

## **GUIDANCE NOTES ON THE CONTRACT RULES FOR SHIPMENT OF PACKED COCOA PRODUCTS IN CONTAINERS ON FOB TERMS (CP 4)**

These guidance notes aim to provide informal, non-statutory guidance about FCC Contract Rules. These Guidance Notes do not form part of any FCC Contract Rules whatsoever or any contract subject to any such FCC Contract Rules and shall not affect the construction or interpretation of any such FCC Contract Rules or any such contract

### **1. APPLICATION OF CONTRACT RULES**

#### **1.1 Law**

The Contracts (Rights of Third Parties) Act 1999 does not apply to any contract incorporating CP4. It is aimed at preventing a third party from having any right to enforce any term of the contract, even if the term purports to confer a benefit upon him, unless the contract expressly provides that he may have such a right.

### **2. GENERAL DEFINITIONS**

These Rules do not include any definitions or specifications of products. Therefore it is essential that Buyers and Sellers agree product definitions and/or specifications to apply to any product traded under this contract. The current version of the Codex Alimentarius can be found at [www.codexalimentarius.net](http://www.codexalimentarius.net)

### **3. TRANSMISSION OF NOTICES**

It is recommended that notices be passed directly between Parties whether or not a broker is involved.

### **13. PRESENTATION AND PAYMENT OF DOCUMENTS**

#### **13.4 Mode of Payment**

The purpose of this clause is to establish which costs of presentation are payable by the Buyer and which by the Seller. The premise is that with the exception of contracts subject to a Letter of Credit, it is up to the Seller how documents are presented to the Buyer for payment. If the Seller chooses, or is obliged to, present documents through the banking system as a collection (usually subject to the edition of ICC Uniform Rules for Collections current at the time of the presentation of the documents) the charges incurred by the Collecting Bank are for the Seller's account, even if the Collecting Bank is the Buyer's bank.

## **PART 4 – SAMPLING PROCEDURES FOR ARBITRATION PURPOSES**

The method set out in Part 4 is NOT a method to be used on a day to day basis for the conduct of cocoa products trade. Parties recognise and use different methods of sampling.

If a quality dispute arises which can not be solved amicably and is referred to arbitration, and parties have not agreed on a sampling plan, then samples must be drawn in accordance with Part 4.

## **GUIDANCE NOTES ON THE FCC ARBITRATION AND APPEAL RULES**

### **3.2 Application for Arbitration**

a) Applications for arbitrations must be accompanied by details of the contract and of the dispute.

With effect from 1st March 2010 the FCC Secretariat ceased to have responsibility to assess whether a prima facie case has been established by the Claimant when claiming arbitration. Accordingly, when a claim is lodged with the Federation, the Secretariat will immediately allocate a case reference and will appoint arbitrators to form a Tribunal whose first duty is to assess whether such a prima facie case has been proven. This change in procedure does not in any way alter the responsibility of the Claimant to provide evidence, to be passed on to the Tribunal, that a contract exists and that this contract is subject to FCC Contract Rules and Arbitration and Appeal Rules.

Whilst it is not always possible, or indeed necessary, to have a hard copy contract signed by both parties, this does not obviate the need for clarity in confirming that the parties have elected to trade on the basis of the FCC Contract and that this contract is subject to FCC Arbitration and Appeal Rules.

Therefore, to minimise disputes on jurisdiction, and as laid out in the previous FCC Guidance Note dated 26 January 2009, we recommend that parties adopt the practice of confirmation of business by email or fax stating all of the parameters set out in the FCC Short Form Contract which can be found within the FCC Contract Rules for Cocoa Beans and Cocoa Products.

### **4.24 & 8.24 Interest**

Previous editions of the Arbitration and Appeal Rules required Arbitrators and Boards of Appeal always to award interest at two percent over the base rate of Barclays Bank or as appropriate in other currencies. Now that compound interest may be awarded it is inappropriate to require Arbitrators and Boards of Appeal always to award an additional two percent over such rates but Arbitrators and Boards of Appeal still have the power to do so in appropriate cases pursuant to the terms of this Rule.