

# **EXHIBIT 3**

CONGOLESE LABOR PARTY

-----  
OFFICE OF THE PRESIDENT OF THE REPUBLIC

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OFFICE OF THE CHAIRMAN OF THE COUNCIL  
OF MINISTERS

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CENTRAL GOVERNMENT CONTRACTS  
DIRECTOR

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B.P. 2057 - Tel.: 81-36-01

PEOPLE'S REPUBLIC OF THE  
CONGO

[illegible line]

CONTRACT No.

SECTION No. 81275821000

SUPPLYING OF MACHINERY AND  
EQUIPMENT FOR THE R.N.T.P.

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## CONTRACT OF PURCHASE AND SALE

### THIS CONTRACT IS BETWEEN

The People's Republic of the Congo, represented by the Central Government Contracts Director, hereinafter referred to as "the Buyer";

as one party,

AND

The firm C. ITOH MIDDLE EAST E.C., whose company head office is located in Bahrain, Persian Gulf, represented by its General Manager, hereinafter referred to as

"the Seller",

as the other party.

### THE FOLLOWING WAS AGREED UPON:

#### ARTICLE 1/ - PURPOSE:

The purpose of this Contract is to establish the terms and conditions under which the seller obligates itself to sell and deliver to the buyer, which obligates itself to purchase, the construction machinery and vehicles hereinafter referred to as "THE MACHINERY AND EQUIPMENT".

It is agreed that the expression "THE MACHINERY AND EQUIPMENT" as well as the technical specifications, are defined in the appendixes, which are an integral part of this contract.

#### ARTICLE 2/ - PRICE

The contractual price CIF Pointe-Noire for the machinery and equipment is a firm and non-revisable price throughout the entire term of implementation of this contract. The amount of this contract as indicated in the detailed estimate is established as the amount of ONE BILLION ONE HUNDRED EIGHTY MILLION JAPANESE YEN (¥ 1,180,000,000).

#### ARTICLE 3/ - PAYMENT TERMS

The contractual price provided in Article 2 shall be paid in the following manner:

A) 10% of the contractual amount, to wit, ONE HUNDRED EIGHTEEN MILLION JAPANESE YEN (¥ 118,000,000) shall be wired as an advance after receipt of a bank guaranty in the same amount for the reimbursement of the advance.

B) 10% of the contractual amount, to wit ONE HUNDRED EIGHTEEN MILLION JAPANESE YEN (¥ 118,000,000) shall be paid through an irrevocable and confirmed documentary credit, payable in proportion [wc] [wc] to deliveries, after submission of shipping documents.

C) 80% of the contractual amount, to wit NINE HUNDRED FORTY-FOUR MILLION JAPANESE YEN (¥ 944,000,000) shall be paid utilizing a supplier loan with the term of four and a half (4.5) years at an interest rate of eight and a half (8.5) percent per annum, calculated beginning on the fifteenth day of the month of shipment as planned and announced in advance by the seller, on the unpaid balance, and such interest shall be paid at the same maturity dates as the principal.

This loan shall be documented by the issuance of a series of nine (9) consecutive and equal semi-annual promissory notes, the first of which shall come due on the one hundred eightieth day following the fifteenth day of the month of shipment as planned and announced in advance by the seller.

The amount of each promissory note shall represent the portion of principal and interest payable on the pertinent maturity date.

The aforementioned promissory notes shall be issued by the buyer, signed by the Caisse Congolaise d'Amortissement, and guaranteed by the Minister of Finance.

In the event of nonpayment of a single installment on its due date or a single one of the 9 promissory notes and eight days after a formal demand for payment has not been complied with, the balance of the contractual amount plus the accrued interest charges as well as the expenses and accessory charges shall become payable immediately and as a matter of right, if the seller so chooses.

The issuance of promissory notes shall not entail any novation of the privilege rights or other rights of the seller.

This supplier loan shall be guaranteed by a letter of guarantee issued by a bank designated by the seller, at the latter's expense.

#### ARTICLE 4/- BANK GUARANTY

In exchange for payment by the buyer of an advance in the amount of ONE HUNDRED EIGHTEEN MILLION JAPANESE YEN (¥ 118,000,000), which represents 10% of the price for the machinery and equipment, the seller shall provide a bank guaranty equal to the aforementioned amount from a leading bank, for the return of the advance.

Said bank guaranty shall be returned upon final acceptance of the entire supply order.

**Article 5 - GENERAL CHARACTERISTICS OF THE MACHINERY AND EQUIPMENT**

The machinery and equipment shall be manufactured, equipped, and finished in all respects using new materials, in conformance to the specifications and in accordance with this contract.

**Article 6 - DELIVERY**

The parties agree that the machinery and equipment shall be shipped from a Japanese port no later than six (6) months following the effective date of the contract, in accordance with a delivery schedule established by the buyer and the seller by mutual consent.

The point of delivery is CIF Pointe-Noire.

The final delivery schedule and the name of the ship shall be communicated to the buyer by the seller no later than one month prior to the contractual [illegible] date.

**Article 7 - SHIPMENTS AND PACKAGING**

The machinery and equipment must be shipped with the appropriate maritime packaging. The recipient of the machinery and equipment shall be R.N.T.P., B.P. 2073, Brazzaville, People's Republic of the Congo.

Each package shall bear the following markings:

- |                          |  |
|--------------------------|--|
| 1) Recipient:            | R.N.T.P.                                     |
| 2) Sender:               | C. ITOH                                      |
| 3) Port of destination:  | Pointe-Noire, People's Republic of the Congo |
| 4) Number of containers: |  |
| 5) Gross and net weight: |  |
| 6) Contract number:      |  |

**Article 8 - SHIPPING DOCUMENTS**

The following documents constitute the shipping documents to be provided to the buyer via bank channels:

- 1) a complete set of "CLEAN ON-BOARD" bills of lading marked "FREIGHT PRE-PAID".
- 2) Packing list in triplicate.
- 3) Commercial invoices in triplicate.
- 4) Certificate of origin of the machinery and equipment in triplicate.
- 5) A complete set of insurance certificates.

In addition, the seller shall provide to the buyer by mail, three copies of each document cited above.

## Article 9 - PROVISIONAL AND FINAL ACCEPTANCE

1. Provisional acceptance of the machinery and equipment shall occur upon their arrival at the port of Pointe Noire, in accordance with the schedule and the provisions of Article 6 and Article 8.

Provisional acceptance shall be attested by a statement signed by both parties.

2. Final acceptance.

Upon expiration of the warranty period provided by Article 11, and in the event that no dispute or claim has been made by the buyer, the two parties shall sign one (1) month later a statement certifying that the seller's obligations have been performed and attesting final acceptance.

## Article 10 - AFTER SALES SERVICE

The team of each manufacturer, in cooperation with its agent for after sales service, the firm SIEHI-CONGO, B.P. 257, in Brazzaville, shall provide the technical assistance necessary for all purposes: to ensure the proper functioning of the machinery and equipment delivered and to assist technical personnel assigned by the buyer.

## Article 11 - WARRANTY

1. The seller guarantees the machinery and equipment for period of six (6) months or 1,000 hours of operation, whichever comes first, in the instance of the construction machinery and equipment, and one (1) year or 10,000 kilometers, whichever comes first, in the instance of the vehicles, beginning on the date of their provisional acceptance by the buyer, against any operating defect, and any defect of manufacture or construction.

2. Determinations of warranty defects shall be made by the buyer and the seller, or in the event of difficulties, by a qualified expert appointed by the parties by mutual consent.

3. Any significant defect of manufacture or materials that should result in application of the warranty shall be reported to the seller or to its representative by a telex or telegram and confirmed by letter within one month following determination of the defect.

4. The warranty applies to replacement or repair by the seller or its agent for after sales service of the part or parts recognized to be defective, at the expense of the seller.

If a part or material is supplied by the seller pursuant to the warranty, delivery shall be made free of charge.

5. The seller shall not be responsible for normal wear, defects in maintenance or service, faulty operation, proven force majeure, [or] failure to follow instructions expressly established by the seller.

#### Article 12 - FORCE MAJEURE

The obligations of the parties to this contract shall be partially or totally suspended to the extent that performance of these obligations shall be directly prevented or delayed in instances of force majeure or acts of God.

The party concerned must, within a maximum of ten (10) days following the occurrence of an instance of force majeure or an act of God, notify the other party by letter, telegram, or telex.

Any notification by telephone, telegram, or telex must be confirmed in writing within a period of thirty (30) days.

In all instances, the parties to the contract must take all appropriate and useful action to ensure the normal resumption of implementation of the contract as soon as possible.

If the force majeure should occur within the month following the effective date of this contract, the parties shall meet to decide upon the action to be taken.

#### Article 13 - DELAY PENALTIES

In the event that the seller has not complied with the conditions and the schedule for delivery of the machinery and equipment, except in instances of force majeure, it shall be liable for payment of a weekly penalty of 0.5% of the total amount of the machinery and equipment delivered late, with a grace period of fifteen days.

The maximum amount of the penalty is limited to five (5) percent of the total amount of the contract. Payment of the aforementioned penalty does not release the seller from its other contractual obligations.

#### Article 14 - EFFECTIVE DATE

This contract shall enter into effect when the following conditions have been met:

- 1) Signing of this contract by the competent authorities of the seller and the buyer.
- 2) Payment by the buyer of 10% of the total amount of the contract.
- 3) Opening of a documentary credit by the buyer in the amount of 10% of the total amount of the contract.

4) Issuance of the letter of guarantee by the bank designated by the seller, as provided by Article 3 above.  
If the four suspensive conditions indicated above are not satisfied within three (3) months of the date this contract is signed, the parties shall be released from their obligations unless they should expressly decide otherwise.

#### Article 15 - TERM

This contract shall enter into effect in accordance with Article 14 and shall expire upon final acceptance, with the exception of hidden defects.

#### Article 16 - TERMINATION CONDITIONS

In an instance of force majeure, and after both parties have for a period of two (2) months exhausted all reasonable and possible means at their disposal to end the abnormal situation resulting from the force majeure, the buyer and this seller shall [each] have the right, after formal notification of the other party, to terminate this contract effective immediately with respect to the portion not delivered.

The seller shall reimburse amounts already paid as an advance on the price for undelivered machinery and equipment.

The buyer shall remain the owner of the machinery and equipment delivered and paid for prior to termination of the contract, and payment shall be performed in accordance with Article 3.

#### Article 17 - WAIVER OF SOVEREIGN IMMUNITY

The buyer hereby irrevocably waives invoking any right whatsoever to diplomatic immunity or any immunity from jurisdiction or execution with respect to its obligations relating to this agreement and the promissory notes, both with respect to itself and to its assets of any nature, in the context of a legal proceeding, judgment, enforcement of a judgment, compensation, seizure or attachment prior to judgment or final and executory seizure or attachment.

#### Article 18 - TRANSFER OF OWNERSHIP

Ownership of each portion or of all of the machinery and equipment covered by this contract shall be transferred to the buyer in accordance with incoterms 19[illegible figures], as amended.

#### Article 19 - DISPUTE RESOLUTION

Any disagreement between the parties regarding the interpretation of this contract and the implementation of same shall be as far as possible resolved amicably.



Disputes that cannot be so resolved shall be submitted to arbitration at the International Chamber of Commerce (I.C.C.).

The rules for the proceeding shall be those of the aforementioned institution, and its decision shall be final.

The venue for the Tribunal shall be Paris.

## **ARTICLE 20 FEES AND TAXES - REGISTRATION AND REVENUE STAMPS**

This contract is subject to all taxes. The latter shall be chargeable to the R.N.T.P., with the exception of registration and revenue stamp fees.  
chargeable to the seller [sic]

### **Article 21 - NOTIFICATION**

Any notice from one of the parties to the other pursuant to the implementation of the contract shall be made to the following addresses:

REGIE NATIONALE DES TRAVAUX PUBLICS ET DE LA CONSTRUCTION  
[National Public Works and Construction Authority]  
B.P. 2073, Brazzaville, People's Republic of the Congo.

[Stamp:]

C. ITOH & CO., LTD.

[illegible line]  
AVENUE [illegible]  
BUILDING [illegible]  
2nd Floor  
B.P. [illegible]  
KINSHASA [illegible]  
TEL: 24730, [illegible]  
TELEX: 21-15

Read and approved

Brazzaville, on [illegible]  
[illegible stamp]  
[illegible signature]  
T. [illegible hand printed name]

Brazzaville, NOVEMBER 17, 1982

The Central Government Contracts  
Director

[illegible signature]

Auxanda Ickonga

[Seal:]

[illegible] OF THE REPUBLIC  
The Central Government Contracts  
Director

Brazzaville, on [blank]

The Chairman of the National Government  
Contracts Board  
[illegible signature]  
Camille Dongou

Approved in Brazzaville, on [blank]  
under No. [blank]

The Chairman of the Central Committee of  
the Congolese Labor Party, President of the  
Republic, Chief of State.

[illegible signature]

COLONEL DENIS SASSOU-NGUESSO



TRANSPERFECT | TRANSLATIONS

City of New York, State of New York, County of New York

I, Frances Grant, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the attached "International Court of Arbitration Award" document and the "Supplying of Machinery and Equipment for the R.N.T.P." contract from French into English.

- ATLANTA
- BOSTON
- BUENOS AIRES
- CHICAGO
- DALLAS
- LONDON
- LOS ANGELES
- MIAMI
- NEW YORK
- PHILADELPHIA
- SAN DIEGO
- SAN FRANCISCO
- SÃO PAULO
- WASHINGTON, DC

*[Handwritten signature]*

Signature

Sworn to before me this  
28<sup>th</sup> Day of June 1999

*Paul D. Balston*

Signature, Notary Public

PAUL D. BALSTON  
Notary Public, State of New York  
No. 01RA6023867  
Qualified in Queens County  
Commission Expires May 3, 2001

Stamp, Notary Public

**PARIS SUPERIOR COURT**

**CIVIL CLERK**

**FILING No. 182  
OF  
September 10, 1996**

**ORDER ENFORCING  
ARBITRATION AWARD**

**RENDERED IN THE DISPUTE OF**

**C. ITOH MIDDLE EAST E.C. (Bahrain)**

**VERSUS**

\* People's Republic of the Congo  
\* Caisse Congolaise d'Amortissement (Republic of the Congo)  
\* People's Republic of the Congo

**MR. LE DOUARIN**

**No. P. 086.**

**FRENCH REPUBLIC  
IN THE NAME OF THE FRENCH PEOPLE**

**The Chief Judge of the Paris Superior Court, in his order of September 12, 1996,  
made final and enforceable the arbitration award that follows:**

**FILING CERTIFICATION**

**In the year one thousand nine hundred ninety-six  
and on the tenth of September,**

**At the Clerk's Office of Paris Superior Court and before me, the undersigned Clerk**

**Appeared Mr. LE DOUARIN.**

**Who filed directly with me, to be entered into the official records of the Clerk's  
Office, in accordance with Articles 1477 and 1500 of the New Code of Civil Procedure, the  
original of an arbitration award rendered by**

**Mr. Philippe Fouchard.**

**Said award decided the dispute of**

**C. ITOH MIDDLE EAST E.C. (Bahrain)      versus      \* People's Republic of the Congo  
\* Caisse Congolaise  
d'Amortissement (Republic of the  
Congo)  
\* People's Republic of the Congo**

**And he signed along with myself, as Clerk, after a reading was performed**

**signed LE DOUARIN      and ALTMAYERHENZIEN.**

**1st REGISTER**

**CONSEQUENTLY,  
THE FRENCH REPUBLIC instructs and orders:  
all Court Bailiffs, when so requested, to enforce this award;  
Chief Prosecutors and Public Prosecutors assigned to Superior Courts to enforce same;  
All Police Commanders and Officers to provide official assistance, when they should be  
legally requested to do so;  
In attestation of which, this document was signed and issued by me as  
Chief Clerk**

**[Seal:]  
PARIS SUPERIOR COURT  
[illegible signature]**

**VOID WORD  
VOID LINE**

**44th AND LAST REGISTER**



City of New York, State of New York, County of New York

I, Frances Grant, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of "Order Enforcing Arbitration Award" document from French into English.

- ATLANTA
- BOSTON
- BUENOS AIRES
- CHICAGO
- DALLAS
- LONDON
- LOS ANGELES
- MIAMI
- NEW YORK
- PHILADELPHIA
- SAN DIEGO
- SAN FRANCISCO
- SÃO PAULO
- WASHINGTON, DC

Signature

Sworn to before me this

29rd Day of June 1999

Signature, Notary Public

LAURA ELLEN VICKERY  
Notary Public, State of New York  
No. 01V16024418  
Qualified in New York County  
since Expires May 10, 2001

Stamp, Notary Public