

STANDARD TERMS OF SALES

1. Terms of Sale

- 1.1. This Sales Terms will form part of and govern all sales quotations and Agreement(s) between the Parties in relation to the sale and purchase of the Goods. This Sales Terms shall be deemed to be accepted by the Buyer upon the Buyer accepting delivery of the Goods.
- 1.2. Subject to Clause 1.3, this Sales Terms shall supersede, override and prevail over any past, current or future; general, conflicting or standard terms and conditions of the Buyer; whether in written or electronic form, pre-printed, printed on or contained within any purchase order, documents, correspondence, other business document, or website of the Buyer, notwithstanding that such documents were received or accepted by the Seller. For avoidance of doubt acceptance of a purchase order and/or acknowledgment/acceptance of receipt of notice of payment:
 - (i) is not acceptance of: (a) Buyer's documentation; (b) any new terms and conditions which are conflicting with this Sales Terms; and/or (c) Buyer's prevalence clause; and
 - (ii) will not form part of nor govern the Agreement(s).
- 1.3. No amendment or variation to this Sales Terms shall take effect unless it is in writing, signed by authorised representatives of each of the Parties.
- 1.4. Unless otherwise expressly agreed to in writing by the Seller, the description, information and illustration contained in catalogues, price lists leaflets and all other description materials are intended merely to present a general idea of the Goods described therein and shall not be deemed or treated as a condition, warranty or representation nor form part of the Agreement(s). Any error or omission in such documents shall be the subject to correction without any liability on the part of the Seller.

2. Orders

- 2.1. No purchase order submitted by the Buyer shall be deemed to be accepted by the Seller unless confirmed and signed in writing by the Seller.
- 2.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any purchasing order and for giving to the Seller any necessary information relating to the purchase and supply of the Goods, including but not limited to the quantity of the Goods and/or the specification of the Goods within reasonably sufficient time.
- 2.3. The quantity and specification of the Goods to be supplied by the Seller to the Buyer shall be those set out in the Seller's quotation.
- 2.4. The Seller reserves the right to make any changes in the specifications of the Goods which are required to conform with any applicable standards, statutory rules or other requirements.
- 2.5. No purchase order which has been accepted by the Seller may be cancelled by the Buyer, except with written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all Liabilities incurred or may be incurred by the Seller.
- 2.6. The Buyer shall, at its own Liabilities:
 - (i) comply with all applicable laws in connection with the Agreement(s) and governing the purchase and where applicable, the importation of the Goods;
 - (ii) obtain all Consents required for the purchase and importation of the Goods; and,
 - (iii) pay Taxes for the purchase and importation of the Goods.

3. Price

- 3.1. The price is exclusive of any Taxes. The Buyer shall bear all Taxes.
- 3.2. Unless otherwise stated in the sales quotation, all prices and commercial conditions quoted are valid for thirty (30) calendar days from the date of the sales quotation.
- 3.3. The Seller may, with thirty (30) calendar days' written notice, increase the price of the Goods.
- 3.4. The price of the Goods is based on current economic, financial, political and legislative conditions (which includes, currency exchange, currency movement, raw materials costs, production costs, labour costs, fuel costs, handling costs, and transportation costs). In the event there is any change to the current economic, financial, political and legislative conditions that affects the Seller, the Seller may provide a written notice to invoke this Clause 3.4 and the Parties shall, within thirty (30) calendar days of the invocation of this Clause 3.4, negotiate and agree in good faith the new price of the Goods to remedy such effect. In the event there is no agreement or either Party refuses to negotiate within the prescribed period, the Seller may suspend or terminate part or all of the affected Seller's obligations by providing five (5) calendar days' written notice.
- 3.5. All sales quotations are given for deliveries within normal working hours. "Normal working hours" mean 9.00a.m to 5.00p.m of a working day in Malaysia and where applicable, country of import, which excludes Saturday, Sunday, or public/bank holidays. Additional costs may apply for deliveries requested outside normal working hours.

4. Payment terms

- 4.1. Unless otherwise expressly agreed in writing by the Seller:
 - (i) Local Buyers shall pay the price of the Goods within thirty (30) calendar days of the date of the Seller's invoice (which may be submitted at any time after the dispatch of the Goods); or
 - (ii) Export Buyers shall pay the price of the Goods by an irrevocable letter of credit opened in favor of the Seller and confirmed by a bank in Malaysia acceptable to the Seller. The letter of credit shall be in such form and substance as the Seller may (at its absolute discretion) specify. The Buyer shall ensure that a letter of credit for the full purchase price of the Agreement(s) is issued and confirmed by a bank in Malaysia acceptable to the Seller within five (5) calendar days from confirmation to supply the Goods by the Seller and in any event no later than four (4) calendar days before the Goods depart the manufacturing plant. The Parties agree that the Seller shall not be under any obligation (contractual or otherwise) to deliver the Goods under the Agreement(s) unless and until the said letter of credit has been issued to the satisfaction of the Seller.
- 4.2. The time of payment of the price shall be of the essence of the Agreement(s).

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- 4.3. All payments to be made by the Buyer shall be made promptly and without withholding, set-off, counterclaim or any other deduction of any nature whatsoever.
- 4.4. Without prejudice to the Seller's rights under Clause 10.1(i), if the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller under the Agreement(s), the Buyer shall pay an interest (both before and after any judgement) on the unpaid amount, at the rate of eight percent (8%) per annum, from the invoice date until the unpaid amount is paid in full (a part of a month being treated as a full month for the purpose of calculating interest); and, the Seller (without suffering any penalty whatsoever and without being in breach of the Agreement(s)) may:
 - (i) Suspend or terminate the the Agreement(s) and/or any further deliveries to the Buyer; and/or
 - (ii) cancel any and all credit period granted by the Seller to the Buyer and, require payment from the Buyer in advance of delivery for all Goods.
- 5. Delivery and Incoterms® 2020**
- 5.1. In the event of any conflict between the Agreement(s) and the Incoterms® 2020, the Incoterms® 2020 shall prevail except for Clause 5.6 of this Sales Terms.
- 5.2. Unless otherwise agreed in writing between the Parties, the Goods shall be delivered in accordance with the FCA Incoterms® 2020.
- 5.3. The Goods shall be deemed delivered when loaded on transport arranged by the Buyer or Seller at the Seller's manufacturing plant.
- 5.4. The Seller bears all risks of loss of or damage to the Goods until it has been delivered in accordance with Clause 5.3 of this Sales Terms.
- 5.5. All risks of the Goods is transferred to the Buyer and the Buyer bears all risks of loss of or damage to the Goods (which includes, loss, damage and/or deterioration of the Goods from any cause whatsoever) in circumstances described under the applicable Incoterms® 2020 and/or from the time it has been delivered in accordance with Clause 5.3 of this Sales Terms.
- 5.6. In the event the Seller agrees to deliver the Goods at the Seller's risk at a place other than that where the Goods are manufactured, the Buyer shall, nevertheless, assume and bear any risk of deterioration in the Goods necessarily incidental to the course of transit and all Liabilities arising therefrom.
- 5.7. The Seller shall be under no obligation to give notice under Section 39(3) of the Sale of Goods Act 1957 (Act. 382)(the "Act"). The Parties agree that Section 39(3) of the Act shall not apply to the Agreement(s).
- 5.8. Any dates quoted by the Seller for the delivery of the Goods are approximate only and the Seller shall not be liable in any way or manner for any delay in delivery of the Goods howsoever the case may be. Time for delivery shall not be of the essence unless agreed and signed by the Seller in writing.
- 5.9. In the event the Goods are to be delivered at a third party's site or the Buyer's site, the Buyer shall ensure that such delivery site is adequately equipped to allow for safe delivery and unloading of the Goods.
- 5.10. If the Buyer fails to take delivery of the Goods, takes improper delivery, requests changes in the delivery schedule (or request for delivery outside normal working hours) or fails to give the Seller adequate delivery instruction:
 - (i) the Seller shall not be liable for any delay or Liabilities which arise from such delay;
 - (ii) the Seller may claim for additional costs or charges incurred or may be incurred; and,
 - (iii) the Buyer shall indemnify the Seller for any Liabilities sustained or may be sustained; in connection with such failure or request.
- 6. Retention of Title**
- 6.1. Without prejudice to the transfer of risks, all Goods shall remain the property of the Seller and title of the Goods shall not pass to the Buyer until payment by the Buyer in full of the price of the Goods.
- 6.2. Until such time as the property in the Goods passes to the Buyer, the Buyer shall:
 - (i) hold the Goods as the Seller's fiduciary agent;
 - (ii) keep the Goods separate from those of the Buyer and third parties; and,
 - (iii) properly store, protect and insure, and identify as the Seller's property.
- 6.3. If the Buyer has failed to pay for the Goods in full, the Seller may, at any time, demand the Buyer (at the Buyer's Liabilities) to return the Goods. If the Buyer fails to do so forthwith, the Seller may enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Buyer shall not be entitled to pledge or charge by way of security for any indebtedness of the Goods which remain the property of the Seller.
- 7. Warranties and Liabilities**
- 7.1. Unless otherwise expressly given by the Seller in writing, all warranties, conditions and other terms (whether express or implied) are hereby excluded and negated to the fullest extent permitted by law.
- 7.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement(s). It is hereby agreed that where the implied terms under the Sale of Goods Act 1957 (Act 382) are inconsistent or conflicting with this Sales Terms, the Sale of Goods Act 1957 (Act 382) shall not apply to the Agreement(s).
- 7.3. Without prejudice to do the generality of the foregoing, no representation, warranty or condition (express or implied) is given by the Seller as to merchantability, fitness, quality or sustainability of the Goods for any particular purpose, whether or not such the purpose of the Buyer's purchase of the Goods is known to the Seller.
- 7.4. The Seller shall not in any circumstance be liable for any defect in the Goods arising from fair wear and tear, or any wilful damage, negligence, storage, subjection to abnormal conditions, failure to follow the Seller's written or oral instructions, misuse or alteration or repair of the Goods, or any other act or omission on the part of the Buyer, its Representatives or any third party or Force Majeure.

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- 7.5. Notwithstanding anything to the contrary provided in the Agreement(s) and to the extent permitted by applicable law, the Seller's total aggregate liability, under or in connection with the Agreement(s) by way of indemnity, warranty, breach of contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed 100% of the unit price (at Ex-Works) of the affected Goods, and not the total aggregate price under the Agreement(s).
- 7.6. Notwithstanding anything to the contrary agreed between the Buyer and the Seller, the Seller shall not be liable for any indirect or consequential losses, damages, costs, expenses and liabilities (which includes, loss of sale, loss of production, loss of profit, loss of business, and loss of contract).
- 8. Claims**
- 8.1. The Buyer shall within five (5) calendar days from the Delivery Date, give written notice to the Seller of any matter or thing by reason whereof the Buyer alleges that the Goods are not in accordance with the Agreement(s). Where the Seller delivers to the Buyer a quantity of Goods lesser than the agreed quantity, the Buyer shall not be able to reject the Goods but may make a claim for the balance Goods, provided such claim is submitted within three (3) calendar days from the Delivery Date. "Delivery Date" means the date the Goods are deemed delivered under the Agreement(s).
- (i) If no such notice is served within the said duration of five (5) calendar days or three (3) calendar days from Delivery Date (as applicable), the Goods shall be deemed to be in accordance with the Agreement(s) in all of aspects and accepted by the Buyer, and the Buyer shall have no right to claim any Liabilities against the Seller.
- 8.2. Export Buyer shall be responsible for arranging for survey, testing and inspection of the Goods before shipment/delivery. The Seller is not liable for any claim nor Liabilities in respect of the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit. In the absence of any other agreement on conclusiveness of survey findings, the Seller's test results shall be final and conclusive and cannot be disputed by the Buyer.
- 8.3. Any claim shall contain information necessary to verify any assessment made or to be made. The Buyer shall permit the Seller to carry out its own assessments on (including to inspect, to sample and to test) the Goods in question on site and to investigate and to advise on any remedial action.
- 8.4. Where there is a valid and accepted claim by the Seller, the Seller shall be entitled at its sole and absolute discretion to either:
- (i) replace the affected Goods free of charge on an exchange basis; or
- (ii) compensate the Buyer by refunding to the Buyer the unit price of the affected Goods (or a proportionate part of the unit price).
- 9. Force Majeure**
- 9.1. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Agreement(s) by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the supply of Goods or under the Agreement(s) if due to any cause beyond the Seller's reasonable control. Without being exhaustive, the following shall be regarded as causes beyond the Seller's reasonable control: (a) act of God, (b) physical natural disaster (including but not limited to fires, floods, storms, explosions, earthquakes, tempest) (f) accident, (g) any effect or consequence of global warming/world climatic change; (h) war or threat of war, (i) sabotage, (j) insurrection, (k) blockage by villages or residents at place of supply or delivery or transit, (l) civil disturbance or requisition; (m) acts, restrictions or regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; (n) import or export regulations or embargoes; (o) industrial or trade disputes (including but not limited to strikes and lock-outs); (p) difficulties in obtaining raw materials, labor, fuel, parts or machinery; (q) outbreaks of any disease (including but not limited to epidemics, endemics and pandemics), (r) power failure or break-down in machinery; (s) riots; (t) malicious damage or (u) other impediment which is beyond the Seller's control or caused by third parties, that the Seller cannot reasonably be expected to have avoided or overcome it or its consequences.
- 9.2. If delivery of the Goods of any part thereof shall be delayed on account of any cause beyond the Seller's reasonable control, the time for delivery shall be extended until the operation of the cause(s) preventing the delivery has ceased or, at the option of the Seller, the Agreement(s) may be cancelled either in full or partially in respect of the unperformed portion thereof. In the later situation, the Buyer shall make payment to the Seller in respect of the portion of the Agreement(s) that has been performed.
- 10. Termination**
- 10.1. In the event that:
- (i) the Buyer refuses, neglects or fails to pay any sum payable by it under the Agreement(s) within seven (7) calendar days of the due date for payment; or,
- (ii) the Buyer makes default or commits any breach of the Agreement(s) and/or any of its obligation and (if capable of remedy) fails to remedy the default or breach within thirty (30) calendar days after being required by written notice to do so; or,
- (iii) the Buyer goes into liquidation or becomes bankrupt (as the case may be), becomes insolvent or makes any voluntary arrangement with its creditor, has a statutory demand presented against it or becomes bankrupt, goes into liquidation or has a petition presented or a resolution passed for winding up; or,
- (iv) the Buyer ceases, or threaten to cease to carry on business; or,
- (v) the Seller reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer within seven (7) calendar days of the Seller's knowledge;
- then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to terminate the Agreement(s) or to suspend any further deliveries under the Agreement(s) without any liability to the Buyer, and if the Goods have been delivered but not paid the price shall become automatically due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10.2. The termination of the Agreement(s) for any reason shall not affect the Seller's and the Buyer's accrued rights, remedies or liabilities including payments due at the effective date of termination.

- 10.3. The Seller shall not be liable for any liabilities arising in connection with any suspension or termination of the Agreement(s) in accordance with the Agreement(s).
- 11. Indemnity for breach of Intellectual Property rights**
- 11.1. The Buyer shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses of any nature whatsoever suffered and/or incurred by the Seller as a result of or arising from any alleged infringement or infringement of any patent, registered design, copyright, trademark, trade name or other intellectual and/or industrial property right.
- 12. Governing Law and Jurisdiction**
- 12.1. The Agreement(s) shall be governed by and construed in all respects in accordance with the laws of Malaysia and any dispute arising out of or in connection therewith shall be submitted to the non-exclusive jurisdiction of the courts in Malaysia. The submission to such jurisdiction shall not (and shall not be construed so as to) limit or exclude the right of the Seller to take proceedings against the Buyer or any of its assets in any other jurisdiction.
- 12.2. The Buyer waives any objection it may have to the venue or forum of any action or proceeding.
- 13. Compliance**
- 13.1. The Buyer is aware of and will comply with the provisions of Compliance Laws, the Seller's Code of Conduct, and their respective purposes.
- 13.2. The Buyer undertakes not to, directly or indirectly, perform any activities or sale of products to or for the benefit of any party from Highly Sanctioned Countries. Should any such transaction be contemplated during the Agreement(s), the Buyer shall inform the Seller thereof immediately and acknowledges that this may constitute an immediate termination event depending on facts and circumstances.
- 13.3. The Buyer will not (or will not attempt to), and will take action(s) to ensure its Representatives (if any) do not (or do not attempt to), (i) give, promise to give, offer, solicit, authorise, transfer or receive cash, or cash equivalent or improper gift or entertainment or the like; or, (ii) take any action or make any omission; whether directly or indirectly (whether through a third-party intermediary or otherwise), to or from anyone (a) in violation of the Compliance Laws; or, (b) the Seller's Code of Conduct; or, (c) which might cause the Seller or the Seller Affiliates to be in violation of Compliance Laws.
- 13.4. The Buyer represents and warrants that the Buyer and its Representatives (if any) is not, directly or indirectly, employed or retained, in connection with any agreement with the Seller, as an official, officer or representative of the government of any country, any agency thereof, any political party thereof, or is a candidate for a public or political office thereof.
- 13.5. The Buyer represents and warrants that no part of any moneys paid in connection with the Agreement(s) shall accrue for the benefit of any third party in violation of the Compliance Laws or the Seller's Code of Conduct.
- 13.6. The Buyer further represents and warrants that the Buyer (or its Representatives (if any)) has not:
- (i) been convicted of any offence in violation of the Compliance Laws; and,
 - (ii) acted in violation of the Compliance Laws; and,
 - (iii) been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offence or alleged offence related to the Compliance Laws; and,
 - (iv) been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, on doing business or otherwise ineligible for participation in procurement processes or contracts.
- 13.7. The Buyer will, and will cause its Representatives (if any) to, maintain books and records that accurately reflect any payment, giving or transfer of cash or cash equivalent, directly or indirectly, in connection the Agreement(s). Such books and records shall remain accessible to the Seller or its authorized representative upon request for audit or verification purposes.
- 13.8. The Buyer acknowledges that a breach of Clause 13 may constitute an immediate termination event depending on facts and circumstances.
- 14. Interpretation**
- 14.1. In this Sales Terms
- “Affiliates” means the Seller's affiliates and/or related entities.
 - “Agreement(s)” means an agreement(s) (whether oral or written), contract(s), purchase order(s) signed and accepted by the Seller, sales order(s), sales confirmation or delivery note for the sale and purchase of the Goods between the Seller and the Buyer, which shall include and be subject to this Sales Terms.
 - “Asia” shall include Bangladesh, China, India, Indonesia, Japan, Laos, Malaysia, Philippines, the Republic of Korea, Singapore, Taiwan, Thailand and Vietnam.
 - “Buyer” means a person or entity (i) who accepts a quotation of the Seller for the sale of the Goods, (ii) whose purchase order for the Goods is accepted by the Seller based on this Sales Terms; or (iii) who purchases or intends to purchase the Goods from the Seller.
 - “Consents” means any all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) required under applicable laws.
 - “Compliance Laws” anti-corruption, anti-money laundering laws or any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by regulators or authorities, including in Asia, Australia and Africa or by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, the European Union, or the United Kingdom Government.
 - “Goods” means either calcium carbonate (CaCO₃) or calcium hydroxide (Ca(OH)₂) or lime based products.
 - “Highly Sanctioned Countries” means North-Korea, Syria, Sudan, Iran and Cuba or any country from time to time subject to a sanctions program identified on the list maintained by OFAC or any regulators or authorities, including in Asia, Australia and Africa or by the U.S. Department of State, the United Nations Security Council, the European Union, or the United Kingdom Government.
 - “Liabilities” all liabilities, charges, costs, expenses, damages and losses (including: loss of profit, labours costs, fuel costs, material costs, transportation charges, storage charges).

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“Party”	means the Buyer or the Seller individually.
“Parties”	means the Buyer and Seller collectively.
“Representatives”	means the Buyer’s affiliates or related entities, directors, employees, shareholders, agents, representatives, contractors or subcontractors or any other person associated with or acting on behalf of the Buyer including the subsidiaries, parent company, affiliates, directors, employees, agents and representatives of the Buyer’s contractors and subcontractors).
“Sales Terms”	means the standard terms and conditions of sale and purchase of the Goods set out in this document.
“Seller”	means Lhoist (Malaysia) Sdn. Bhd. (Company No. 200701004964 (762963-K)).
“Taxes”	means any goods and services tax, excise duties, entry tax, duty, impost, cess, levy, tariff, fee and other taxes whatsoever and wherever charged, levied or imposed together with any interest or penalties in relation thereto on the production, sale, purchase or supply of the Goods (including custom fees).

- 14.2. Any reference in this Sales Terms to any provision of a statute shall be construed as a reference to this provision as amended, re-enacted or extended at the relevant time. Headings are for convenience only.
- 14.3. Unless a contrary indication appears, a reference in this Sales Terms to “including” shall not be construed restrictively but shall mean “including without prejudice to the generality of the foregoing” and “including, but without limitation”.
- 14.4. No rule of construction (including the contra proferentem rule) applies to the disadvantage of the Seller because the Seller was responsible for the preparation or drafting of this Sales Terms or any part thereof.
- 15. General**
- 15.1. Any notice to be given by either party to the other under this Sales Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.2. Each of the Seller and the Buyer is not by virtue of this Sales Terms the employee, agent or partner of the other party and is not authorised to bind or represent the other party.
- 15.3. The Buyer hereby expressly agrees that the Seller shall be entitled, at any time, to set off any monies owing by the Seller (and/or any member of the Sellers’ group) to the Buyer (and/or any member of the Buyer’s group) against any monies owing by the Buyer to the Seller.
- 15.4. If any provision of the Agreement(s) is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected thereby.
- 15.5. No exercise or failure to exercise or delay in exercising any right, power or remedy vested in the Seller shall constitute a waiver by it of that or any other right, power or remedy.
- 15.6. The Buyer undertakes that it shall at all times keep confidential (and shall undertake that its Representatives shall keep confidential) any confidential information which it may acquire hereunder and shall not use or disclose such information except with the consent of the Seller or in accordance with the order of the court of competent jurisdiction.
- 15.7. Without prejudice to the foregoing, the Seller may assign any Agreement(s) and the rights and obligations thereunder with notice to the Buyer. The Agreement(s) are personal to the Buyer who may not without the prior written consent of the Seller, assign, mortgage, charge or dispose of any of its right thereunder, or subcontract or otherwise delegate any of its obligations thereunder.
- 15.8. A person who is not a party to the Agreement(s) (other than a person who is a member of the Sellers’ Group) shall have no right to enforce any of its terms.
- 15.9. The Buyer undertakes to adhere to the International Labour Organisation’s (ILO) labour and human rights standards, the International Finance Corporation’s (IFC) Performance Standards on Environmental and Social Sustainability, the IFC sector guidelines on mining, the World Bank Group’s Environmental, Health and Safety Guidelines, and its guidelines for mining, as well as the Voluntary Principles on Security and Human Rights. The Buyer shall take all reasonable steps to ensure that the Buyer’s Representative(s) and others under its direction and control likewise observe and comply with the foregoing.