Acme Coke 11236 S. Torrence Ave. Chicago IL 60617



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KCBX Contract

Dated: 1998



April 16, 1998

VIA FACSIMILE

Mr. Thomas G. Kramer Business Unit Leader/Marketing Director KCBX Terminals Company 3259 East 100th Street Chicago, Illinois 60617

Mr. Ron Watson Koch Industries Legal Department P. O. Box 2256 Wichita, Kansas 67201-2256

RE: <u>Terminal Services Agreement between Acme Steel Company and KCBX Terminals</u>
<u>Company</u>

Gentlemen:

Following our recent meeting, enclosed find a final draft of the Terminal Services Agreement between Acme Steel Company and KCBX Terminals Company reflecting the changes we discussed. Please note that we have revised the Right of First Refusal Covenants to provide that they will terminate in the event the Terminal Services Agreement is terminated pursuant to Section 2.1.

After you have reviewed the Agreement, please give me a call so we can make arrangements to exchange executed, original copies of the Agreement.

Very truly yours,

John T. Lynch

Assistant General Counsel

JTL/mlb

Enclosures

cc:

w/enclosures

J. Garzella

J. N. Howell

P. J. Johnson

K. J. Leonard

J. R. Page, Jr.

E. P. Weber, Jr.

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TERMINAL SERVICES AGREEMENT

This Agreement (hereinafter referred to as the "Agreement"), made and entered into as of April _____, 1998, by and between Acme Steel Company, a Delaware corporation with its principal place of business at 13500 South Perry Avenue, Riverdale, Illinois 60827-1182 (hereinafter referred to as "ACME"), and KCBX Terminals Company, a North Dakota corporation with its principal place of business at 3259 East 100th Street, Chicago Illinois 60617 (hereinafter referred to as "KCBX");

RECITALS:

- A. KCBX owns and operates a terminal facility (the "Terminal") located at 3259 East 100th Street, Chicago, Illinois 60617, which handles bulk products, including but not limited to coal and petroleum coke, and has access to railroad switching services provided by The Belt Railway Company of Chicago (the "BRC"); and
- B. ACME owns and operates a coke plant (the "Plant") located at 11236 South Torrence Avenue, Chicago, Illinois 60617 and ACME desires to engage and hire terminal services provided by KCBX for the purpose of transferring, storing, and delivering coal and petroleum coke required by the Plant. KCBX desires to provide certain terminal services to ACME, subject to the terms, covenants and conditions hereinafter set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein set forth and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1.0 Terminal Services & Term

- 1.1 KCBX agrees to provide certain terminal services (the "Terminal Services") to ACME, consisting of, among other things specified to be done under this Agreement, the transfer of coal and petroleum coke from rail car, lake vessel, and river barge to ground storage, the reloading of coal and petroleum coke from ground storage to truck, weighing of trucks, and delivery of coal and petroleum coke via dumptruck to the Plant on a daily basis. ACME hereby agrees to engage and hire such Terminal Services from KCBX, subject to the terms, covenants and conditions herein set forth.
- 1.2 KCBX hereby agrees to provide the Terminal Services to ACME and ACME hereby agrees to engage and hire such Terminal Services from KCBX, which services shall cover the period commencing April 1, 1998 through December 31, 2008, inclusive, unless sooner terminated as herein provided (the "Contract Period").

- 1.3 Prior to the receipt of the coal and petroleum coke of ACME at the Terminal, KCBX will clean the Terminal facilities in accordance with the coal and petroleum coke maintenance standards of ACME, a copy of which is attached hereto and made a part of this Agreement by reference as Attachment No. 1 hereto. It is mutually understood that delivery of coal and petroleum coke by KCBX under this Agreement is critical to the fully integrated steel operations of ACME. Subject to the terms and conditions of this Agreement, including but not limited to the provisions of Section 7.1 hereof, KCBX will make every reasonable effort to insure that the Plant is continuously supplied with the required coals and petroleum cokes. KCBX will furnish a 2-way radio to a designated ACME employee to further assure that communications regarding shipments of coal and petroleum coke to the Plant are properly coordinated. A truck wheel-wash system will be operated and maintained by KCBX in order to prevent trucks from tire-tracking coal and petroleum coke on the roadways. A truck scale shall be operated and maintained at KCBX. The scale will be checked and calibrated on a quarterly basis by Fairbanks Scale Company. The scale will be tested and certified annually by the City of Chicago Bureau of Weights and Measures. A copy of the truck scale certification documents shall be immediately furnished to ACME by KCBX upon completion of such tests.
- 1.4 KCBX agrees to comply with all federal, state and local laws, ordinances and regulations applicable to performance by KCBX of the Terminal Services contemplated under this Agreement.

2.0 Fees, Adjustments, Weight Determination, Volume, Storage, Etc.

2.1 The word "ton" refers to an avoirdupois unit equal to 2,000 pounds. ACME agrees to pay KCBX the following fees for coal and petroleum coke delivered to ACME pursuant to this Agreement:

Shipping Period		Per Ton Rate
April 1, 1998 through March 31, 1999 April 1, 1999 through March 31, 2000 April 1, 2000 through March 31, 2001	-	\$3.15 per net ton
	- 24	\$3.18 per net ton
	<u>-</u> -	\$3.21 per net ton

The above rates are intended to be the total compensation payable by ACME to KCBX for performance of the Terminal Services under this Agreement for the specified periods. Rates shall not be reduced below such rates for the entire Contract Period. KCBX and ACME agree to meet during the month of March, 2001 for the purpose of negotiating a mutually acceptable rate for the period commencing after March 31, 2001 of the Contract Period. In the event that KCBX and ACME fail to reach mutual agreement on the rates which will be applicable after March 31, 2001, it is

mutually agreed that an eighteen (18) month "fall-out period" will be established, during which time this Agreement will remain in full force and effect, provided that the "fall-out period" will commence on April 1, 2001 and expire on September 30, 2002. The per ton rate applicable during the "fall-out period" will be \$3.24 per net ton of coal and petroleum coke delivered to ACME pursuant to this Agreement. At the conclusion of any such "fall-out period" hereunder, it is understood and agreed that this Agreement shall terminate and neither party shall have any further duty or obligation to the other hereunder.

- 2.2 Subject to the terms and conditions of this Agreement, ACME covenants and agrees to deliver its entire Plant requirements of coal and petroleum coke to the Terminal during the Contract Period. Such requirements are projected to be 750,000 net tons of coal and petroleum coke for each twelve (12) month period during the Contract Period under this Agreement. Actual requirements may differ from projected requirements.
- 2.3 KCBX agrees to provide ACME with sufficient designated storage space and stockpile capacity to store the coal and petroleum coke requirements of ACME for a period of 45 days between March 16 and November 14 of each calendar year. Between December 15 and April 15 of each calendar year, KCBX agrees to increase storage space and stockpile areas for coal and petroleum coke delivered to the Terminal via rail car from 45 days to 75 days. Between November 14 and April 15 of each calendar year, KCBX further agrees to provide sufficient designated storage space and stockpile capacity to store such coal and petroleum coke requirements of ACME delivered to the Terminal via lake vessel for a period of 120 days.
- ACME may from time to time arrange to ship a test quantity (up to 10,000 net tons) to KCBX for the purpose of testing a new grade of coal and or petroleum coke at the Plant. In the event that ACME desires to ship a quantity of test coal or petroleum coke, ACME agrees to provide KCBX with a minimum of thirty (30) days advance written notice. KCBX will arrange to set aside adequate temporary space (sufficient for storing up to 10,000 net tons) for such test coal or petroleum coke in addition to ACME's normal inventories at the Terminal.
- 2.5 KCBX shall keep the coal and petroleum coke inventories of ACME at the Terminal on separated and distinct stockpiles in order that ACME can release the desired quantities and types of coal and petroleum coke for delivery to the Plant. KCBX will clearly and conspicuously identify the coal and petroleum coke stockpiles by type and as the property of ACME at the Terminal. In addition, KCBX will not permit any liens to be filed on the coal and petroleum coke inventories of ACME at the Terminal by any creditor of KCBX. KCBX will immediately notify ACME of any

such liens and will immediately remove or bond over any such liens. KCBX will reasonably cooperate with ACME and its lenders in perfecting a security interest in favor of ACME's lenders in the coal and petroleum coke inventories of ACME at the Terminal. KCBX acknowledges that neither this Agreement nor the performance of this Agreement gives rise to any security interest or right of set off in the coal and petroleum coke inventories of ACME at the Terminal in favor of KCBX. KCBX will keep accurate records of all coal and petroleum coke transferred to ground storage at the Terminal and shall make such inventory information available to ACME on a daily basis. It is mutually understood and agreed that KCBX will rotate ACME's coal and petroleum coke inventories in accordance with generally recognized industry standards in order to minimize any weathering and/or spontaneous combustion of such coal and petroleum coke stored for ACME at the Terminal.

- 2.6 KCBX agrees to grant ACME or its authorized representatives the right to enter the Terminal after advising the KCBX operations manager on duty and after verification that such representatives of ACME are wearing appropriate safety equipment as required by KCBX. The general purpose of such visits shall be to inspect the coal and petroleum coke inventories of ACME stored at the Terminal, including the inspection of the unloading, loading, weighing procedures of KCBX together with verification of the performance of all other duties and obligations of KCBX under this Agreement.
- 2.7 ACME will make all necessary or appropriate arrangements at the Plant in order to accommodate the rapid turn-around of all trucks delivering coal and petroleum coke pursuant to this Agreement.

3.0 Scheduling, Railway Documentation & Demurrage, Etc.

- 3.1 ACME shall request that it's coal and petroleum coke suppliers provide written notice to KCBX of each shipment of coal and petroleum coke to the Terminal at the time the rail cars, lake vessels, and river barges are released at origin. Such notice shall be sent to KCBX by telecommunication facilities and shall include, without limitation, the rail car numbers, mine origin, and shipping date.
- 3.2 KCBX shall be responsible for the complete and proper unloading of each rail car delivered to the Terminal pursuant to this Agreement, including, consistent with generally recognized industry practice and the provisions of this Agreement, the cleaning of the Terminal prior to the receipt of coal and petroleum coke pursuant to this Agreement. KCBX shall unload each entire unit train shipment and transfer the coal to ground storage and release the unit train within 24 hours after actual placement of the unit

train at the Terminal. Actual placement occurs after any preceding train on Terminal trackage has been unloaded and released and at the point when a unit train of coal consigned for delivery to KCBX by ACME arrives on Terminal trackage. If a unit train cannot be positioned on Terminal trackage, then the unit train shall be held at the nearest available hold point. The time elapsed while at the hold point and while transporting a unit train from the hold point to the Terminal shall be excluded from the 24-hour release requirement provided above.

- 3.3 KCBX shall close and latch each rail car hopper door after dumping the coal contents of each rail car at the Terminal.
- Inventory gains or losses factors of plus/minus 2% are generally recognized industry standards. KCBX shall be responsible for any loss above industry standards of the coal or petroleum coke inventory of ACME stored at the Terminal except to the extent caused by the negligence or intentional misconduct of ACME or its officers, employees, representatives, contractors other than KCBX or agents. KCBX will from time to time arrange with ACME to "zero-out" stockpiles of the coal and petroleum coke of ACME stored at the Terminal. In the event that such survey or stockpile reconciliation results in coal or petroleum coke inventory losses exceeding 2%, then KCBX and ACME agree to meet for the purpose of understanding and addressing as appropriate factors contributing to such excess losses.

4.0 Billing and Payment

4.1 All payments to KCBX from ACME shall be due and payable, without setoff or deduction, within ten (10) days following receipt by ACME of each invoice from KCBX. All payments to be made by ACME to KCBX under this Agreement in connection with the performance of the Terminal Services, shall be remitted in good and sufficient US funds as follows:

KCBX Terminals Company P.O. Box 93584 Chicago, Illinois 60673

5.0 Waiver

5.1 The failure of either party hereto to insist in any one or more instances upon the strict performance of any duty or obligation of the other under this Agreement, or the failure by either party to exercise any right or remedy, whether legal or equitable, in the event of any default by the other party hereunder, shall not be construed as a future waiver of such duty or obligation, or the waiver of any such right or remedy with respect to any

continuing or future default hereunder, but the same shall continue and remain in full force and effect hereunder.

6.0 Liability

- 6.1 Except as otherwise expressly provided in this Agreement, KCBX shall have no liability to ACME for personal injury (including death) or property damage relating to the transactions contemplated under this Agreement, except as a direct and proximate result of the negligence or willful misconduct of KCBX or its officers, employees, representatives, contractors or agents. In no event shall either party or any of their respective affiliates have any liability whatsoever to the other party, or any other person or entity claiming by, through or under such other party, for any special, incidental, consequential or punitive damages, whether direct or indirect, relating to the transactions contemplated under this Agreement.
- 6.2 KCBX shall indemnify, hold harmless and defend ACME from and against any liability, loss, cost or expense (including reasonable attorneys' fees and expenses) resulting from the negligence or intentional misconduct of KCBX or its employees, representatives, agents or contractors, including any liability, loss, cost or expense involving personal injury including death or property damage, or (subject to the limitation on damages contained in Paragraph 6.1 hereof) resulting from any breach of any duty or obligation of KCBX under this Agreement.
- ACME shall indemnify, hold harmless and defend KCBX from and against any liability, loss, cost or expense (including reasonable attorneys' fees and expenses) resulting from the negligence or intentional misconduct of ACME or its employees, representatives, agents or contractors, including any liability, loss, cost or expense involving personal injury including death or property damage, or (subject to the limitation on damages contained in Paragraph 6.1 hereof) resulting from any breach of any duty or obligation of ACME under this Agreement.

7.0 Force Majeure

7.1 Except for the payments of money to KCBX by ACME hereunder, KCBX and ACME shall be excused from their respective performance of any obligation under this Agreement when and to the extent the cause of such nonperformance is due to an event or condition which constitutes "force majeure" hereunder. The term "force majeure" shall mean causes beyond the control and without the fault or negligence of the party whose performance is affected thereby, including but not limited to acts of God, acts of the public enemy, wars, riots, insurrections and other hostilities, fires, explosions, mechanical breakdowns, adverse geologic conditions,

regulations or acts of governments or governmental agencies, unavailability or shortage of power or labor, shortage or curtailment of energy sources, strikes or other labor disturbances, failure or delay of the suppliers of goods or services, embargoes, inability to obtain necessary permits, licenses and governmental approvals after applying for same with reasonable diligence, acts of governmental authorities, or other causes of a similar or dissimilar nature which wholly or partly prevent the mining, processing or loading of coal and petroleum coke by ACME's supplier, or the transporting, receiving, accepting, unloading and/or utilizing of the coal or petroleum coke by the Plant or the receiving, transporting, unloading, storage or loading of coal or petroleum coke by KCBX at the Terminal, or the transportation or unloading of the coal or petroleum coke by the designated truck carrier.

8.0 Assignment

- 8.1 ACME shall have the right to assign this Agreement to its lenders, subject to each of such lenders expressly assuming in writing all of the duties and obligations imposed upon ACME hereunder. Subject to the foregoing, neither party may assign this Agreement in whole or part without the prior written consent in each instance of the other party, which consent shall not unreasonably be withheld or delayed, and any attempt to assign this Agreement without the prior written or delayed consent of the other party shall be void.
- 8.2 Neither party may subcontract any obligation under this Agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld or delayed. (ACME may not refuse its consent to a particular trucking subcontractor if the effect of such refusal is to increase KCBX's cost of subcontracting the service.) Any subcontract shall not relieve the subcontracting party from its obligations under this Agreement.

9.0 Entire Agreement

This Agreement and all attachments herein set forth contain all the covenants, promises, agreements, conditions, warranties, representations and understandings between KCBX and ACME concerning the transactions contemplated herein, and there are no covenants, promises, agreements, conditions, warranties, representations or understandings, either written or oral, other than herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to the Agreement shall be binding upon KCBX or ACME unless in writing making reference to the Agreement and signed by KCBX and ACME. All previous agreements or understandings between the parties

respecting the transactions contemplated by this Agreement are hereby merged into this Agreement.

10.0 Notices

All notices provided for under this Agreement shall be in writing and shall be deemed to be properly delivered when delivered personally to the party to whom directed or when sent by certified or registered letter (postage prepaid) or by telegram, telex or facsimile, and addressed to the party to whom directed at its below specified address:

KCBX:

KCBX Terminals Company 3259 East 100th Street Chicago, Illinois 60617 Telephone No. 773/375-3700

Fax No. 773/375-3153 Attn.: Administrative Office

ACME:

Acme Steel Company 13500 South Perry Avenue Riverdale, Illinois 60827-1182 Phone No. 708-841-8383 ext. 2617

Fax No. 708-849-3067 Attn.: Purchasing Manager

or at such other address as either party may advise by written notice served on the other as hereinabove provided. All notices shall be effective when received.

11.0 Confidentiality

11.1 KCBX and ACME respectively, shall keep confidential all of the terms and conditions of this Agreement, and any documents or other information delivered or provided in connection herewith, unless such documents or information is part of the public domain or is reasonably determined by counsel for either party to be otherwise required to be disclosed by operation of law, regulatory agency, or by a regulatory agency proceeding, provided that in the event of any such disclosure, the party making such disclosure shall provide prompt notice to the other party in order to provide that party an opportunity to protect its interest.

12.0 Successors and Assigns

12.1 Without in any way limiting the provisions of Section 8.1 hereof, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors and assigns.

13.0 Survival

13.1 The confidentiality and liability provisions set forth in this Agreement or contained in any subsequent alteration, amendment, change or addition hereto, shall survive the expiration or any sooner termination of this Agreement.

14.0 Severability

14.1 In the event one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed in order to give full force and effect to the meaning and intent hereof as if such invalid, illegal or unenforceable provision had never been contained herein.

15.0 Section Headings

15.1 The section headings contained in this Agreement are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope and nature of the subject matter contained herein. Words of any gender in this Agreement shall include the other gender, and words in the singular number shall include the plural when the context requires.

16. Third Party Beneficiaries

16.1 This Agreement is intended for the sole benefit of the parties hereto and, to the extent applicable, their respective affiliates, and shall not be construed to grant any right or benefit to any third parties except as otherwise specifically provided herein.

17. Governing Law

17.1 This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois, without regard to the conflict of law provisions thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the day and year first set forth.

Title:______ Title:____

Date:_______Date:_____

ACME STEEL COAL STORAGE STANDARDS

The objective of Acme Steel Company's Coke Plant coal storage and reclaiming standards is to provide a consistent coal blend to the coke ovens that has properties which are predictable with respect to yield, quality, oven pressure, and ease of pushing. To this end:

- 1. When piles are being built, the belts and chutes are to be substantially clean of material other than the particular coal or petroleum coke being run.
- 2. The storage location is to be clean before new material is put down. The previous material in the location will have to be the same coal, or a similar coal based on chemistry and rheological properties. Unless instructed otherwise by ACME, KCBX will assume that products from the same supplier have "similar chemical and rheological properties".
- Coal piles will be distinct, neat, with sufficient space between them to prevent contamination with other piles or other material by weather, mobile equipment, trucks, etc.
- 4. Drainage will be maintained so the bases of the coal piles are not in water (precipitation or ground water).
- 5. Any clean-up coal from operations relating to ACME is to be isolated for ACME to inspect and determine its disposition.
- 6. When reclaiming the pile, the base is not to be picked up. After the pile is reclaimed, the area will be inspected before another material is put in that area.
- 7. Piles will be maintained to present the smallest surface area to the elements.
- 8. ACME will approve dust suppressant agents.

COVENANT OF RIGHT OF FIRST REFUSAL BETWEEN ACME AND KOCH CARBON INC.

ACME COKE PLANT COAL PAD RECLAIM OPPORTUNITY

In conjunction with a Terminal Services Agreement (the "Agreement") between KCBX Terminals Company (KCBX) and Acme Steel Company (ACME), it is hereby agreed by ACME to grant Koch Carbon Inc. (KOCH), the parent company of KCBX, a Right of First Refusal to reclaim the coal and coke storage pads at ACME. ACME also grants Koch Carbon Inc. (KOCH), the parent company of KCBX, a Right of First Refusal to purchase the coal and coke recovered KOCH's reclamation operation or any other reclamation operation at ACME's coke plant. The term of this covenant will be January 1, 1999 through March 31, 2008; however, in the event the Agreement is terminated prior to March 31, 2008 pursuant to Section 2.1 of the Agreement or otherwise, then this Covenant of Right of First Refusal shall also terminate and shall have no force or effect.

These Rights of First Refusal allows KOCH the right to meet any legitimate and bonafide written offers made to ACME by any other party to reclaim ACME's coal storage pads and to purchase the coal and coke recovered by reclamation operations.

Signed:	Signed:
Acme Steel Company Authorized Representative	KCBX Terminals Company A Division of Koch Carbon Inc. Authorized Representative
Date:	Date:

PETROLEUM COKE RIGHT OF FIRST REFUSAL COVENANT BETWEEN ACME AND KOCH CARBON INC.

In conjunction with a Terminal Services Agreement (the "Agreement") between KCBX Terminals Company (KCBX) and Acme Steel Company (ACME), it is hereby agreed by ACME to grant Koch Carbon Inc. (KOCH), the parent company of KCBX, a Right of First Refusal to supply ACME's total requirements of petroleum coke. ACME's petroleum coke requirements are approximately 70,000 tons per year. The term of this covenant will be January 1, 1999 through March 31, 2008; however, in the event the Agreement is terminated prior to March 31, 2008 pursuant to Section 2.1 of the Agreement or otherwise, then this Covenant of Right of First Refusal shall also terminate and shall have no force or effect.

The Right of First Refusal allows KOCH the right to meet any legitimate and bonafide written offers submitted to ACME for supply of petroleum coke by any other party.

Signed:	Signed:
Acme Steel Company Authorized Representative	KCBX Terminals Company A Division of Koch Carbon Inc. Authorized Representative
Date:	Date:

COKE BREEZE RIGHT OF FIRST REFUSAL COVENANT BETWEEN ACME AND KOCH CARBON INC.

In conjunction with a Terminal Services Agreement (the "Agreement") between KCBX Terminals Company (KCBX) and Acme Steel Company (ACME), it is hereby agreed by ACME to grant Koch Carbon Inc. (KOCH), the parent company of KCBX, a Right of First Refusal to purchase ACME's total annual generation of coke breeze (estimated to be approximately 60,000 tons per year). The term of this covenant will be January I, 2000 through March 31, 2008; however, in the event the Agreement is terminated prior to March 31, 2008 pursuant to Section 2.1 of the Agreement or otherwise, then this Covenant of Right of First Refusal shall also terminate and shall have no force or effect.

The Right of First Refusal allows KOCH the right to meet any legitimate and bonafide written offers made by any other party to purchase ACME's annual generation of metallurgical coke breeze.

Signed:	Signed:
Acme Steel Company Authorized Representative	KCBX Terminals Company A Division of Koch Carbon Inc. Authorized Representative
Date:	Date: