

# How Can Commodity Traders Incorporate Human Rights into Contracts?

Guidance

Helping companies implement the UNGPs



The Commodity Trading Sector Guidance on Implementing the UN Guiding Principles on Business and Human Rights (**Commodity Trading Guidance**) aims to help representatives of commodity trading firms to implement the **UNGPs** in company systems and cultures.

This explainer delves deeper into one element of the Guidance - that traders should take every opportunity to **incorporate their human rights commitments in their business relationships**.

## Human rights issues in commodity trading supply chains

The UNGPs note that where a company is **'directly linked'** to adverse human rights through its supply chains, it should use its leverage to address that adverse impact. One important point of leverage for commodity trading companies are in the contracts that they enter with the relevant service providers or transportation or production entities. Commodity traders often engage with service providers such as shippers, transporters, banks and inspection companies (amongst others). Some firms may only be involved in the production of commodities (**upstream**), some in transportation and storage (**midstream**) and others in the processing of the final product (**downstream**).

### Definition Leverage

"Leverage" is defined as the ability of a company to "effect change in wrongful practices of an entity that causes harm".

By specifying their expectations around human rights and working conditions in the contract, traders can implement a model of responsible purchasing. Below are set out a few ways in which contracts can be used in a way that is effective, enforceable and operationally practical to ensure a respect for human rights along the commodity trading supply chain.

## Warranties and representations

A relatively straightforward contractual term that traders can incorporate in their supplier contracts is a warranty or a representation. A warranty is an assurance or a statement of fact made by the supplier to the buyer. For example, a warranty may require the supplier to represent and warrant to the buyer that it is not engaging in human rights violations such as modern slavery or forced labour. A breach of such a warranty could give the trading company a right to immediately terminate the contract. A warranty can be an ongoing obligation for the lifetime of the contract.

However, the effectiveness of a warranty depends on whether breaches of the warranty can be easily detected by the buyer. From a practical perspective, it may be unrealistic to ask suppliers to guarantee perfect compliance with human rights and safety standards. If that were the case, almost every purchasing contract would need to be terminated as such warranties would be routinely breached. On their own, warranties carry the risk of becoming a "checkbox" approach to managing human rights risks in supply chains without any substantial improvement in the actual protections of such rights.



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## Beyond warranties to human rights due diligence requirements

Human rights due diligence (HRDD) as understood within the context of the UNGPs is an ongoing process where businesses identify, prevent, mitigate and account for the human rights impacts of their activities. As emphasised in the Commodity Trading Guidance, traders should have a robust HRDD process in place.

In its [Model Contractual Clauses Project](#), the American Bar Association (ABA) observed the importance of including a HRDD requirement in supplier contracts as well. Such a clause might require the supplier to agree that it will establish and maintain a HRDD process (appropriate to the size of the supplier and the circumstances) and to ensure that it periodically discloses information about its HRDD process and outcomes to the commodity trading company or buyer.

Instead of just having a warranty that the supplier will not violate human rights in its operations, a clause which requires the supplier to establish a strong HRDD process is more realistic and operationally practical. As detailed below, such a clause can also open up opportunities for more well-resourced buyers to support their suppliers with the HRDD process.

### Buyer responsibilities

There is broad research to suggest that the purchasing practices of buyers can also play an important role in either harming or supporting workers in supply chains. Conversely, demands from buyers about order changes, prices and production times can have negative impacts on human rights. The abrupt termination of contracts can also have devastating impacts on suppliers.

To the extent that traders engage in human rights-respecting buying practices, it may be an important approach for buyers to also set out their own responsibilities in contracts with suppliers. The ABA has provided examples of such clauses. One useful illustration is a

#### **Box** Grievance mechanisms in contracts


As part of encouraging suppliers to engage in human rights due diligence, it is important that suppliers are maintaining a grievance mechanism (appropriate to their size) to ensure that individuals and stakeholders can report any issues without fears of retaliation. Incorporating a requirement for an operational grievance mechanism in a contract can be an important step for trading company buyers to ensure that their suppliers are engaging with stakeholders. The buyer can also include a requirement that the supplier provide the buyer with periodic, documentary evidence of consultations with affected stakeholders. Examples of such clauses are available on the ABA's [Model Contractual Clauses project](#).

*See also explainer on grievance mechanisms in this series.*

clause which obliges the buyer to terminate its relationship with the supplier in way that is responsible, by taking into account the potential adverse human rights impacts and employing reasonable efforts to avoid or mitigate them.

The ABA's [Model Contractual Clauses project](#) also suggests that companies think about providing reasonable assistance to suppliers to meet their human rights obligations. For example, a clause might provide the buyer with an option to either terminate the contract where there are human rights issues, or instead to provide commercially reasonable efforts to the supplier (such as upgrading facilities, providing training and strengthening management systems).

**For more information on implementing the UNGPs in the commodity trading sector, visit the [Commodity Trading Guidance website](#).**



**Implementing the UN  
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Business and Human Rights**

Guidance for the Commodity Trading Sector