

**Responsible
Contracting
Project**

**Framing Memo for the
Tea Sector Model Contract Clauses
(TMCs)**



In Collaboration with ETP

Framing Memo for the Tea Sector Model Contact Clauses (TMCs)

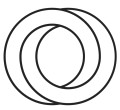
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Disclaimer

The TMCs and this Framing Memo are the product of the Responsible Contracting Project and ETP. Nothing contained herein, including the clauses to be considered for adoption, is intended, nor should it be considered, as the rendering of legal advice for specific cases or particular situations, and readers are responsible for obtaining such advice from their own legal counsel. The TMCs are intended for educational and informational purposes only, and ultimately the contractual parties are to decide whether and which of the contractual clauses they use in their supply relationships. The lawyer who advises on the use of these clauses must take responsibility for the legal advice offered. Integration of the TMCs clauses does not guarantee full compliance with the EU CSDDD.

We would like to thank and acknowledge the ETP members, suppliers and civil society organizations including Fairtrade, IDH and Thirst who provided valuable support and feedback in the development of the TMCs.



Summary

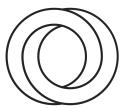
The Tea Sector Model Contract Clauses (TMCs) are designed to help buyers, relevant intermediaries and producers in the tea sector implement their commitment to responsible business conduct through responsible contracting. This Framing Memo serves as an accompanying guide to and complements the implementation of the TMCs.

Contracts serve as an important mechanism for allocating rights and responsibilities between business partners – typically a buyer and supplier. However, traditional contracting models in the tea sector often place the responsibility for mitigating human rights and environmental impacts directly on tea gardens, ignoring the reality on the ground and the economic pressures buyers can exert on producers.

The TMCs and the guidance in this Framing Memo will help buyers, suppliers and their partners align with evolving legal standards on human rights and environmental due diligence. While companies cannot expect to meet the requirements in new regulations simply by adding clauses to their contracts, responsible contracts are a critical component of an effective due diligence process and should be designed to strengthen the foundation for responsible business conduct.

Distinguishing between Traditional Contracts and the Shared Responsibility approach to Human Rights and Environmental Due Diligence





I. Background to the Tea Model Contract Clauses (TMCs)

The Responsible Contracting Project (RCP), in conjunction with members of the Ethical Tea Partnership (ETP), have prepared model contract clauses to address human rights and environmental performance issues in the purchase and sale of tea. With input from civil society partners, the Tea Model Contract Clauses (TMCs) are intended to provide guiding principles to ETP members and other actors operating across the tea sector, in particular the growing number of tea enterprises that seek to distinguish themselves as responsible actors.

The TMCs clauses are designed to help buyers, relevant intermediaries such as brokers, and producers (tea gardens) implement their commitment to responsible business conduct, and to address issues such as gender-based violence, exploitation and health and safety challenges throughout the tea value chain. The clauses are also designed to help buyers and suppliers align with international standards on responsible business conduct, including the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and to meet evolving legal standards pertaining to human rights due diligence and sustainability reporting.¹

ETP was established in 1997 to support tea companies in their efforts for responsible sourcing. Today it is a global membership organisation that aims to catalyse long-term, systemic change, to benefit everybody who works in tea – especially people in tea-producing regions. ETP's members include companies that manufacture, trade and retail tea, ranging from the sector's start-ups to the biggest multi-nationals.

The RCP was founded in 2022 as a spin-off from the American Bar Association (ABA) Business Law Section Working Group to Draft Model Contract Clauses to Protect Human Rights in International Supply Chains. The TMCs draw on many of the principles contained within the ABA Working Group's Model Contract Clauses 2.0 (MCCs 2.0), published in 2021, as well as the European Model Clauses (EMCs),² drafted in 2024 in response to the new EU Corporate Sustainability Due Diligence Directive (CSDDD). It is important to note, however, three primary distinctions between the TMCs and RCP's other tools such as the MCCs 2.0 as well as the EMCs:

- 1) The MCCs 2.0 and EMCs were drafted to be used across different sectors, whereas the TMCs were drafted specifically for the tea sector.
- 2) The MCCs 2.0 and EMCs were drafted to balance obligations between buyers and suppliers, whereas the TMCs were drafted specifically with small tea gardens and intermediaries in mind. As such, the TMCs contain a number of buyer obligations as well as protections for small tea growers.

The TMCs are designed primarily for **direct purchasing relationships**. A significant proportion of tea is sourced through auction sales channels and subject to competitive bidding processes. Procurement and contracting practices differ in this context, and the

¹ Integration of the TMCs does not guarantee compliance with any applicable laws or regulations.

² The EMCs have been drafted by the European Working Group, an independent group of experts composed of legal practitioners and academics representing France, Germany, Italy, the Netherlands, Poland, Portugal, and Spain, as well as legal experts from the UK and the US. See <https://www.responsiblecontracting.org/emcs>

TMCs may not fit the purchasing model employed by buyers sourcing directly from auction houses. Companies buying through auctions are advised to use their leverage and support the offering of higher-value teas that fosters improved working conditions and the closure of the living wage gap.³ Joint action by buyers to engage with auction houses and other collective suppliers may be required where direct purchasing from tea gardens is either not possible or not desirable, for whatever reason.

As the intended audience for the TMCs is varied, there is no one-size-fits-all set of clauses. Users can select and edit or adapt the clauses to suit their needs. If readers are interested in clauses that contain more detailed obligations for suppliers, we recommend they also look at our other tools, such as the EMCs which were designed to reflect specific requirements in the EU CSDDD and which can be found on the RCP website, under Toolkit, here: <https://www.responsiblecontracting.org/toolkit>.

II. The Human Rights and Environmental Due Diligence Framework

Human rights and environmental due diligence (HREDD) is a dynamic, ongoing process whereby companies must identify, prevent, mitigate, account for, and, where appropriate, remediate any potential or actual adverse human rights and environmental impacts (Adverse Impacts) in their supply chain. The concept of HREDD is enshrined in the UNGPs, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the OECD Due Diligence Guidance for Responsible Business Conduct, and the sector-specific OECD-FAO Guidance for Responsible Agricultural Supply Chains. For more information on the due diligence process and supporting measures, please consult these instruments.

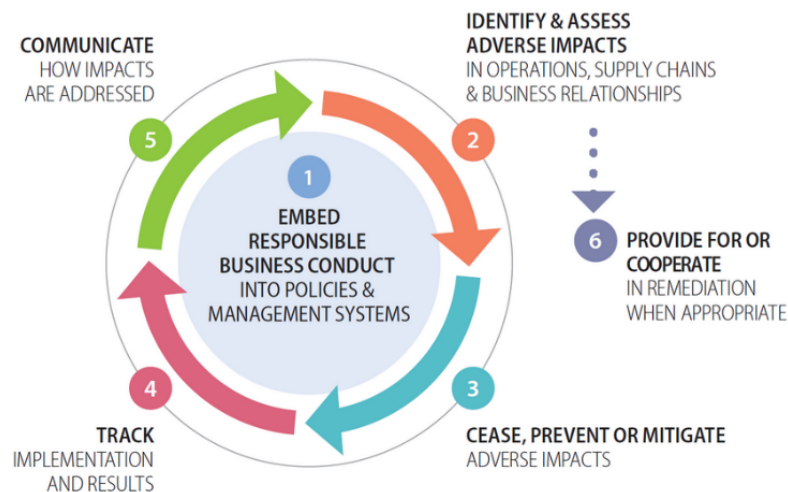


Fig. 1 The Due Diligence Process and Supporting Measures, OECD Due Diligence Guidance for Responsible Business Conduct. Pg. 21

³ ETP Responsible Purchasing Practices, May 2022. <https://etp-global.org/resources/responsible-purchasing-practices-briefing-paper/>

To comply with international standards for responsible business conduct such as the UNGPs and OECD Guidelines, companies in the tea industry—including brands, retailers, brokers, auction houses and other stakeholders—must take several important steps, including:

- Embed responsible business conduct into policies and management systems: Devise, embed, and disseminate policies that articulate human rights and environmental commitments and plans for implementing due diligence across the value chain.
- Identify, assess, and address risks and impacts: Businesses should identify and address actual and potential adverse impacts, and implement measures that effectively prevent and mitigate those impacts.
- Monitor and communicate: Track the effectiveness of measures taken and be transparent about how these impacts are managed, including through public reporting.
- Provide remedy: When a business has caused or contributed to adverse impacts, provide for or cooperate in remediation.

In recent years, these principles and guidelines have evolved from being considered "soft law" to "hard law," with established regulations now in place in many tea-importing countries and regions. This includes the EU CSDDD and the German Supply Chain Due Diligence Act (LkSG) as examples, which mandate that companies must conduct HREDD. Other tea producing and importing markets have introduced trade bans on products tainted by forced or child labour together with new rules and guidance on HREDD as well as rules pertaining to corporate sustainability reporting, corporate governance, and stakeholder engagement.⁴

Three core principles of responsible contracting have been designed to reflect core HREDD requirements and to support responsible business conduct in supply chains. The three core principles (the 3 Rs) of responsible contracting are:

- I. Responsible allocation of risks and responsibilities: Set aside supplier-only guarantees of perfect compliance in favour of a joint commitment to cooperate in carrying out human rights and environmental due diligence (HREDD).
- II. Responsible purchasing practices: The buyer commits to engage in purchasing practices that can support effective HREDD.
- III. Remediation first and responsible exit: If an adverse impact happens, provide remedy to victims and take measures to ensure the harm stops, the root causes of the impact are addressed, and do not reoccur before turning to traditional contract remedies (e.g., suspending payment and cancelling orders). Exit should only be pursued as a last resort, taking measures to mitigate the harm.

These core principles, reflected across the TMCs, support effective HREDD and a transition away from traditional contracting towards contracts that operationalise the

⁴ The EU Corporate Sustainability Reporting Directive (CSRD) for instance aims to combat greenwashing and improve transparency in how businesses address sustainability risks. By disclosing reliable and detailed information and data on their social and environmental performance, businesses can differentiate themselves from their competitors and communicate their sustainability performance more efficiently. This can help companies secure access to sustainable finance, protect the business from accusations of greenwashing, and demonstrate to civil society, consumers, and investors that the business understands their responsibilities and real-world impacts.

shared-responsibility approach to HREDD enshrined in the UNGPs and the OECD Guidelines.

III. How is contracting relevant to HREDD?

Contracts are increasingly being used as a method for companies to uphold human rights and environmental (HRE) standards across their supply chains. As privately negotiated agreements, contracts offer flexibility to set specific performance standards with business partners. As legal instruments, the commitments they contain are binding, regardless of local legislation. Thus, contracts provide a platform to enhance corporate sustainability performance and to deliver improved outcomes on the ground for vulnerable workers and their families.

Contracts serve as an important mechanism for allocating risks, rights, and obligations between the parties – the buyer (and/or its representatives) and the supplier. However, while contracts are important vehicles for implementing effective HREDD, they are not a silver bullet. Companies cannot expect their HRE issues to be solved simply by changing their contracts. HREDD is a comprehensive process that extends far beyond contracts and requires continuous engagement and monitoring.

Likewise, while contracts are a critical component of a robust HREDD process, they are not a proxy for it; companies cannot expect to meet requirements in the EU CSDDD or other legislation simply by adding certain clauses to their contracts. This is addressed explicitly in the EU CSDDD, which clarifies that companies cannot contract their way out of their due diligence obligations.⁵ However, contracts *can* and should be (re)designed to strengthen the foundation for effective HREDD.

IV. HREDD Implementation in Tea Supply Chains

Tea companies manage complex supply chains that often span multiple countries and involve a large number of workers and suppliers. As a result, ensuring responsible and sustainable practices at each stage of the supply chain has become a challenge for brands, retailers, producers and their stakeholders.⁶ The tea sector also drives economic growth and provides essential income for millions of families, including many vulnerable farmers and workers who reside in rural areas. Nevertheless, for tea farmers and factories to be able to produce tea sustainably and to meet increasing data collection and disclosure demands from importing markets, the way tea is bought and sold must change.

Many tea-producing regions experience political and economic conditions that escalate the possibility of adverse social and environmental impacts. In rural areas where tea is cultivated, workers are often especially vulnerable to low wages, harassment, and exploitative working conditions. The tea market is also highly concentrated, with a few companies controlling packing, distribution, and retail, exerting significant influence over the supply chain and pressuring plantations to stay price competitive. Auctions are

⁵ Recital 66 (The guidance on model contract clauses (...) should reflect the principle that the mere use of contractual assurances cannot, on its own, satisfy the due diligence standards provided for in this Directive.)

⁶ ETP, Know Your Supply Chain Factsheet, October 2023. <https://etp-global.org/resources/know-your-supply-chain-factsheet/>

dominated by a small number of large buyers who can dictate prices and purchasing practices, often to the detriment of farmers who lack adequate or any representation in the price-setting process.⁷

Business decisions such as the terms of trade, pricing, contract duration, payment schedules, and sourcing strategies (including where, how, and from whom to purchase) significantly influence the ability of business actors to respect human rights and mitigate sustainability risks. These decisions affect producers' capacity to afford and invest in sustainable production while upholding human rights.

Note that, provision of fair and just remuneration for workers and smallholder farmers is not only a human right in itself, it is also crucial for ensuring other human rights are met. For instance, low wages are linked to higher risks of child labour, forced labour, vulnerability to climate change, and gender-based violence and discrimination - issues that are common in some tea supply chains.⁸

Many tea brands, retailers and brokers have publicly available corporate human rights policies and codes of conduct in place to address these issues. However, there are notable gaps between the principles and commitments expressed within these documents, and their practical implementation on the ground, which is often ineffective and lacking in genuine collaboration with affected workers and communities.

Typically, when tea buyers (e.g. brands, retailers, brokers) include human rights and environmental (HRE) obligations in their agreements with suppliers, they employ traditional contracting techniques that shift all risks and costs associated with upholding HRE standards onto the supplier. This is because traditional contracts focus on managing company risks, not HRE risks. HREDD in the tea sector often relies on supplier-only guarantees of perfect compliance provided through contractual assurances from suppliers promising that there are no human rights violations occurring in their supply chains. These unrealistic guarantees place the burden of conducting effective HREDD onto suppliers and producers, disregarding the complexities of preventing and mitigating harm in complex, multi-tiered tea supply chains. Such guarantees can incentivize suppliers and producers to hide problems that arise in the supply chain, discouraging the disclosure and transparency necessary for addressing adverse impacts. Requiring first-tier suppliers to uphold social and environmental standards throughout the *entire* supply chain does not support effective HREDD or the management of systemic risks.

Brands, brokers, auction houses, cooperatives and other producers share responsibility for preventing harm in their supply chains. This means that brands, brokers and producers, whether they are acting as buyer or supplier in any given instance, should ensure that HRE standards are cascaded up, down, and across their supply chains. Shared responsibility, not risk-shifting, is necessary to effectively manage complex risks in dynamic tea supply chains.

⁷ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023. Available: https://thirst.international/wp-content/uploads/2023/12/THIRST_HRIA_Root_Causes_Final_19-12-2023.pdf

⁸ See ETP Global Position on Living Wages in the Tea Industry, January 2023. Available : <https://etp-global.org/wp-content/uploads/2023/10/Global-Position-on-Living-Wages-In-The-Tea-Industry.pdf>. Additionally, ETP and Oxfam, Understanding Wage Issues in the Tea Industry, Report from a multi-stakeholder project, 2013. Available: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/287930/rr-understanding-tea--industry-wage-020513-en.pdf;jsessionid=DD8A388D30749F934D57FB1B02A01270?sequence=1>

To mitigate their risks, tea buyers and retailers often impose strict compliance with certification standards on suppliers. This can lead to financial strain on smaller producers who often lack the resources to meet such demands. Certification standards can be particularly costly for small tea gardens.⁹ Furthermore, an overreliance on audits and the practice of requiring tea producers, including small gardens, to bear the costs of audits can compromise auditor independence and their ability to effectively identify adverse human rights impacts.¹⁰

Tea is a low-cost commodity, both wholesale and retail, with slim profit margins that can undermine the ability to pay living wages or provide living incomes. Additionally, tea is a labour-intensive crop with high production costs, and smaller producers can struggle to provide social services to workers and their families (e.g., healthcare, education, accommodations) when prices are driven down. Recent results from an International Labour Organization (ILO) study show low compliance levels with the minimum wage in the tea sector for employees in India, Indonesia, and Viet Nam.¹¹ National minimum wages are also often set very low, serving as a default wage that is insufficient to support workers and their families. Additionally, the increasing number of seasonal and informal workers across the tea industry fuels demand for cheap labour and further exerts downward pressure on wages.¹²

These challenges highlight the need for effective HREDD to improve conditions for workers. The TMCs are designed to help buyers, intermediaries and tea gardens to address these challenges and to implement commitments to responsible business conduct and effective HREDD.

V. Aligning Tea Contracts with new due diligence regulations

While the TMCs are designed primarily to support effective HREDD and implementation of the UNGPs and OECD Guidelines, they also support alignment with new due diligence requirements such as those set out in the EU CSDDD and the German Supply Chain Due Diligence Act (LkSG).

Not a one size fits all approach

While the EU CSDDD imposes an obligation for companies to conduct HREDD, it does not specify a rigid formula for doing so. There is no one size fits all when it comes to due diligence. Each company will be expected to demonstrate that it is taking responsibility to identify, prevent, mitigate, and as needed, remediate adverse impacts in its chain of activities. Importantly, companies are not expected to have zero (potential and actual) adverse impacts in their chain of activities. Rather, they are expected to have a robust risk-management system in place to proactively identify, prioritise, and address impacts

⁹ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023. Available: https://thirst.international/wp-content/uploads/2023/12/THIRST_HRIA_Root_Causes_Final_19-12-2023.pdf

¹⁰ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023.

¹¹ ILO, Wages and working conditions in the tea sector: the case of India, Indonesia and Viet Nam. International Labour Office, December 2020. Available:

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/projectdocumentation/wcms_765135.pdf

¹² Thirst, Human Rights in The Tea Sector: The Big Picture, 2023.

as they arise. This is what is meant **by saying that due diligence is an obligation of means, rather than results.**¹³

Contracts as preventive and corrective measures

The EU CSDDD identifies contracts as preventive and corrective measures that companies will be expected to employ, where relevant and feasible, to meet their due diligence obligations. Article 10 (Preventing adverse impacts) and Article 11 (Bringing actual adverse impacts to an end), both speak directly to contracts and require companies to “seek contractual assurances from direct business partners that they comply with the company’s code of conduct and, as necessary, with the company’s prevention action plan” or with the company’s “corrective action plan”.¹⁴

As preventive measures, contracts must be designed “to prevent or, where prevention is not possible or immediately possible, adequately mitigate potential adverse impacts that have been or should have been identified.”¹⁵ As corrective measures, contracts must be designed “to bring actual adverse impacts that have been, or should have been, identified [...] to an end.”¹⁶

Contracts should be designed to be effective

For contracts to be appropriate, they need to be capable of *effectively* addressing adverse impacts in a way that is commensurate with the severity and likelihood of the impact, as well as with the company’s level of involvement in the impact.¹⁷ Account must be taken of “the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors.”¹⁸ Rather than operating on their own, contracts must be designed to support a broader, context-specific, and dynamic process for identifying, preventing, mitigating potential adverse impacts and for correcting and remediating actual adverse impacts.

Contracts should facilitate ongoing cooperation and communication

Contracts that impose responsibilities solely on suppliers can discourage honest communication about issues, creating a false sense of a risk-free supply chain. Such arrangements are both unrealistic and ineffective. These practices also impact on businesses’ ability to meet new sustainability reporting regulations such as the EU Corporate Sustainability reporting Directive (EU CSRD). To address this, contracts

¹³ See CSDDD Recital 19 (“This Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped. For example, with respect to business partners, where the adverse impact results from State intervention, the company might not be in a position to arrive at such results. Therefore, the main obligations in this Directive should be obligations of means.”).

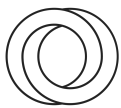
¹⁴ CSDDD Article 10(2)(b) and Article 11(3)(c): Companies must “seek contractual assurances from a direct business partner that it will ensure compliance with the company’s code of conduct and, as necessary, a prevention action plan [or corrective action plan], including by establishing corresponding contractual assurances from its partners, to the extent that their activities are part of the company’s chain of activities.”

¹⁵ CSDDD Article 10(1).

¹⁶ CSDDD Article 11(1).

¹⁷ CSDDD Article 3(l)(o) and Articles 10(1) and 11(1): When designing appropriate measures, companies should consider the degree and nature of a company’s involvement in an adverse impact (cause, jointly cause, directly linked); whether the adverse impact could (or did) occur in the company’s own operations or in those of a subsidiary, a direct business partner, or an indirect business partner; and how much influence the company has over the business partner that could (or did) cause or jointly cause the adverse impact.

¹⁸ CSDDD Article 3(1)(u): “‘risk factors’ means facts, situations or circumstances that relate to the severity and likelihood of an adverse impact, including company-level, business operations, geographic and contextual, product and service, and sectoral facts, situations or circumstances.”



should facilitate ongoing cooperation and communication, and clearly allocate responsibilities, reflecting each party's role, capacity, and influence in the supply chain.

The EU CSDDD sets out key principles on what appropriate contracting looks like. The below provides an overview of the types of contracting practices that companies should **avoid**, and which they should pursue, to be in sync with the CSDDD:¹⁹

1. Don't employ risk-shifting contracts that simply transfer due diligence responsibilities to business partners and require perfect compliance. Instead, use contracts that share the responsibility for due diligence and facilitate on-going cooperation between the parties.
2. Don't ignore the role of in-scope companies' purchasing practices. Instead, include a contractual commitment to responsible purchasing practices from day one.
3. Include cost-sharing commitments in your contracts to ensure that HREDD-related costs are distributed fairly and that business partners, especially SMEs such as small tea gardens, are not overburdened.
4. Include a contractual commitment to remediate (cure, correct) adverse impacts that may arise and prioritise remediation ahead of order cancellation or termination. Include responsible exit commitments in the contract. Do not include immediate or zero-tolerance termination rights.

Contracts should allocate shared responsibility for HREDD between buyers and suppliers

Both the EU CSDDD and LKSG call for shared responsibility and responsible purchasing practices. Aligning tea contracts with the CSDDD's requirements requires a strategic and collaborative approach and involves embedding detailed human rights and environmental standards into contracts, fostering a shared responsibility approach, and ensuring purchasing practices support rather than hinder due diligence efforts. Utilizing available guidance and focusing on collaboration and support, especially for SMEs, will be key in meeting these new regulatory requirements.

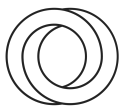
Note that, although the EU CSDDD establishes due diligence standards for large EU businesses and non-EU businesses generating significant revenue in the EU,²⁰ the Directive will likely have major implications beyond these companies, including for tea suppliers and brokers. That is because large companies in scope of the law will have to implement the due diligence requirements in their own operations, as well as in the operations of their subsidiaries and business partners to the extent the latter are involved in the company's "chain of activities".²¹ It is therefore helpful to think of the Directive's scope as covering not just individual companies, but also the companies' commercial relationships, which are often mediated through contracts.

¹⁹ See RCP's Policy Brief on responsible contracting and the CSDDD for more information.

<https://www.responsiblecontracting.org/csddd-policy-brief>

²⁰ Article 2 sets out the CSDDD scope, clarifying that both EU and non-EU-companies will be subject to HREDD requirements.

²¹ The chain of activities includes all upstream activities of companies' business partners if they are related to the production of goods or the provision of services by that company (including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products and the development of the product or the service); downstream activities are limited to distribution, transport and storage of company products, if carried out for or on behalf of the company, Article 3(1)(g).



VI. Roles and Responsibilities in the Tea Sector

- Buyers (Retailers and Brands)

Retailers and brands wield significant influence and market power in the tea sector. By adopting responsible purchasing practices such as building long-term relationships with suppliers, paying a fair price which covers the cost of production and provision of a living wage or income, and being consistent when placing orders, companies sourcing directly from high-risk areas or from intermediaries can help mitigate adverse sustainability impacts across their supply chains. These practices include planning and forecasting, order placement and lead times, price negotiation and payment terms, and the values and principles upheld by the buyer, all of which can be reflected in contractual agreements.

Adopting responsible purchasing practices is central to sustainable procurement and can significantly enhance a supplier's ability to improve working conditions and increase wages. Research by the ILO indicates that responsible purchasing practices, such as providing sufficient lead times and adopting fair pricing, can lower production costs, reduce wage pressure, and help suppliers create a healthy work environment. However, in highly competitive markets, where businesses strive to offer consumers lower prices and greater availability and choice, many continue to engage in poor practices that negatively impact workers and farmers.²²

Buyers can ensure that HRE standards are reflected across their supply chains by including requirements that HREDD responsibilities be shared and included in intermediary contracts with their own suppliers. Regardless of whether buyers are subject to regulatory requirements, buyers set the tone for responsible business conduct and should ensure that their contracts align with broader company-wide sustainability commitments.²³

- Intermediaries (agents/buyers/traders, brokers and auction centres):

Brokers, auction houses and other intermediaries play a crucial role in tea supply chains. While much of the tea consumed in western markets is bought via auctions, the practice of selling processed tea through auctions can create additional obstacles to achieving prices that can cover the costs of sustainable production. This issue is exacerbated by several factors, including the dominance of a few very large buyers who leverage their market power to dictate prices, traders who exploit price fluctuations, unfair purchasing practices at auction centres, inadequate representation of farmers and producers by brokers, and the challenges faced by local buyers when competing with multinational corporations.²⁴

Responsible purchasing practices for brokers and auction houses should include better collaboration and representation of tea producers. By adopting responsible practices, brokers and auction centres can help create a more equitable market. As

²² ETP, Responsible Purchasing Practices, May 2022.

²³ ETP membership criteria includes performance expectations on responsible contracting and use of the TMCs (see ETP performance expectation 2.4).

²⁴ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023.

previously stated, the TMCs apply primarily to direct buying relationships. Companies buying through auctions are encouraged to use their leverage and support the offering of higher-value teas that can foster improved working conditions and help close the living wage gap.²⁵ Buyers sourcing from auction houses can also use the TMCs to review and adapt their own purchasing practices with different intermediaries.

- Producers (Tea Gardens & Cooperatives)

Most of the world's tea is cultivated on commercial plantations, also known as estates or tea gardens, which employ workers to pluck leaves, fertilize, weed, prune tea bushes, and maintain the estates. Many of these estates also run their own tea factories, where additional workers are employed to process the green leaves into finished tea. Wages on tea plantations are usually low, typically hovering around the national legal minimum, but rarely amounting to a decent, living wage, often leaving families inadequately fed.²⁶ Workers are often paid based on the amount of tea leaves they pluck, with wages frequently falling below the basic daily rate when quotas are not met, although basic wages may not fall below applicable statutory or agreed minimum rates. Piece rate payment systems cause highly variable incomes for field workers, sometimes falling below the legal minimum wage.²⁷ Many workers lack job security and are not represented by reliable, effective, or independent trade unions.

In countries such as Kenya and Sri Lanka, small-scale tea growers produce the majority of the tea but face low and fluctuating prices for their produce, making them vulnerable within supply chains dominated by large companies. The pressure to reduce tea prices is often passed down to growers, further reducing low incomes and pushing workers further into poverty. Producers earn only a fraction of the price that tea fetches on the international market and in stores in Europe and the US.²⁸ Small-scale farmers also face the challenge of competing with plantation tea. Tea factories and plantations, to which these farmers sell their green leaf tea, often pay lower prices due to perceived lower quality and additional market information that farmers lack. Furthermore, small-scale farmers may lack essential agricultural inputs, such as fertilizers or irrigation necessary for improving the quality and productivity of their farms.²⁹

In several tea producing countries, tea companies are expected or required by law to provide housing, drinking water, health care and other social services to workers and their dependents.³⁰ However, recent research found that women across tea-growing regions experience economic and employment discrimination, sexual abuse and coercion, and violation of maternity rights.³¹ Housing in many parts of the sector is dilapidated and many workers do not have access to safe drinking water. Forced labour and child labour have been identified in certain supply chains and older people in tea

²⁵ ETP, Responsible Purchasing Practices, May 2022.

²⁶ See Fairtrade, About Tea. Available here: <https://www.fairtrade.org.uk/farmers-and-workers/tea/about-tea/>

²⁷ ETP and Oxfam, Understanding Wage Issues in the Tea Industry, Report from a multi-stakeholder project, 2013. Available: <https://www.ethicalteapartnership.org/wp-content/uploads/Understanding-Wage-Issues-in-the-Tea-Industry.pdf>

²⁸ See Fairtrade, About Tea.

²⁹ See Fairtrade, About Tea.

³⁰ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023. Available: https://thirst.international/wp-content/uploads/2023/12/THIRST_HRIA_Root_Causes_Final_19-12-2023.pdf

³¹ Thirst, Human Rights in The Tea Sector: The Big Picture, 2023.

growing regions are highly vulnerable to rights abuses, losing their homes and access to medical care upon retirement.³² Lower profits mean there are fewer resources available to invest in workers who become less willing to work on plantations, which leads to industrial unrest and labour shortages.

The TMCs provide for the creation of worker engagement in every aspect of the Buyer's and Supplier's HREDD framework. Worker voices are essential to any effort to effectively identify, prevent, mitigate, and account for adverse HRE impacts. The TMCs include clauses focused on stakeholder engagement and on building lines of communication with workers.

VII. How to use the Model Contract Clauses for Tea (TMCs)

The TMCs are model clauses that are designed to be edited to suit the user's needs. Rather than copying and pasting the TMCs into a contract, users should:

- (1) select the TMCs they want to include in the contract;
- (2) edit and adapt them to suit their needs and specific circumstances. Text placed in brackets [] is offered in the alternative, and the user can select which bracketed formulation to include.

As the intended audience for these clauses is varied, there is no one-size-fits-all set of clauses. Users can select and edit or adapt the clauses to suit their needs.

We recognise that there are various sourcing modalities within the tea sector, and that these model clauses **may not suit buyers sourcing from auction houses**. Where a competitive bidding process takes place based on the grade and quality of the tea, buyers may wish to consider building in additional criteria on human rights, wages, or other sustainability related issues. Joint action by buyers to engage with auction houses and other collective suppliers is required where contractual relationships are with intermediaries. Such action could be pursued with tea trading (buying & selling) associations and tea boards, and the TMCs could be used to inform the content of the rules for buying and selling tea.

Brands also contract with other intermediaries (bought leaf factories, cooperatives etc), and the TMCs reflect expectations that brands, brokers, and producers, whether they are acting as buyer and/or supplier, must cooperate to ensure that HRE standards are properly implemented *across* their supply chain.

The TMCs are designed to help buyers and suppliers align more closely with evolving legal standards on human rights due diligence and sustainability reporting. However, the TMCs are a tool to support responsible actors in the tea industry, and use of the clauses does not guarantee compliance with the provisions of the CSDDD. Furthermore, the TMCs only provide model contract clauses for a limited number of issues. Recognizing the unique characteristics of the tea ecosystem and the inherent human rights risks in complex tea supply chains, we have outlined below what each key player can achieve

³² Thirst, Human Rights in The Tea Sector: The Big Picture, 2023.

with the help of TMCs, while being mindful of their individual responsibilities within the chain of actors.

VIII. Conclusion

As outlined above, traditional contracting models often place the responsibility for mitigating human rights impacts directly on tea gardens, ignoring the economic pressures buyers exert to produce tea more quickly and cheaply. A shared responsibility regime encourages both buyers and suppliers to engage in responsible sourcing and purchasing practices. This includes transparent communication, mutual accountability, and collaborative problem-solving to address human rights impacts. Ultimately, this model aims to create sustainable improvements in human rights performance on the ground and to deliver better outcomes for workers and farmers across tea supply chains.

IX. Further Resources:

ETP Resources

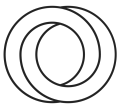
- ETP Resources: <https://etp-global.org/resources/>
- ETP, Know Your Supply Chain Factsheet, 2023. <https://etp-global.org/resources/know-your-supply-chain-factsheet/>
- ETP, Global Position on Living Wages in the Tea Industry, 2023: <https://etp-global.org/wp-content/uploads/2023/10/Global-Position-on-Living-Wages-In-The-Tea-Industry.pdf>
- ETP, Responsible Purchasing Practices Briefing paper: <https://etp-global.org/resources/responsible-purchasing-practices-briefing-paper/>

RCP Resources

- RCP's Toolkit: <https://www.responsiblecontracting.org/toolkit>
- Policy Brief on Responsible Contracting and the EU CSDDD: <https://www.responsiblecontracting.org/csddd-policy-brief>

Other organisations

- Fairtrade - Tea: <https://www.fairtrade.org.uk/farmers-and-workers/tea/about-tea/>
- Thirst Knowledge Hub: <https://thirst.international/knowledge-hub/>
- IDH - Tea Sector: <https://www.idhsustainabletrade.com/sectors/tea/>
- Ethical Trading Initiative (ETI): <https://www.ethicaltrade.org/what-we-do/eti-initiatives/common-framework-responsible-purchasing-practices>
- The Common Framework for Responsible Purchasing Practices ([cfrpp.org](https://www.cfrpp.org)): <https://www.cfrpp.org/the-common-framework>



- Better Buying - [Five Principles of Responsible Purchasing TM:](https://betterbuying.org/research-tools/five-principles-of-responsible-purchasing-practice/)