

## BAGASSE SUPPLY AGREEMENT

THIS BAGASSE SUPPLY AGREEMENT (this "Agreement") is executed this 18<sup>th</sup> day of April 2003 by and between UNITED FARMER & INDUSTRY COMPANY LIMITED ("Seller"), a company established and registered under the laws of Thailand having its registered office at 2, 22<sup>nd</sup> Floor, Ploenchit Center, Sukhumvit Road, Klongtoey, Bangkok 10110, Thailand, and PHU KHIEO BIO-ENERGY COMPANY LIMITED ("Buyer"), a company established and registered under the laws of Thailand having its registered office at 2, 22<sup>nd</sup> Floor, Ploenchit Center, Sukhumvit Road, Klongtoey, Bangkok 10110, Thailand.

### RECITALS:

- (A) Seller owns and operates a sugar plant located at Phukhiao, Chaiyapoom that generates bagasse (the "Seller Facility").
- (B) Buyer owns and operates a power plant located at Phukhiao, Chaiyapoom (the "Buyer Facility").
- (C) Seller and Buyer desire to enter into this Agreement for the sale and purchase of bagasse.

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements set forth herein, Seller and Buyer hereby agree as follows:

### ARTICLE 1 TERM; SURVIVAL

#### 1.1 Term.

The term of this Agreement shall begin on the date hereof and shall continue for a period of 21 (twenty one) years after the date on which Seller commences selling bagasse to Buyer which shall be no later than May 31, 2004 (the "Commencement Date"), unless otherwise terminated in accordance with the provisions set forth herein. The "Term" shall mean such period.

#### 1.2 Survival of Rights on Termination.

The expiration or termination of this Agreement shall not affect any rights or obligations, which may have accrued prior to or in connection with such expiration or termination, and shall not affect continuing obligations of each of the parties under this Agreement.

### ARTICLE 2 SALE AND PURCHASE OF BAGASSE

Beginning on the Commencement Date and continuing during the Term, Seller shall sell and deliver and Buyer shall purchase and accept from Seller bagasse in quantities and qualities set forth in Appendix A at the delivery point located at the end of the crushing line (the "Delivery Point").

### ARTICLE 3 PAYMENT

Each billing period (the "Billing Period"), for all bagasse delivered to Buyer, Buyer shall pay to Seller an amount which shall be determined in accordance with Appendix B (the "Bagasse Payment"). The Billing Period shall be each calendar month in a contract year.

## ARTICLE 4 BILLING AND PAYMENT

### 4.1 Billing.

Seller shall tender an invoice to Buyer on or before the seventh (7<sup>th</sup>) day of each Billing Period for all amounts payable by Buyer in accordance with this Agreement including but not limited to the Bagasse Payment through and as of the last day of the preceding Billing Period. Each invoice shall include the calculation of each payment for the bagasse delivered in the preceding Billing Period.

### 4.2 Payments.

Payments shall be made, in full, by Buyer following to due date, provided that Buyer may set off any amount owed and outstanding to Buyer under the Utilities Supply Agreement dated April 18, 2003 between Buyer and Seller against any amount owed and outstanding to Seller under this Agreement. Any payment not so made when due shall bear interest at Siam City Bank Public Company Limited's MOR from the date such payment was due until paid.

### 4.3 Billing Errors and Adjustments.

In the event an error is discovered in the amount billed in any invoice rendered by Seller, such error shall be adjusted by Seller within sixty (60) days of the determination thereof, provided that claim therefor shall have been made by Buyer within sixty (60) days of the date of discovery of such error, and, in any event, within twenty-four (24) months after the date of payment. Any amount paid to Seller by Buyer as a result of a billing error shall be refunded to Buyer or credited against the following month's invoice, at the Seller's option, with interest at Siam City Bank Public Company Limited's MOR from the date such amount was paid to Seller until refunded to Buyer.

### 4.4 Other Payments.

All other amounts due to either party under this Agreement shall be paid or objected to within thirty (30) days following receipt by the other party of an itemized invoice from the party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment. If any amount is not paid when due, there shall be due and payable to the other party in addition to such payment, interest thereon from the date such amount was due until the date such amount is paid at Siam City Bank Public Company Limited's MOR.

### 4.5 Disputed Payments.

Where any sum is in dispute, each of the parties agrees to use its best efforts to resolve the disagreement promptly, equitably and in a good faith manner. Any adjustment agreed by the parties in respect of such disagreement shall be made on the next invoice.

## ARTICLE 5 EVENTS OF DEFAULT; TERMINATION

### 5.1 Events of Default.

The following events or conditions shall constitute "Events of Default" under this Agreement, unless cured in accordance with the provisions hereof:

- (a) either party shall fail to make payments for amounts due under this Agreement to the other party within fifteen (15) days after receipt of written notice of the delinquency thereof; or
- (b) either party fails to comply with any material provision of this Agreement and such failure shall continue uncured for fifteen (15) days after notice thereof by the other party, provided that if such failure cannot be cured within such period of fifteen (15) days with the exercise of the best efforts of the defaulting party, then such cure period shall be extended for an additional reasonable period of time (not to exceed thirty (30) days) so long as the defaulting party is exercising reasonable diligence to cure such failure; or
- (c) either party shall: (i) admit in writing its inability to pay its debts as such debts become due; (ii) make a general assignment or an arrangement or composition with or for the benefit of its creditors; (iii) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such party under any bankruptcy or similar Law; (iv) take any action for the purpose of effecting any of the foregoing; or (v) file a petition under any bankruptcy or similar law; provided, however, that any admission, assignment or arrangement, failure, action or filing which occurred prior to the date hereof shall not constitute an Event of Default under this Agreement; or
- (d) a proceeding or case shall be commenced, without the application or consent of a party, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of such party or of all or any substantial part of its assets; or (iii) similar relief in respect of such party under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and in effect, for a period of sixty (60) days; provided, however, that any proceeding or case which occurred prior to the date hereof shall not constitute an Event of Default under this Agreement.

## 5.2 Remedies of Seller.

Upon the occurrence of any Event of Default by Buyer under Section 5.1 hereof that is not cured pursuant to the cure periods thereof, Seller may:

- (a) suspend deliveries of bagasse from the Seller Facility to Buyer until Buyer shall cure such Event of Default;
- (b) exercise all remedies available under applicable law, including bringing an action or actions from time to time for recovery of monetary damages that may include, without limitation, all amounts due and unpaid to Seller by Buyer, and all costs and expenses reasonably incurred in the exercise of its remedies hereunder (including, but not limited to, attorneys' fees); and/or
- (c) terminate this Agreement.

## 5.3 Remedies of Buyer.

Upon the occurrence of an Event of Default by Seller under Section 5.1 hereof that is not cured pursuant to the cure periods thereof, Buyer may:

- (a) terminate this Agreement;
- (b) exercise all remedies available under applicable law, including bringing an action or actions from time to time for recovery of damages that may include, without limitation, all amounts due and unpaid to Buyer by Seller, and all costs and expenses reasonably incurred in the exercise of its remedies hereunder (including, but not limited to, attorneys' fees); and/or
- (c) suspend payments to Seller for bagasse to the extent that Seller is unable to deliver bagasse, provided that Buyer will immediately resume payments at such time as Seller is able to deliver the bagasse in accordance with this Agreement.

#### 5.4 Cumulative Remedies.

All remedies provided hereunder are cumulative and may be exercised in whole or in part and from time to time.

### ARTICLE 6 FORCE MAJEURE

#### 6.1 Effect of Force Majeure Event.

Subject to the limitations set forth herein, if either party is rendered unable by reason of a Force Majeure Event to perform, wholly or in part, any obligation set forth in this Agreement (other than an obligation to pay money when due), then:

- (a) upon such party's giving notice and full particulars of such event as soon as practicable after the occurrence thereof, such obligations of such party shall be suspended or excused to the extent of such Force Majeure Event; and
- (b) if the obligations of either party under this Agreement have been suspended or excused pursuant to Section 6.1(a) for a continuous and uninterrupted period of twelve (12) months, then either party may terminate this Agreement by delivering to the other party written notification of its decision to terminate this Agreement.

#### 6.2 Force Majeure Event Defined.

For the purposes of this Agreement, "Force Majeure Event" shall mean any act, event, condition or circumstance that has a material adverse effect on a party's ability to perform its obligations under this Agreement (except for the obligations to pay money when due), to the extent that such act, event or condition:

- (a) is beyond the reasonable control of the party relying thereon;
- (b) is not the result of any acts, omissions, delays, fault or negligence of such party (or any Person over whom such party has control);
- (c) is not an act, event or condition, the risks or consequences of which such party has expressly agreed to assume hereunder; and
- (d) cannot be cured, remedied, avoided, offset, mitigated, negotiated or otherwise overcome by the prompt exercise of due diligence of the party relying thereon,

and shall include but not limited to strike, lockout, concerted act of workers or other industrial disturbance, fire, explosion, flood or other natural catastrophe, civil disturbance, riot or armed

conflict whether declared or undeclared, curtailment, shortage, rationing, allocation or failure of normal sources of supply of labor, materials, transportation, energy, utilities, or changes in atmospheric air composition, accident, and Act of God.

### 6.3 Notification and Obligation to Remedy.

In the event of the occurrence of a Force Majeure Event that prevents a party from performing its obligations hereunder, such party shall:

- (a) immediately notify the other party in writing of such Force Majeure Event;
- (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required in the context of the Force Majeure Event;
- (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable, provided that such party shall not be required by this paragraph (c) to settle any labor dispute on terms that are adverse to such party;
- (d) keep such other party apprised of such efforts on a continuous basis; and
- (e) provide written notice of the resumption of performance hereunder.

## ARTICLE 7 LIABILITY

No party shall be liable to the other party for any indirect, incidental, special, consequential or punitive damages or loss of the other party including, but not limited to, loss of profits or revenues; cost of capital or financing; cost of backup power; loss of goodwill arising out of the carrying out of, or failure to carry out, any operations or obligations contemplated by this Agreement, irrespective of the causes thereof, including fault or negligence.

## ARTICLE 8 TITLE

Title to the bagasse delivered hereunder shall pass from Seller to Buyer at the Delivery Point.

## ARTICLE 9 DISPUTE RESOLUTION

### 9.1 Amicable Settlement.

In any dispute arising out of or related to this Agreement, including any question as to its formation, validity, interpretation or termination (a "Dispute") the parties shall, upon written notice and for thirty (30) days thereafter, attempt promptly and in good faith to settle the Dispute by mutual discussion. The thirty (30) day period for amicable settlement of a particular Dispute may be extended by written agreement of the parties.

### 9.2 Arbitration.

If the parties fail to settle amicably any Dispute, then such Dispute shall be settled exclusively and finally by arbitration before the Arbitration Institute of the Ministry of Justice of the Kingdom of Thailand under the Thai Commercial Arbitration Rules of the Arbitration Institute, Ministry of Justice then in effect.

## ARTICLE 10 NOTICES

### 10.1 Notices.

Unless otherwise provided for herein, all notices and other communications given or required to be given hereunder shall be in writing and faxed or sent by courier or by registered or certified mail, return receipt requested and postage prepaid. All such notices and communications shall be effective:

(a) if sent by facsimile, upon confirmation of transmission by an activity report identifying the correct number called and stating that the correct number of pages have been transmitted and that such transmission is "OK" or equivalent; or

(b) if sent by courier or registered or certified mail, when received.

### 10.2 Addresses; Fax Numbers.

All notices and communications must be sent to the addresses or facsimile numbers for Seller and Buyer set forth below. In the alternative, the parties may use such other address or facsimile number as either party may designate from time to time by written notice given to the other party.

#### If to Seller:

##### United Farmer & Industry Company Limited

Address: 22<sup>nd</sup> Floor, Ploenchit Center  
2 Sukhumvit Road  
Klongtoey, Bangkok 10110  
Thailand

Tel: 0-2656-8488 # 114

Fax: 0-2656-8487

Attn: Mr.Krisda Monthienchienchai

#### If to Buyer:

##### Phu Khieo Bio-energy Company Limited

Address: 25<sup>th</sup> Floor, Ploenchit Center  
2 Sukhumvit Road  
Klongtoey, Bangkok 10110  
Thailand

Tel: 0-2656-8488 # 414

Fax: 0-2656-9929

Attn: Mr.Sirisak Tatong

## ARTICLE 11 ASSIGNABILITY

This Agreement shall not be assigned by Buyer or Seller without the express written consent of the other party hereto, such consent shall not be unreasonably withheld.

## ARTICLE 12 MISCELLANEOUS

### 12.1 Entire Agreement.

This Agreement, together with the Appendices attached hereto and made a part hereof, is the entire understanding of the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous oral or written discussions, negotiations and agreements the parties may have had with respect to the subject matter hereof.

### 12.2 Amendment.

This Agreement may be amended only by a written instrument signed by both parties.

### 12.3 Waivers.

Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition.

The failure or delay of either party to require performance by the other party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such party in writing in accordance with the terms hereof. No waiver by either party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

### 12.4 Relationship.

Nothing contained in this Agreement shall be deemed or construed for any purpose to establish, between Seller and Buyer, a partnership or joint venture, a principal-agent relationship or employer-employee relationship or any relationship other than seller and purchaser.

### 12.5 Headings.

The headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

### 12.6 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Thailand.

### 12.7 Severability.

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law or by any governmental entity, (a) such term or provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

#### 12.8 Appendices.

All Appendices referred to in this Agreement are attached hereto and incorporated herein by reference as though fully set forth wherever so referenced in this Agreement.

#### 12.9 Third Parties.

This Agreement is intended to be solely for the benefit of Seller and Buyer and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party (other than successors and permitted assigns) not a signatory hereto.

#### 12.10 Confidentiality.

Buyer and Seller and their contractors, consultants and agents shall hold in confidence all documents and other information labeled "Confidential" whether technical or commercial, supplied to it on behalf of the other party relating to the design, construction, operation, maintenance, management and financing of the Buyer Facility and the Seller Facility and shall not, save as required by applicable law or appropriate governmental entity, prospective lenders or investors and their professional advisors, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement. To the extent that such disclosures are necessary, the parties also agree that they shall endeavor in disclosing such information to seek to preserve the confidentiality of such disclosures.

#### 12.11 Further Assurances.

If either party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other party shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.





APPENDIX A  
BAGASSE QUANTITY AND QUALITY SPECIFICATIONS

QUANTITY

All bagasse produced by Seller at the end of crushing line, without weighing.

QUALITY

Moist Content: 51%

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APPENDIX B  
BAGASSE PAYMENT

The Bagasse Payment shall be calculated as follows:

27% of the quantity of cane subject to crushing according to the production report announcement of  
The Office of The Cane And Sugar Board (ton) x Bagasse unit price (250 Baht/ton)

Y.V. Surtz