicated or contacted by the intermediary (direct business)

Another important point to be decided is whether the intermediary should be entitled to remuneration on business entered into by the counterpart, without the intermediary's intervention, with third parties introduced by the intermediary or falling within the scope of its activity, particularly as concerns **subsequent contracts** with third parties introduced by the intermediary.

This aspect has been already examined in paragraph 6(c) of the Introduction.

9. Confidentiality and non-disclosure obligations.

According to Article 6 of the General Conditions, each party has an obligation not to disclose any confidential information obtained in the context of the NCND agreement, such as names of customers; sources for contracts; business opportunities made available by the intermediary; or, on the other side, information given by the counterpart about its marketing organization, pricing policies, commercial strategies, etc.

This non-disclosure obligation arises only with respect to information which is actually confidential: it is in particular understood that the parties' right to disclose or use information which is in the public domain is not affected.

Box A-6 gives the parties the opportunity to expressly state which information they consider confidential. If they do not do so, in principle only information which has been supplied to the other party with the indication that it is confidential will be considered as such.

However, this is not to be regarded as an absolute rule:

- even when the party disclosing the information does not indicate that it is confidential, the receiving party will be bound to confidentiality if the confidential nature of the information is so obvious that it would be against good faith to rely on the absence of an express indication; and
- even when the parties have expressly stated that it is confidential, information which is in the public domain can in no case be considered as confidential (Article 6.2).

If parties prefer to include a more detailed clause on confidentiality, they may incorporate by reference the ICC Model Confidentiality Clause 2006 (ICC Publication n. 664)

10. Term of the agreement

The model contract contains only the option of a contract for a fixed term, thus excluding a contract for an indefinite term, considering that such solution is almost never used for this type of agreement. In Box A-6 of the Special Conditions the parties may indicate the duration (or expiry date) of the agreement, as well as the conditions for its renewal. If nothing has been agreed, **the contract is deemed to be made for a period of one year** (Article 11.1). Moreover, Article 11.2 states some supplementary rules applicable when the parties have agreed that the agreement will be automatically renewed.

The possibility of an earlier termination of the agreement (before its expiry) in case of substantial breach or exceptional circumstances is foreseen in Article 12.

11. Applicable law and resolution of disputes

This model form has been based on the assumption that it will not be governed by a specific national law, but only by the provisions of the contract itself and the principles of law generally recognized in international trade as applicable to contracts with occasional intermediaries (also called «lex mercatoria»). Consequently, Article 13.1 of the General Conditions provides that the contract is to be governed by the “rules and principles of law generally recognized in international trade as applicable to international contracts with occasional intermediaries”, together with the UNIDROIT Principles on International Commercial Contracts. This means that questions not covered by the contract will be governed by the general principles of the “lex mercatoria”, together with the rules contained in the UNIDROIT principles.

The working party is conscious that these principles are very general and may not always give clear guidance in case of a dispute. However, a reference to national laws – which in most cases have no specific rules on occasional intermediaries engaged in international commerce – can imply the application of rules for domestic intermediaries (e.g., brokers) which may be very different from what the parties expect (e.g., unforeseen requirements or time bars for claiming commission).

Considering this risk, it was thought that the possible disadvantage resulting from the application of rather flexible and general rules is counterbalanced by the greater certainty of a uniform set of contractual rules and by the reference to a set of rules on contracts, like the **Unidroit Principles** of International Commercial Contracts¹⁰, which offer a reasonably foreseeable legal framework for most issues which may arise..

In any case, if the parties wish nevertheless to submit the contract to a particular national law, they may do so by completing Box A-8.

¹⁰ The text of the Unidroit Principles 2010 can be found in Appendix 2.

It should further be remembered that there may be situations where certain *ordre public* rules are to be respected, which must be taken into account whatever the law governing the NCND agreement. So, for example there are in certain countries rules which require local intermediaries to obtain prior government authorization for the exercise of their activity. Parties should therefore check the existence of rules of this type before entering into an NCND contract.

As concerns the resolution of disputes, the standard solution under Article 13.2, which will automatically apply if not otherwise agreed, is ICC arbitration, but other alternatives (such as jurisdiction of ordinary courts) can be chosen in Box A-9.

If the parties choose litigation, they may indicate, under Box A-9, the forum (city, country) which will have jurisdiction. They may also determine if such jurisdiction should be exclusive, i.e., if they wish to exclude the jurisdiction of any other court¹¹. If the parties choose option A-9-B (Litigation – ordinary courts) without indicating the forum, ordinary courts will have jurisdiction according to the applicable procedural rules.

¹¹ It should be noted that within the European Union (and with respect to some other European countries like Switzerland and Norway), where the 1968 Brussels Convention or the 1988 Lugano Convention on jurisdiction apply, the choice of forum will be considered exclusive if the parties have given no further indication (see. Art. 17(1) of the above conventions).

SECTION A: CONTRACT SPECIAL CONDITIONS

These Special Conditions have been prepared in order to permit the parties to agree on the particular terms of their NCND Agreement by completing the spaces left open or choosing (as the case may be) among the alternatives provided in this document. Obviously this does not prevent the parties from agreeing on other terms or further details in Box A-10 or in one or more annex(es).

The present Non-circumvention & Non-disclosure Agreement will be governed by these Special Conditions and by the ICC General Conditions for Non-circumvention & Non-disclosure Agreements, which constitute part B of this document.

The particulars of each individual can be found in the accompanying sheets. Signatures of acceptance of these conditions are shown on the front page.

Special and additional conditions can be found in Section A-10.

A-3	EXCLUSIVE RIGHTS OF THE INTERMEDIARY (art. 7)
A-3.1	<p>With respect to the activity to be performed by the Intermediary in general</p> <p>A. <input type="checkbox"/> The intermediary is non-exclusive: the Counterpart remains free to appoint other intermediaries and to act on its own with respect to the activity entrusted to the Intermediary.</p> <p>B. <input checked="" type="checkbox"/> The intermediary is exclusive: consequently the Counterpart shall not</p> <ul style="list-style-type: none"> <input type="checkbox"/> entrust other intermediaries with the same task. <input type="checkbox"/> perform on its own the task entrusted to the Intermediary. <p>C. Remuneration on business made without the Intermediary's intervention</p> <p>On possible direct business by the Counterpart within the scope of the activity entrusted to the Intermediary, the Intermediary will <input checked="" type="checkbox"/> be entitled to remuneration. <input type="checkbox"/> not be entitled to remuneration.</p>
A-3.2	<p>With respect to the particular deal for which this NCND Agreement is entered into</p> <p>A. <input checked="" type="checkbox"/> The Counterpart may deal directly with the third party.</p> <p>B. <input type="checkbox"/> The Counterpart may deal with the third party only through the Intermediary.</p> <p>C. <input type="checkbox"/> Other:.....</p> <p>Remuneration with respect to the particular deal will be due:</p> <ul style="list-style-type: none"> i. <input checked="" type="checkbox"/> in case of conclusion of the contract ii. <input type="checkbox"/> only if the contract has been concluded through the Intermediary's actual intervention iii. <input type="checkbox"/> other:
A-3.3	<p>With respect to contracts with a third party introduced by the Intermediary (customer protection)</p> <p>A. <input type="checkbox"/> The Intermediary will not enjoy customer protection, i.e., the Counterpart will be free to conclude contracts with the third party without any obligation towards the Intermediary.</p> <p>B. <input checked="" type="checkbox"/> The Intermediary will enjoy customer protection as specified hereunder</p> <p>1. Third parties to whom the customer protection will apply are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> any third parties indicated or contacted by the Intermediary. <input checked="" type="checkbox"/> only third parties actually contacted through the Intermediary's assistance. <input type="checkbox"/> other: <p>2. Extent of customer protection with respect to direct dealings with the third party:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the Counterpart may deal with the third party only through the Intermediary. <input checked="" type="checkbox"/> the Counterpart may deal directly with the third party. <input type="checkbox"/> other: <p>3. Remuneration with respect to contracts made with protected customers without the Intermediary's intervention</p> <ul style="list-style-type: none"> <input type="checkbox"/> on all future contracts with protected customers <input checked="" type="checkbox"/> only on contracts with protected customers concluded through the Intermediary's actual intervention <input type="checkbox"/> other:

A-4	UNDERTAKING NOT TO COMPETE
<p>A. <input checked="" type="checkbox"/></p>	<p>The Intermediary agrees not to provide its services to competitors of the Counterpart:</p> <ul style="list-style-type: none"> <input type="checkbox"/> with respect to the promotional activity it agrees to perform. <input type="checkbox"/> with respect to the third party(ies) indicated to the Counterpart. <input type="checkbox"/> with respect to the third party(ies) it actually puts into contact with the Counterpart. <input checked="" type="checkbox"/> with respect to the particular deal for which this NCND Agreement is entered into. <input type="checkbox"/> other:
<p>B. <input checked="" type="checkbox"/></p>	<p>The Intermediary is free to provide its services to any third party, including competitors of the Counterpart.</p>

A-5	REMUNERATION PAYABLE TO THE INTERMEDIARY
A-5.1	Amount and type of remuneration
	<p>For its activity as defined in box A-1 the Intermediary will be entitled to:</p> <p><input type="checkbox"/> a lump sum of</p> <p><input checked="" type="checkbox"/> a commission of %2 (two percent per metric ton) of the value of the contract(s) entered into with a third party.</p> <p><input type="checkbox"/> remuneration to be agreed upon case by case.</p> <p><input type="checkbox"/> other:</p>
A-5.2	Conditions for the right to remuneration
A. <input type="checkbox"/>	Remuneration for the performance of services as such
	The remuneration will be due independently from the result obtained through the Intermediary's intervention, i.e., for the performance by the Intermediary of its services (e.g. supply of information, putting into contact with a third party).
B. <input checked="" type="checkbox"/>	Remuneration depending on the conclusion of contract(s) with a third party
	The remuneration will be due only if and to the extent a contract has been concluded with the third party introduced by the Intermediary.
	i. Time limit for the conclusion of the contract with the third party
	The remuneration will be payable provided the contract has been concluded with the third party:
	<input type="checkbox"/> within (specify date or time from conclusion of this NCND agreement).
	<input checked="" type="checkbox"/> before termination or expiration of this NCND Agreement.
	<input type="checkbox"/> other:
	ii. Time when the remuneration is due
	The right to remuneration will arise:
	<input type="checkbox"/> when the contract with the third party has been concluded (This applies to every commercial invoice paid under the contract)
	<input type="checkbox"/> when the Counterpart has performed its obligations under the contract with the third party.
	<input checked="" type="checkbox"/> when the third party has performed its obligations under the contract with the Counterpart.

A-6	CONFIDENTIALITY
	<p>The Counterpart agrees to consider as confidential the following information:</p> <p><input checked="" type="checkbox"/> the names and addresses of the third party(ies) transmitted by the Intermediary according to A-1</p> <p><input type="checkbox"/> other:</p>

A-7	TERM OF THE AGREEMENT
------------	------------------------------

A. Duration of the NCND Agreement
<p>This NCND Agreement shall remain in force:</p> <p><input checked="" type="checkbox"/> for a period of 5 (five) years from the date of its conclusion.</p> <p><input type="checkbox"/> until (specify date).</p>
B. Possible renewal of the NCND Agreement after the date of expiry
<p>At the date of expiration this NCND Agreement:</p> <p><input checked="" type="checkbox"/> shall definitely cease (unless a new agreement is entered into between the parties).</p> <p><input type="checkbox"/> shall be automatically renewed for a further period of unless terminated by either party by notice in writing not less than months before the date of expiry.</p>

A-8	APPLICABLE LAW
To be completed only if the parties wish to modify art. 13.1 of the General Conditions	
<p><input checked="" type="checkbox"/> This NCND agreement shall be governed by the laws of England & Wales</p>	
<p><i>The choice of a domestic law to govern the NCND agreement is not recommended, unless the rules applicable under such law have been previously ascertained: see Introduction, § 11.</i></p>	

A-9	RESOLUTION OF DISPUTES (art.14)	
<p><i>The two solutions hereunder (arbitration or litigation before ordinary courts) are alternatives: parties cannot choose both of them. If no choice is made, ICC arbitration will apply, according to Art. 14.2.</i></p>		
<p>A. <input checked="" type="checkbox"/> ARBITRATION</p> <p>1. <input checked="" type="checkbox"/> ICC (according to Art. 14.2)</p> <p style="background-color: yellow;">Place of arbitration: London, England</p> <p>2. <input type="checkbox"/> Other:</p> <p>..... (specify)</p> <p>Place of arbitration:</p>	<p>B. <input type="checkbox"/> LITIGATION (ordinary courts)</p> <p>In case of dispute the courts of (place), (country) shall have jurisdiction.</p> <p>Such jurisdiction shall be <input type="checkbox"/> exclusive. <input type="checkbox"/> non-exclusive.</p>	

A-10	OTHER
-------------	--------------

10.1 For purposes of clarification, the Buyer’s Mandate is regarded as an Intermediary.

A-10.2 For purposes of clarification, the Counterparty is regarded as the Buyer and the third party is the Seller.

A-10.3 Commissions:

A-10.4 **Commissions summary:**

This agreement also acts as a record confirming the commission amounts for each named beneficiary as set out below:

Party:	Name:	Commission:
Intermediary 1		% /metric ton
Intermediary 2		% /metric ton
Intermediary 3		% /metric ton
Intermediary 4		% /metric ton
Intermediary 5		% /metric ton
		%2/mton in total

A-10.5 **Clauses relating to Commissions**

- a. The Third Party (SELLER), hereby irrevocably confirms and irrevocably accepts to pay all intermediaries and fee holders at the same time and in a manner as the seller is being paid for each and every transaction of this contract up to the completion of the contract plus rollovers and extensions and in accordance with the bank details to be specified in the hard copies of this contract.

- b. The Third Party (SELLER), irrevocably confirms that he will order and direct his bank to endorse automatic payment orders to the beneficiaries named below; furthermore, he confirms that all pay orders shall automatically transfer funds as directed into each beneficiaries designated bank account within 3 (three) business days after the date of closing and completion of each and every shipment of the product during the contract term plus any/or extensions and rollover of the specified contract. For the purpose of clarity, we confirm that the closing and completion of each and every shipment shall be deemed to take place when the letter of credit or stand-by letter of credit issued by the buyer has been drawn down at the counters of the issuing bank.

- c. The Third Party (SELLER), agrees to provide all beneficiaries with written evidence of the pay orders lodged with our bank together with acknowledgements of their acceptance. Furthermore, our bank shall be instructed to provide duly signed and stamped acknowledgement of this instruction as set out in the annex. Forming part of this agreement. It is understood that for the purposes of this Master Fee Protection Agreement, our bank shall be the same bank and this IMFPA acts as an integral part of it.
- d. The Third Party (SELLER), or the seller named legally authorized representative as stated within the signed and legally binding main transaction, contract unconditionally agree and undertake to approve and originate all payments in USD\$ currency to all beneficiaries named below as their rightful and payable commissions.
- e. Commissions shall be governed according to this contract and specific master fee protection agreement which covers the initial contract and shall include any renewals, extensions, rollovers, additions or any new or transfer contract any how originated from this transaction because of the above intermediaries or changing codes of the initial contract entered into between the Counterparty (BUYER) and Third Party (SELLER).
- f. This master fee protection agreement and any subsequently issued pay orders shall not be assignable, transferable and divisible and shall not be amended without the express written and notarized consent of the receiving beneficiary. All parties agree neither to circumvent nor to attempt circumvent either for the transaction of this current contract or in the future for a period of five (5) years from the date of the execution of this fee protection agreement. This document binds all parties, their employees, associates, transferees and assignees or designees.
- g. All faxed and/or e-mailed signatures shall be considered as original signatures for the purpose of binding all parties to this agreement. This document may be signed & in any number of counterparts all of which shall be taken together and shall constitute as being one & the same instrument. Third Party (Seller) or Counterparty (Buyer) does not have the right to change the payments to negotiators.
- h. Furthermore, we agree that any and all commissions due shall be paid to the beneficiary as a result of any extension or rolls of the contract and that we shall effect all necessary documentation with our bank without any undue delays to ensure such commissions and paid within the terms of the agreement.

A-10.6 Electronic Document Transmissions

All parties agree that Electronic signature is valid and accepted as hand signature:

1. EDT (Electronic document transmissions) shall be deemed valid and enforceable in respect of any provisions of this Contract. As applicable, this agreement shall be Incorporate U.S. Public Law 106-229, "Electronic Signatures in Global & National Commerce Act" or such other applicable law conforming to the UNCITRAL Model Law on Electronic Signatures (2001)
2. ELECTRONIC COMMERCE AGREEMENT (ECE/TRADE/257, Geneva, May 2000) adopted by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT).
3. EDT documents shall be subject to European Community Directive No. 95/46/EEC, as applicable. Either Party may request hard copy of any document that has been previously transmitted by electronic means provided however, that any such request shall in no manner delay the parties from performing their respective obligations and duties under EDT instruments.

SELLER – COMPANY

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page

Name (of signatory):	
Title (of signatory):	
Company:	
Address:	
Phone number:	
Mobile:	
Fax:	
Email:	
Passport (of signatory):	
Issue date:	
Nationality:	
Date:	
<u>Copy of passport, signature and Company Seal:</u>	

INTERMEDIARY 1

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page.

Name:		Commission: % / metric Tonne	
Title:		Account name:	
Company:		Bank Name:	
Address:		Bank Address:	
Phone number:		Account Number:	
Mobile:		SWIFT:	
Fax:		Routing Number:	
Email:		Bank Officer:	
Passport:		Bank Phone Number:	
Issue date:		Bank Fax Number:	
Nationality:		Bank Email:	
Date:		Beneficiary of Commission:	

Copy of passport, Signature and/or Company Seal:

Special Payment Instructions:

All wire transfers must be incorporated right after the text of the message and a copy of the wire transfer slip will be sent to the following email address: for legal verification and documentation in accordance with the Patriot Act / a copy of the original agreement has to be submitted to the Bank for banking regulations. The S.W.I.F.T. or a Clearstream message covering all remittances must clearly indicate: "CLEAN, CLEAR, LIEN FREE AND UNHINDERED, WON BY FINANCIAL CONSULTING FEES IN COMMERCIAL COMPANIES WITH NON-CRIMINAL ORIGIN, NOR TERRORISTS, KNOWN TRANSACTION CODE: FOR SAME DAY LIQUIDATION / INSTANT CREDIT "instant credit - same day value / money immediately upon receipt. Sender is known by us, this is done with full banking responsibility and we are satisfied as to the source of the funds sent to us. All transfer instructions shall state: "THE FUNDS ARE CLEAN AND CLEAR, WITH NON-CRIMINAL ORIGIN AND ARE PAYABLE IN CASH IMMEDIATELY AFTER THE RECEIPT BY THE BENEFICIARY'S BANK."

INTERMEDIARY 2

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page.

Name:		Commission: % / metric Tonne	
Title:		Account name:	
Company:		Bank Name:	
Address:		Bank Address:	
Phone number:		Account Number:	
Mobile:		SWIFT:	
Fax:		Routing Number:	

Email:		Bank Officer:	
Passport:		Bank Phone Number:	
Issue date:		Bank Fax Number:	
Nationality:		Bank Email:	
Date:		Beneficiary of Commission:	

Copy of passport, Signature and/or Company Seal:

Special Payment Instructions:

All wire transfers must be incorporated right after the text of the message and a copy of the wire transfer slip will be sent to the following email address: for legal verification and documentation in accordance with the Patriot Act / a copy of the original agreement has to be submitted to the Bank for banking regulations. The S.W.I.F.T. or a Clearstream message covering all remittances must clearly indicate: "CLEAN, CLEAR, LIEN FREE AND UNHINDERED, WON BY FINANCIAL CONSULTING FEES IN COMMERCIAL COMPANIES WITH NON-CRIMINAL ORIGIN, NOR TERRORISTS, KNOWN TRANSACTION CODE: FOR SAME DAY LIQUIDATION / INSTANT CREDIT "instant credit - same day value / money immediately upon receipt. Sender is known by us, this is done with full banking responsibility and we are satisfied as to the source of the funds sent to us. All transfer instructions shall state: "THE FUNDS ARE CLEAN AND CLEAR, WITH NON-CRIMINAL ORIGIN AND ARE PAYABLE IN CASH IMMEDIATELY AFTER THE RECEIPT BY THE BENEFICIARY'S BANK."

INTERMEDIARY 3

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page.

Name:		Commission: % / metric Tonne	
Title:		Account name:	
Company:		Bank Name:	
Address:		Bank Address:	
Phone number:		Account Number:	
Mobile:		SWIFT:	
Fax:		Routing Number:	
Email:		Bank Officer:	
Passport:		Bank Phone	

		Number:	
Issue date:		Bank Fax Number:	
Nationality:		Bank Email:	
Date:		Beneficiary of Commission:	

Copy of passport, Signature and/or Company Seal:

Special Payment Instructions:

All wire transfers must be incorporated right after the text of the message and a copy of the wire transfer slip will be sent to the following email address: for legal verification and documentation in accordance with the Patriot Act / a copy of the original agreement has to be submitted to the Bank for banking regulations. The S.W.I.F.T. or a Clearstream message covering all remittances must clearly indicate: "CLEAN, CLEAR, LIEN FREE AND UNHINDERED, WON BY FINANCIAL CONSULTING FEES IN COMMERCIAL COMPANIES WITH NON-CRIMINAL ORIGIN, NOR TERRORISTS, KNOWN TRANSACTION CODE: FOR SAME DAY LIQUIDATION / INSTANT CREDIT "instant credit - same day value / money immediately upon receipt. Sender is known by us, this is done with full banking responsibility and we are satisfied as to the source of the funds sent to us. All transfer instructions shall state: "THE FUNDS ARE CLEAN AND CLEAR, WITH NON-CRIMINAL ORIGIN AND ARE PAYABLE IN CASH IMMEDIATELY AFTER THE RECEIPT BY THE BENEFICIARY'S BANK."

INTERMEDIARY 4

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page.

Name:		Commission: % / metric Tonne	
Title:		Account name:	
Company:		Bank Name:	
Address:		Bank Address:	
Phone number:		Account Number:	
Mobile:		SWIFT:	
Fax:		Routing Number:	
Email:		Bank Officer:	
Passport:		Bank Phone Number:	
Issue date:		Bank Fax Number:	
Nationality:		Bank Email:	
Date:		Beneficiary of Commission:	

Copy of passport, Signature and/or Company Seal:

Special Payment Instructions:

All wire transfers must be incorporated right after the text of the message and a copy of the wire transfer slip will be sent to the following email address: for legal verification and documentation in accordance with the Patriot Act / a copy of the original agreement has to be submitted to the Bank for banking regulations. The S.W.I.F.T. or a Clearstream message covering all remittances must clearly indicate: "CLEAN, CLEAR, LIEN FREE AND UNHINDERED, WON BY FINANCIAL CONSULTING FEES IN COMMERCIAL COMPANIES WITH NON-CRIMINAL ORIGIN, NOR TERRORISTS, KNOWN TRANSACTION CODE: FOR SAME DAY LIQUIDATION / INSTANT CREDIT "instant credit - same day value / money immediately upon receipt. Sender is known by us, this is done with full banking responsibility and we are satisfied as to the source of the funds sent to us. All transfer instructions shall state: "THE FUNDS ARE CLEAN AND CLEAR, WITH NON-CRIMINAL ORIGIN AND ARE PAYABLE IN CASH IMMEDIATELY AFTER THE RECEIPT BY THE BENEFICIARY'S BANK."

INTERMEDIARY 5

Note this form is record of personal details and payment information only, and does not constitute final signing and agreement of the contract itself, as this must be done on the front page.

Name:		Commission: % / metric Tonne	
Title:		Account name:	
Company:		Bank Name:	
Address:		Bank Address:	
Phone number:		Account Number:	
Mobile:		SWIFT:	
Fax:		Routing Number:	
Email:		Bank Officer:	
Passport:		Bank Phone Number:	
Issue date:		Bank Fax Number:	
Nationality:		Bank Email:	
Date:		Beneficiary of Commission:	

Copy of passport, Signature and/or Company Seal:

Special Payment Instructions:

All wire transfers must be incorporated right after the text of the message and a copy of the wire transfer slip will be sent to the following email address: for legal verification and documentation in accordance with the Patriot Act / a copy of the original agreement has to be submitted to the Bank for banking regulations. The S.W.I.F.T. or a Clearstream message covering all remittances must clearly indicate: "CLEAN, CLEAR, LIEN FREE AND UNHINDERED, WON BY FINANCIAL CONSULTING FEES IN COMMERCIAL COMPANIES WITH NON-CRIMINAL ORIGIN, NOR TERRORISTS, KNOWN TRANSACTION CODE: FOR SAME DAY LIQUIDATION / INSTANT CREDIT "instant credit - same day value / money immediately upon receipt. Sender is known by us, this is done with full banking responsibility and we are satisfied as to the source of the funds sent to us. All transfer instructions shall state: "THE FUNDS ARE CLEAN AND CLEAR, WITH NON-CRIMINAL ORIGIN AND ARE PAYABLE IN CASH IMMEDIATELY AFTER THE RECEIPT BY THE BENEFICIARY'S BANK."

SECTION B: ICC General Conditions for Non-circumvention & Non-disclosure Agreements

Art. 1 General

- 1.1 These General Conditions shall apply together with the Special Conditions (Part A) of the ICC Non-circumvention & Non-disclosure Agreement), to the extent such Special Conditions have been completed by the parties, or whenever the agreement between the parties makes reference to the ICC General Conditions for Non-circumvention & Non-disclosure Agreements or similar rules. Where these General Conditions (Part B) are used independently of the said Special Conditions (Part A), any reference in Part B to Part A will be interpreted as a reference to any relevant specific conditions agreed by the parties.
- 1.2 No modification of this NCND Agreement is valid, unless agreed or evidenced in writing. However, a party may be precluded by its conduct from asserting this provision to the extent that the other party has relied on that conduct.

Art. 2 Good faith and fair dealing

- 2.1 In carrying out their obligations under this Agreement, the parties will act in accordance with good faith and fair dealing.
- 2.2 The provisions of this Agreement, as well as any statements made by the parties in connection with it, shall be interpreted in good faith.

Art. 3 Authority of the Intermediary to bind the Counterpart

- 3.1 Unless otherwise agreed in writing, the Intermediary has no authority to make contracts on behalf of, or in any way to bind the Counterpart towards third parties.

Art. 4 Services provided by the Intermediary

- 4.1 The services to be provided by the Intermediary may comprise one or more of the following activities:
- (a) The indication of names and addresses of third parties or of a particular deal to be made with a third party (see Box A-1.1 of the Special Conditions), for the purpose of enabling the Counterpart to enter into a direct business relationship with such third party(ies).
 - (b) The putting of the Counterpart into contact with a third party and/or assistance to the Counterpart for the purpose of concluding a specific deal or contract with such third party and/or the assistance to the Counterpart during performance of the contract (see Box A-1.2 of the Special Conditions).
 - (c) Other similar services to be set out in detail (see Box A-1.3 of the Special Conditions).
- 4.2 The Agreement must state as precisely as possible the type of services which the Intermediary agrees to provide, without however necessarily specifying the name of the third party, which may be left to a further stage (see Box A-2 of the Special Conditions). No obligation will arise on the side of the Counterpart if the services to be provided by the Intermediary are not at all identified in this Agreement, or in another written document, or are so vague that it would be unreasonable for the Counterpart to undertake the obligations under this Agreement with respect to them.

- 4.3 If the Intermediary has agreed to transmit to the Counterpart information about a third party, a specific deal or other information (particularly if the parties have completed boxes A-1.1 of the Special Conditions), it is assumed, unless otherwise agreed in writing, that the Intermediary's obligation is limited to the communication of the name of the third party and/or of the deal or such other information as the Intermediary may have agreed to transmit.
- 4.4 If the Intermediary has agreed to put the Counterpart in contact with a third party, it is assumed, unless otherwise agreed in writing, that in order to perform such obligation the Intermediary must actually establish a direct contact between the Counterpart and the third party. Further obligations of the Intermediary to assist the Counterpart until the conclusion of the deal and/or to assist the Counterpart during performance of the contract will arise only to the extent such obligations have been expressly undertaken by the Intermediary (e.g., by choosing alternatives B or C of Box A-1.2 of the Special Conditions). In such cases the Intermediary must undertake reasonable efforts to assist the Counterpart until the conclusion of the deal (if alternative B has been chosen) and/or during performance of the contract with the third party (if alternative C has been chosen).

Art. 5 Remuneration payable to the Intermediary

- 5.1 The parties may agree upon remuneration (commission or lump sum) to be paid by the Counterpart to the Intermediary for the services rendered (see, for instance, Box A-5.1 of the Special Conditions). The amount of such remuneration or the criteria for its determination (e.g., agreement case by case, determination by a third party) must be agreed in writing. In the absence of a written agreement to this effect, it is assumed that the Intermediary is not entitled to remuneration from the Counterpart for its activity.
- 5.2 If the parties have agreed that the Intermediary's remuneration should be a lump sum, payment will be due, unless otherwise agreed in writing, when the Intermediary has completed the service(s) it is to provide under this Agreement. In all other cases, remuneration shall be due, unless otherwise agreed in writing, if and to the extent a contract has been concluded with the third party introduced by the Intermediary.
- 5.3 Unless otherwise agreed in writing (especially under A-5.2-B), the remuneration payable to the Intermediary on contracts with third parties will be due only after fulfillment by the third party of its obligations towards the Counterpart (e.g., payment of the invoiced price if the Counterpart is the seller; delivery of the goods if the Counterpart is the buyer).
- 5.4 If the remuneration is to be calculated as a percentage of the value of the contract with the third party (commission), it shall be calculated--unless otherwise agreed in writing--on the net amount of the invoices, i.e., the effective sales price (any discount other than cash discounts being deducted) clear of any additional charges (such as packing, transportation, insurance) and clear of all tariffs or taxes (including value-added tax) of any kind, provided that such additional charges, tariffs and taxes are separately stated in the invoice.
- 5.5 The parties may fix (especially under A-5.2-A) a time limit within which the contract between the Counterpart and the third party must be concluded. If no contract is concluded within such time limit, no remuneration will be due to the Intermediary, unless it appears that the conclusion of the contract with the third party has been intentionally delayed by the Counterpart for the purpose of avoiding payment. If no time limit has been agreed in the contract (or otherwise in writing), the right to remuneration will in any case expire if the contract with the third party has not been concluded before the expiration or termination of the NCND Agreement.
- 5.6 If the Intermediary has been granted an exclusive right, all direct deals made by the Counterpart which fall under the Intermediary's exclusivity will entitle the Intermediary, unless otherwise agreed in writing, to the remuneration (if any) foreseen in this Agreement, on the terms and conditions stated herein.

Art. 6 Confidential Information

- 6.1 Each party agrees not to disclose to third parties any Confidential Information (as defined hereunder under Article 6.2) disclosed to it by the other party in the context of this Contract, such as names of customers, sources of contacts, and business opportunities, and to return to the other party any confidential documents after the term or expiry of this Agreement.
- 6.2 Confidential Information means information which has been supplied to the other party with an indication that it is confidential (or which has been indicated under A-6 of the Special Conditions as being confidential), as well as information the confidential nature of which is so obvious that it need not be specified, provided such information is not in the public domain.

Art. 7 Exclusive rights of the Intermediary

- 7.1 Except as stated hereafter in Articles 7.2 and 7.3 and unless otherwise agreed in writing (especially under box A-3.1-B and A.3.1-C), it is assumed that the Intermediary is appointed on a non-exclusive basis, i.e., that the Counterpart remains free to appoint other intermediaries and to act on its own with respect to the activity the Intermediary is to perform.
- 7.2 With respect to third parties the Counterpart comes to know through the Intermediary's intervention, the following will apply, unless the parties have agreed otherwise in writing:
- 7.2.1 If the Intermediary's task is simply to indicate the name of a third party, it is assumed that it is not granted an exclusive right (customer protection) with respect to such third party and that the Counterpart may deal with that third party without any limitation.
- 7.2.2 If the Intermediary is to put the Counterpart into contact (and/or assist during negotiation) with a third party, it is assumed that the Intermediary is granted an exclusive right to act as an intermediary--for present and future business of the same type with such third party (customer protection)--on the terms and conditions indicated in this NCND Agreement, and particularly under Article 7.4 herein.
- 7.2.3 If the Intermediary is to put the Counterpart into contact (and/or assist during negotiation) with a third party for a particular deal, it is assumed that the Intermediary is granted no exclusive right with respect to future business with such third party.
- 7.3 Unless otherwise agreed in writing (especially under box A-3.2 and A-3.3 of the Special Conditions), the exclusivity granted to the Intermediary does not prevent the Counterpart from making direct contact with the third parties introduced by the Intermediary, provided it pays the remuneration which may be due under Article 5 on the business made with such third party.
- 8.1 Unless otherwise agreed in writing, any exclusive right granted to the Intermediary will not exceed the duration of this NCND agreement. However, in case of earlier termination by the Intermediary for breach by the Counterpart, the exclusive rights granted to the Intermediary (and corresponding right to remuneration) will last until the date on which the Agreement would have naturally expired.
- 8.1 The term "exclusive right" or "exclusivity" includes also situations where the exclusivity is not absolute, such as those (sometimes called "sole" instead of "exclusive") where the Counterpart retains the right to directly deal with third parties reserved to the other party, with or without remuneration to the Intermediary.

Art. 8 Undertaking not to compete

- 8.1 If and to the extent the Intermediary has been granted an exclusive right by the Counterpart, it is assumed, unless otherwise agreed in writing, that it undertakes not to provide its services, directly or indirectly, to competitors of the Counterpart with respect to the business for which it has the exclusivity.

- 8.1 On the contrary, to the extent the Intermediary has not been granted an exclusive right, it will have no obligation to act only for the Counterpart. In this case it will be free to act for competitors of the Counterpart, provided it does not use any confidential information or otherwise take advantage of its relationship with the Counterpart in the dealings with such competitors.
- 8.1 Unless otherwise agreed in writing, any undertaking not to compete on the part of the Intermediary will not exceed the duration of this NCND Agreement. However, in case of earlier termination by the Counterpart for breach by the Intermediary, the non-competition obligation of the intermediary (if any) will last until the date on which the Agreement would have naturally expired.

Art. 9 Damages in case of breach

- 9.1 If a party breaches its obligations under this Agreement, the other party will be entitled to recover the actual damages suffered as a consequence of such breach.
- If the Counterpart concludes a contract with a third party in breach of this Agreement, the damages suffered by the Intermediary are assumed to be equivalent to the remuneration payable to the Intermediary under this Agreement on such business.
- 9.2 The parties may agree on liquidated damages by expressly fixing the amount due for a specific breach. Such liquidated damages may however be reduced by the arbitrator(s) or by the court(s) if they appear to be excessive considering all circumstances of the case.
- 9.3 The party entitled to liquidated damages under Article 9.2 may claim further damages, provided it proves that it has actually suffered the damage in excess of the sum fixed under Article 9.2.

Art. 10 Right to inspect the Counterpart's books

- 10.1 The Intermediary will have the right to have the Counterpart's books inspected by an independent expert for the purpose of detecting a possible breach by the Counterpart of its obligations under this Contract.
- 10.1 If the inspection shows that the Counterpart has breached this Contract, the costs of such inspection shall be borne by the Counterpart. Otherwise they shall be borne by the Intermediary.

Art. 11 Duration

- 11.1 Unless otherwise agreed in writing (especially in Box A-7), this NCND Agreement will remain in force for a fixed period of one year.
- 11.2 If the parties have agreed that the NCND Agreement will be automatically renewed at its expiry, unless terminated with notice before such date, the notice must be given in writing by means of communication ensuring evidence and date of receipt (e.g., registered mail with return receipt, special courier, telex), not less than two months before the expiry date. If the successive period of renewal has not been specified, such period will be six months.

Art. 12 Earlier termination

- 12.1. Each party may terminate this NCND Agreement with immediate effect, by notice given in writing by means of communication ensuring evidence and date of receipt (e.g., registered mail with return receipt, special courier, telex), in case of a substantial breach by the other party of the obligations arising out of the Agreement, or in case of exceptional circumstances justifying the earlier termination.
- 12.2. Any failure by a party to carry out all or part of its obligations under the Agreement, resulting in such detriment to the other party as to substantially deprive it of what it is entitled to expect under the Agreement, shall be considered a substantial breach for the purpose of Article 12.1. Circumstances in which it would be unreasonable to require the terminating party to continue to

be bound by this Agreement shall be considered exceptional circumstances for the purpose of Article 12.1.

Art. 13 Applicable law

- 13.1 Unless otherwise agreed in writing (especially in Box A-8), any questions relating to this agreements which are not expressly or implicitly settled by its provisions shall be governed, in the following order:
- (a) by the principles of law generally recognized in international trade as applicable to international contracts with occasional intermediaries,
 - (b) by the relevant trade usages, and
 - (c) by the UNIDROIT Principles of International Commercial Contracts 2010,
- with the exclusion – subject to Article 13.2. hereunder – of national laws.
- 13.2 In any event consideration shall be given to mandatory provisions of the law of the country where the Intermediary is established which would be applicable even if the contract is governed by a foreign law. Any such provisions will be taken into account to the extent that they embody principles which are universally recognized and provided their application appears reasonable in the context of international trade.

Art. 14 Resolution of disputes - Arbitration

- 14.1 The parties may at any time, without prejudice to Article 14.2., seek to settle any dispute arising out of or in connection with this agency contract in accordance with the ICC Mediation Rules.
- 14.2 Unless otherwise agreed in writing, all disputes arising out of or in connection with this NCND Agreement, or its validity, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.