

***The Copper Consortium will offer, to non-members, Letters of Access to each of its Dossiers on Intermediate Substances on terms set out in this Agreement. This procedure will be executed as soon as the Technical Completeness Check of the registration file, submitted by the Lead Registrant, has been completed by ECHA (anticipated in July 2010).***

## **AGREEMENT AND LETTER OF ACCESS**

Whereas:

- (1) Regulation 1907/2006/EC (the "Regulation") provides that any manufacturer of an on-site isolated, or a transported isolated intermediate, in quantities of one tonne or more per year, shall submit a registration ("registration") of such intermediate to the European Chemicals Agency ("ECHA"), subject to definitions and conditions prescribed by the Regulation;
- (2) The Regulation further provides that any manufacturer of an on-site isolated intermediate shall confirm that the intermediate is only manufactured or used under strictly controlled conditions ("SCC") specified in the Regulation and that any manufacturer or importer of a transported isolated intermediate shall confirm himself or state that he has received confirmation from the user that the synthesis of (an)other substance(s) from that intermediate takes place on other sites under specified SCC.
- (3) a Consortium (the "Copper Consortium").of interested parties ("Members of the Copper Consortium") was constituted by agreement on 1<sup>st</sup> November, 2007 for the purposes of, inter alia, the Joint Submission of a registration under Article 17 and/or Article 18 of a number of Intermediates including Black Copper, on the assumptions that
  - a. each manufacturer and/or importer in the Consortium will meet the requirements as to SCC referred to in the preceding Clause of this Preamble and
  - b. that the additional information for transported isolated intermediate in quantities of 1,000 tonnes or more per year per manufacturer or importer will be included in the registration
- (4) the members of the Copper Consortium who have pre-registered Black Copper (the "relevant members of the Consortium") in accordance with the requirements of the Regulation jointly hold rights to information and/or studies and/or tools on the physicochemical, human health and/or environmental properties and relevant Classification (if any) of Black Copper (a compilation of knowledge hereinafter called the "Dossier");
- (5) the Dossier may<sup>1</sup> be necessary to meet the requirements of the registration of Black Copper in accordance with the Regulation;
- (6) guidance on data-sharing issued by the ECHA in relation to the Regulation states that "parties sharing data must make "every effort to ensure that the costs of sharing the information are determined in a fair, transparent and non-discriminatory way" (Article 27(3) and 30.1)";
- (7) the fee structure set out in this Agreement takes account of this requirement and recognises the investment made by the relevant members of the Consortium in the development of the Dossier;
- (8) the Substance Information Exchange Forum ("the SIEF") (as defined in the Regulation) for Black Copper, established by the process set out in the Regulation, has or has been deemed to have appointed Metallo Chimique, a Member of the Copper Consortium, as Lead Registrant (as defined in the Regulation) for the Joint Submission;
- (9) on creation of the Joint Submission by the Lead Registrant, a security token will be issued by ECHA to the Lead Registrant to be shared with other participants in the Joint Submission;

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<sup>1</sup> The use of the word "may" recognises that any legal entity is able to provide its own dossier to support its own registration.

- (10) the Copper Consortium has appointed the European Copper Institute of Avenue de Tervueren 168, Bte 10, B1150 Brussels Belgium ("ECI") to act as Secretariat to the Consortium and the Consortium and the relevant members of the Consortium have duly authorised ECI to act on its behalf on all matters relating to this Agreement, including its signature on behalf of the Copper Consortium as authorised by the relevant members.

ECI, on behalf of the Copper Consortium and of the relevant members of the Consortium

and

[Applicant] with registered office located at [ ] the "Applicant"

AGREE AS FOLLOWS:

1. In consideration of the payment of the fee calculated in accordance with Clause 6 by the Applicant to ECI, the Copper Consortium shall grant to the Applicant, by Letter of Access in the terms set out in the Annex, the information necessary to fulfil obligations set out in Articles 17 2. (c), 17 2. (d), 18 2. (c) and 18 2. (d) of the Regulation, access to a valid security token granted by ECHA to the Lead Registrant for Black Copper, the right to participate in the Joint Submission and the right to refer to the Dossier for the sole purpose of supporting the Applicant's registration of Black Copper in accordance with the Regulation.
2. It shall be the responsibility of the Applicant to satisfy himself that the identity of the on-site isolated intermediate and/or transported isolated intermediate which he intends to register in accordance with the requirements of the Regulation and about which a grant of access to the Dossier is made available under this Agreement is the same as the identity of Black Copper as defined by the Copper Consortium.
3. The grant of information and the means and right of participation in the Joint Submission by the Copper Consortium or by the relevant members of the Consortium in accordance with Clause 1 of this Agreement is made on the assumption that the Applicant shall at the time of registration be in a position to confirm or to state that confirmation has been received by him that the SCC referred to in Article 17 (3) and/or Article 18 (4) of the Regulation, as appropriate, are met and that the Applicant accepts the Classification(s) stated in the Dossier.
4. Using the template in Annex 1, the Applicant shall declare to ECI within five working days of the signature of this Agreement:
  - a. the names of all legal entities falling under the control of the Applicant ("Affiliates") to which the rights conferred by the Letter of Access shall apply.
  - b. the average annual tonnage of Anode Blister produced in or imported into the EU by the Applicant (including those of Affiliates) in the three calendar years prior to the date of signature of this Agreement (the "tonnage").
5. If the Applicant is an Only Representative ("OR"), as defined in the Regulation, acting on behalf of a legal entity which is a non-EU producer and/or importer of Copper, the Applicant shall complete:
  - a. the requirement of Clause 4a in respect of the legal entity which the Applicant is representing: the Applicant shall disclose the name of the legal entity represented by the Applicant and names of all legal entities falling under its control ("Affiliates") on whose behalf the Applicant seeks the rights conferred by the Letter of Access; and
  - b. the requirements of Clause 4b in relation to the production and/or import tonnage of said legal entity and its Affiliates.
  - c. where the Applicant is an OR, the rights afforded to the Applicant and to ECI and the duties to be undertaken by the Applicant and ECI shall apply as if the legal entity represented by the OR were itself the Applicant. For the purposes of Clauses 9 and 10,

the legal entity represented by an OR shall not be treated as a third party, but shall itself be bound by the requirements of Clause 10.

6. On receipt of the information referred to in Clause 4 ECI will issue an invoice to the Applicant for the fee. The fee shall be as follows:
  - for Applicants producing or importing a tonnage  $\geq 20,000$  tonnes, the fee is  $(14,000 + (T - 20,000) \times 0.19)$  € .
  - for Applicants producing or importing a tonnage  $\geq 1,000$  tonnes but  $< 20,000$  tonnes, the fee is fixed at 14,000 €.
  - for Applicants producing or importing a tonnage  $< 1,000$  tonnes, the fee is fixed at 7,000 €.
7. The Letter of Access shall be issued by ECI to the Applicant on receipt of the payment of the fee. The Applicant shall confirm its receipt in writing to ECI.
8. The Letter of Access shall be valid indefinitely.
9. Nothing in this Agreement shall give the Applicant or the Affiliates the right to assign, transfer or grant to any third party the rights conferred by this Agreement and by the Letter of Access without the express written permission of ECI on behalf of the Copper Consortium.
10. Save as required by the Regulation, the Applicant shall not disclose to any third party any information contained in or derived as a result of this Agreement.
11. Nothing in this Agreement shall be construed as giving the Applicant or its Affiliates any property rights whatsoever in the Dossier or any licence or permit to use the information for any purpose other than that specified in this Agreement.
12. Except as required by the Regulation nothing in this Agreement shall be construed as requiring the Copper Consortium or any relevant Members of the Copper Consortium including the Lead Registrant to undertake or contribute to the undertaking of, directly or indirectly, any of the obligations imposed by the Regulation on the Applicant.
13. The Copper Consortium or any of its Members including the Lead Registrant or any of its duly authorised agents and representatives shall not be liable to the Applicant in any way whatsoever for any loss or damage arising out of compliance or of non-compliance with the requirements of the Regulation whether arising out of the use of the Dossier or not.
14. ECI shall keep confidential any data such as production or import tonnage disclosed by the Applicant to it for the purposes of this Agreement, and shall not disclose to any of the Members of the Copper Consortium or to any other party such data or any information from which such data can be calculated.
15. In the event of any material breach of this Agreement by the Applicant ECI may cancel any rights granted to the Applicant by this Agreement and by the letter of Access issued to the Applicant. In such circumstances, the Applicant shall not be entitled to a refund of any part of the fee paid.
16. Any and all disputes which may arise between the parties in connection with this Agreement shall be settled by an amicable effort on the part of both parties. In the absence of such, this Agreement is governed by and all disputes arising under or in connection with this Agreement shall be resolved in accordance with the laws of Belgium.

Signed

For the Consortium

Duly authorised to sign on behalf of the Copper Consortium and the relevant members of the Consortium

For the Applicant

Duly authorised to sign on behalf of the Applicant

Date

To the Applicant:

**Letter of Access to the Joint Submission Dossier for Black Copper**

Pursuant to the Agreement dated [date] between the Copper Consortium and [Applicant] (the "Agreement") the Copper Consortium hereby grants to the Applicant the right to participate in the Joint Submission of the registration of Black Copper and the right to refer to the Dossier for the sole purpose of supporting the Applicant's registration of Black Copper in accordance with the Regulation, subject to the terms of the Agreement.

Terms used in this letter shall be construed by reference to the Agreement.

In order to facilitate participation in the Joint Submission of the registration, the Applicant is also given the following information:

- Joint Submission name:
- Valid security token number issued by ECHA to the Lead Registrant
- A document in electronic format listing Classifications and the related compositions of Black Copper, so that registrants can complete IUCLID sections 1.1 (substance ID) and 1.2 (composition) in such a way as to allow ECHA to link these to Section 2 of Metallo Chimique's submission (classifications).
- The Arche Classification Tool<sup>2</sup> in electronic format in the version as used by the Lead Registrant dossier June 2010 and any subsequent updates thereto except in respect of metal toxicity values submitted by the Applicant later than June 2010;
- Recommendations regarding the analytical information (chemical & spectral data) necessary to provide confirmation of the composition(s) of the substance (IUCLID section 1.4)

The right conferred by this Letter of Access shall be without termination.

Signed:

John Schonenberger  
Chief Executive  
European Copper Institute

Duly authorised by the Copper Consortium

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<sup>2</sup> The Arche Classification tool is an IT tool in Microsoft Excel format that allows Tier 2 classifications of the relevant intermediate based on chemical (elemental) compositions and mineralogical information.

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**ANNEX TO LETTER OF ACCESS APPLICATION**

**Declaration and Signature of Applicant (1/2)**

The undersigned provides this annex to the signed Letter of Access agreement.

<b><u>Date</u></b>	
<b><u>Name of Applicant</u></b> <sup>3</sup>	
<b><u>Corporate address</u></b>	
<b><u>Represented by</u></b> <b><u>Name &amp; Title</u></b>	
<b><u>VAT number (in EU)</u></b>	
<b><u>Affiliates</u></b> <b><u>Represented</u></b>	
<b><u>Company Name,</u></b> <b><u>Address and Local</u></b> <b><u>Contact Person, incl.</u></b> <b><u>telephone and email</u></b>	
<b><u>List all Affiliates -</u></b> <b><u>using separate</u></b> <b><u>page(s) as required</u></b>	
<b><u>Signature(s)</u></b>	
<b><u>Name(s)</u></b>	
<b><u>Title(s)</u></b>	

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<sup>3</sup> Where the Applicant is an EU based producer/importer, the tonnage shall be the total of EU production plus imports into the EU for all Affiliates within the Applicant's company.

Where the Applicant is an Only Representative, the tonnage shall be the total imports into the EU for all Affiliates of the non-EU legal entity appointing the OR.

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Declaration and Signature of Applicant Member (2/2)

Material scopes are listed on the REACH website of the European Copper Institute  
<http://www.eurocopper.org/copper/reach.html>

Substance	Tonnage
<b>Sub-Group A</b>	
Copper	
<b>Sub-Group B</b>	
Intermediate 1	
Intermediate 2	
Intermediate 5	
Intermediate 6	
Intermediate 7	
Intermediate 8	
Intermediate 10	
Intermediate 11	
Intermediate 12	
Intermediate 13	
Intermediate 14	
Intermediate 15	
<b>Sub-Group C</b>	
Copper Slags Product	

The tonnages on which the fees for Letters of Access are based are the averages of the three years prior to the date of formal registration (within REACH IT). As an example, for LoAs to dossiers required by the end of November 2010, the tonnages are the averages of 2007, 2008 and 2009.

Where the Applicant is an EU based producer/importer, the tonnage shall be the total of EU production plus imports into the EU for all Affiliates within the Applicant's company.

Where the Applicant is an Only Representative, the tonnage shall be the total imports into the EU for all Affiliates of the non-EU legal entity appointing the OR.