

# SALE AND PURCHASE CONTRACT FOR MAGNETITE IRON SAND

KNOW ALL MEN BY THESE PRESENTS:

This Contract is entered into by and between the Parties below this \_\_\_\_\_ day of \_\_\_\_\_, 2013, in \_\_\_\_\_, Philippines:

**BLUEGREEN MINERAL TRADERS, INC.**, a company duly organized under the laws of the Republic of the Philippines with office address at No. 12 Guiryan cor. Palanza St., Araneta East Subd., Quezon City, Metro Manila, represented herein by its President, **LYDIA Y. CU**, hereinafter referred to as the **BUYER**;

AND

**VFR II CONSTRUCTION**, a company duly organized and existing under and by virtue of the laws of the Philippines, with office address at 57 Agpalo St., Lucero, San Marcelino, Zambales, Philippines, represented herein by its owner/General Manager, **VICENTE FERNANDEZ RODRIGUEZ II**, hereinafter referred to as the **SELLER**;

## WITNESSETH:

WHEREAS, the SELLER offered its services to the BUYER for the delivery of MAGNETITE IRON SAND.

WHEREAS, the BUYER is desirous to accept the services of the SELLER for the delivery of MAGNETITE IRON SAND under the specifications mentioned in this contract.

WHEREAS, the SELLER has represented and warranted itself as competent and qualified to accomplish the undertaking called for this contract in accordance with the specifications of the BUYER.

WHEREAS, on the basis of the abovementioned representation and warranty by the SELLER, the BUYER hereby agrees and makes an irrevocable commitment to accept the offer of the SELLER.

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto mutually agree, stipulate and covenant as follows:

## Article 1.0 TERMINOLOGY

In this contract the following terms shall, unless otherwise defined, have the following meaning:

“U.S. Dollars or US \$” means the currency of the United States of America freely transferable from and payable to an external account.

“Wet Basis” means Iron Ore in its natural wet state.

“Dry Basis” means Iron Ore at 105°C (degrees centigrade).

“WMT” or “Wet Metric Ton” means a wet metric ton of Iron Ore.

“DMT” means a dry metric ton of Iron Ore. It is the weight of total cargo loaded less the moisture content based on the independent surveyor report during loading to the MV chartered by the BUYER.

“Departure Station” means the Loading Port at Open Sea/Port near Mine Site designated by SELLER.

“Independent Surveyor” means an Independent surveyor appointed by either party, CCIC/SGS will be appointed at loading port.

“Magnetite Iron Sand” shall mean fine magnetite iron sand mining in Zambales, Philippines and which is to be purchased by BUYER under this contract.

“FOB” in accordance with Incoterms 2010.

“Government” means the Government of Philippines, its departments and subdivisions.

"Price" shall mean the price for invoicing purposes expressed in US Dollars, with any calculated price

Rounded up to the nearest cent.

"L/C" Open Letter of Credit

"BL QTY" stands for Bill of Lading's Quantity, based on weighting done by Independent surveyor.

"MC" stands for Moisture Content of total cargo delivered based on Independent surveyor result.

#### **Article 2.0 COMMODITIES**

a. Name of commodity	:	Magnetite Iron Sand
b. Country of Origin	:	Philippines
c. Loading Port	:	Subic Port
d. Unloading Port	:	
e. Shipment	:	10,000.00 DMT ±5% in BULK

#### **Article 3.0 DELIVERY PERIOD and QUANTITY**

**Quantity:** 10,000.00 DMT (+/-5%).

**Laycan:** The Magnetite Iron Sand shall be loaded within 20 days after seller received the 50% Down payment in Cash.

#### **Article 4.0 SPECIFICATIONS**

Specification of Magnetite Iron Sand to be sold under this Contract/Agreement shall be as follows:

Chemical composition as per Independent Surveyor Report (Percentage by weight Basis)

<b>Iron (Fe)</b>	<b>61.0% up</b>	<b>- Right on Rejection below 61.0%</b>
Silica (SiO <sub>2</sub> )	6.5% Max	
Alumina (Al <sub>2</sub> O <sub>3</sub> )	4.5% Max	
Phosphorous (P)	0.08% Max	- Right on Rejection above 0.1%
Sulphur (S)	0.08% Max	- Right on Rejection above 0.1%
TiO <sub>2</sub>	8.0% Max	

Moisture 8.00% Max (Free moisture loss at 105°C, degrees Celsius)

Size 0mm - 5mm, 100 % Min

#### **Article 5.0 Base PRICE**

**Base Price:**

<b>US\$68.00/DMT</b>	<b>(United</b>	<b>States Dollar Sixty Eight only per Dry</b>
<b>Metric Ton)</b>		
<b>• 10.000 DMT</b>		
<b>= 680.000US\$</b>	<b>(United</b>	<b>States Dollar Six Hundred Eighty Thousand)</b>

Delivery FOB SUBIC PORT PHILIPPINES, based on Fe content 61% up.

#### **Article 6.0 PRICE ADJUSTMENT**

Magnetite Iron Sand delivery under this contract shall conform to the above standard chemical content in Article 4.0 and the price payable by Buyer to Seller for the shipment shall be adjusted in accordance with the following manner:

##### **(a) Iron Content (Fe)**

<b>Fe=58%</b>	<b>USD 55/DMT</b>
<b>Fe=59%</b>	<b>USD 60/DMT</b>
<b>Fe=60%</b>	<b>USD 65/DMT</b>
<b>Fe=61% up</b>	<b>USD 68/DMT</b>

**Note: this is the basis for the escalation of price base on the assay on actual grade percentage.**

**(b) Other Chemical contents**

If SiO<sub>2</sub>>6.5%, the base price will be decreased by USD0.50/DMT for each 1% above 6.5%, fraction pro rata;

If Al<sub>2</sub>O<sub>3</sub>>4.5%, the base price will be decreased by USD0.50/DMT for each 1% above 4.5%, fraction pro rata;

If P>0.08%, the base price will be decreased by USD0.20/DMT for each 0.01% above 0.08%, fraction pro rata.

If P>0.1%, the Buyer has the right to reject the good or renegotiate on the price of the good;

If S>0.08%, the base price will be decreased by USD0.20/DMT for each 0.01% above 0.08%, fraction pro rata.

If S>0.1%, the Buyer has the right to reject the good or renegotiate on the price of the good;

If TiO<sub>2</sub>>8%, the base price will be decreased by USD0.50/DMT for each 1% above 8%, fraction pro rata.

(c) Commercial Invoice shall be calculated on Dry Metric Tons basis. Moisture Content of the cargo shall be determined by obtaining the moisture loss at 105°C (degrees Celsius). Actual weight calculation of the cargo (magnetite iron sand) to be proportionately reduced or added from the Bill of Lading weight as per following formula:

Dry Metric Ton = BL Weight – {BL Weight x (MC Result (in percent))}

Note: BL Weight = Bill of Lading weight of the total cargo.

MC Result = Moisture Content of the total cargo based on independent CCIC/SGS Laboratory test result.

Total Amount of Commercial Invoice = Dry Metric Ton x Price after adjustment as per Clause 6 (a) above stated.

**Article 7.0 TERMS OF PAYMENT**

In consideration of the deliverables to be made by the SELLER under this Contract, the BUYER shall pay in accordance with the following:

7.1. Upon signing of the Contract, the Buyer agrees to issue a downpayment covering **50%** of the Base Price. The confirmed transfer of the downpayment will start the operation.

7.2 Also upon signing of the Contract, the Buyer agrees to issue an Irrevocable, **Open** Letter of Credit covering 50% of the Base Price.

7.3 Any payment payable under L/C by the Buyer to the Seller, based on price adjustment schedule under Article 6.0, shall be made upon each delivery and will start after the equivalent of the first 50% downpayment has already been delivered.

**Article**

**8.0**

**DELIVERY OF THE PRODUCT**

(a) Shipping and Delivery of Goods by the Seller to the Buyer declared valid if the goods are received by the Buyer at the Loading Port.

(b) All fees, transportation and risk in the delivery of goods will be born by the parties according to the FOB port or DELIVERED TO nearest port.

(c) THE SELLER shall complete the delivery of 10.000DMT±10% of the good within the agreed time period.

(d) The BUYER shall be responsible for chartering the vessel for every shipment.

(e) NOTWITHSTANDING the provision of rejection under Article 4.0 and Article 6.0, if the BUYER rejects any of the product which do not comply with the specifications in Article 4.0, the SELLER shall supply replacement commodity which do comply with the specification subject to reimbursement to the SELLER, transport costs associated with returning the commodity to the

point of origin, unless for any reasons, the said commodity is irreplaceable due to fortuitous event or force majeure, unable during period to fulfill or resume performance of the obligations hereunder, then either party, may in good faith terminate this Contract.

(e) The Seller is considered released from any liability of the aforementioned defect in the delivery of the commodity, if no written notice of rejection is received within forty eight (48) hours from the date of delivery.

#### Article 9.00 BANKING DETAILS

##### Buyer Banking Details

BANK Name:

Address:

City:

Country:

SWIFT Code:

Account Name:

Account Number:

Bank Branch:

Bank Officer:

Bank Phone Number:

Bank Fax Number:

##### SELLER Banking Details

BANK Name:

Address:

City:

Country:

SWIFT Code:

Account Name:

Account Number:

Bank Branch:

Bank Officer:

Bank Phone Number:

Bank Fax Number:

#### Article 10.0 Title

The title in respect of iron sand being bought shall pass from the Seller to the Buyer after successful delivery at the port of loading.

#### Article 11.0 SAMPLING AND ANALYSIS

At the departure Seller shall at Seller's expense, appoint an Independent Surveyor to determine the specification of Iron content in each shipment, and shall provide a certificate showing details of the determination and also the percentage of free moisture loss at 105 C( degree centigrade)

If the difference in percentage of Fe content between Buyer's and Seller's analysis of this Contract is more than 0.5% point or if there exists a significant difference between the two said analysis in respect of any more chemical elements other than Fe, Seller shall consult with Buyer can use the average. If, after consultation, the difference cannot be reconciled, the sample shall be analysed by an umpire agreed between Buyer and seller. If umpire analysis is required then any payment adjustment arising from this will be made when the umpire certificate is available.

#### Article 12.0 FORCE MAJEURE

If any time during the existence of this contract agreement either party is unable to perform whole or in part any obligation under this contract agreement, because of war, hostility, military operation of any character, civil commotions, sabotage, quarantine restriction, act of government, fire, floods, explosions, epidemic, strikes embargoes and total breakdown of the stacking/ship loading systems, then the date of fulfilment of any obligation shall be postponed during the time when such circumstances are operative.

#### Article 13.0 ARBITRATION

Any dispute or claim arising out of this Agreement shall be settled with mutual consent of both the parties. If the parties are failed to conclude the decision, settlement of dispute shall be referred to an Arbitrator agreed by the parties. The outcome of arbitration is final and binding for both parties.

#### Article 14.0 ATTORNEY FEES PROVISION

In any litigation . arbitration or other proceeding by which one party either seeks to enforce its rights under this Contract or seeks a declaration of any rights or obligation thereto, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

#### Article 15.0 TAXES AND DUTIES

All taxes, import duties, clearance fees, governmental expenses and licenses or levies will be handled and paid by the parties concerned.

#### Article 16.0 GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Philippines. Any suit or proceeding arising out or relating to this Agreement shall be instituted in the appropriate court of Quezon City or Makati City, Philippines at the option of the aggrieved party.

#### Article 17.0 CONFIDENTIALITY

Neither party shall, without the prior written consent of the other, disclose or make available to any person, make public, or use directly or indirectly, except for the performance and implementation of the tasks, any confidential information acquired from an information holder in connection with the performance of this Contract, unless: (1) the information is known to the disclosing party, as evidenced by its written records, prior to obtaining the same from the information holder and is not otherwise subject to disclosure restrictions on the disclosing party, (2) the information is disclosed to the disclosing party by a third party who did not receive the same, directly or indirectly, from an information holder, and who has no obligation of secrecy with respect thereto, or (3) required to be disclosed by law.

The obligations to preserve the confidentiality cited above shall survive the termination of this Contract.

#### Article 18.0 VALIDITY

THIS Contract is considered Valid, Legal, Binding from the Date of Signing by Buyer and Seller throughout completion of execution of its Terms and Conditions.

Any Changes of the Terms and Conditions of this Contract must be in written form and added as an Addendum upon agreed, signed and dated by both parties, which shall be considered as an integral part of this original Contract.

The parties to this Agreement hereby agree to full performance of the covenants contained herewith.

**IN WITNESS WHEREOF**, we the undersigned with our instrumental witnesses set our hands and affixes our signatures on this day of our Lord this \_\_\_\_\_ day of \_\_\_\_\_, 2013 in Quezon City, Metro Manila, Philippines.

**BUYER:**

**BLUEGREEN MINERAL TRADERS, INC.**

By:

**LYDIA Y. CU**  
President

**SELLER:**

**VFR II CONSTRUCTION**

By:

**VICENTE FERNANDEZ RODRIGUEZ II**  
Owner/General Manager

**Signed in the presence of:**

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## **ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES)  
QUEZON CITY ) S.S.

**BEFORE ME**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013 at Quezon City, Metro Manila personally appeared the following with their respective competent evidence of identity:

LYDIA Y. CU

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VICENTE

FERNANDEZ

RODRIGUEZ

II

known to me to be the same persons who executed the foregoing instrument, consisting of seven (7) pages including the page where the acknowledgement is written, and the parties acknowledged to me that the same is their free and voluntary act and deed and that of the corporations which they represent.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal, on the date and place above-written.

Doc. No. \_\_\_\_\_;

Page No. \_\_\_\_\_;

Book No. \_\_\_\_\_;

**Series of 2013.**