



**Contract Rules for Cocoa Beans  
(Applicable to contracts concluded  
on or after 1<sup>st</sup> March 2010)**

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## RECORD OF AMENDMENTS

Rule No.	Title	Date of Amendment	Brief Description of Amendment
19.4	Non-Payment	01 March 2009	Seller may claim loss of interest from the date payment is due to the date payment is received
8.2.2	All faults	01 March 2010	Amended typographical error “quality and/or condition”
20.1	Quality and/or Condition Arbitrations	01 March 2010	Time limits for Quality & Condition to be the same
20.2	Other than Quality and/or Condition Arbitrations	01 March 2010	Titled amended in line with the provisions of Rule 20.1 stated above
20.4	String Arbitrations	01 March 2010	Amended in line with the provisions of Rule 20.1 stated above

# CONTRACT RULES FOR COCOA BEANS

## PART 1: GENERAL CONDITIONS

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 MARCH 2010*

### 1. APPLICATION OF CONTRACT RULES FOR COCOA BEANS

#### 1.1 LAW

The contract shall be subject to English law both as to its formation and execution.

The following shall not apply:

- (a) the Uniform Law on Sales and the Uniform Law on Formation;
- (b) the United Nations Convention on Contracts for the International Sale of Goods of 1980;
- (c) the United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980;
- (d) the Contracts (Rights of Third Parties ) Act 1999

#### 1.2 INCORPORATION OF RULES

- (a) Any contract incorporating these Contract Rules for Cocoa Beans shall also be deemed to incorporate the FCC Arbitration and Appeal Rules, the FCC Quality Rules, the FCC Sampling Rules and the FCC Weighing Rules (collectively, together with these Contract Rules for Cocoa Beans, “the FCC Rules”) which the Parties declare they are familiar with and agree to, and shall form part of the contract.
- (b) The FCC publishes French translations of the FCC Rules but the original English language versions shall always take precedence.

#### 1.3 FCC ARBITRATION

Any dispute arising under a contract which incorporates the Contract Rules for Cocoa Beans shall be settled by FCC arbitration in accordance with the FCC Arbitration and Appeal Rules.

The seat of the arbitration proceedings is England and the laws of England and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof shall be the applicable procedural law.

Arbitration and Appeal proceedings shall be conducted in the English language on the basis of the English language versions of the FCC Rules, unless and always subject to Rule 1.2(b), the Parties have agreed and specified in the contract that proceedings are to be conducted in the French language on the basis of the French language versions of the FCC Rules.

### 2. DEFINITIONS

The following definitions are applicable to the Contract Rules for Cocoa Beans.

#### 2.1 AFLOAT

Means a parcel which has already been shipped and has not yet been discharged at the place of final delivery.

#### 2.2 ARBITRATION SAMPLE

Means, for the purpose of these Contract Rules for Cocoa Beans, a sample prepared in accordance with the FCC Sampling Rules.

**2.3 ARRIVAL TERMS**

Means a contractual term pursuant to which the goods are due to arrive at the place of final delivery during the arrival period agreed in the contract.

**2.4 BILL OF LADING**

Means an on Board Bill of Lading (B/L) in negotiable and transferable form or a corresponding Ship's Delivery Order (D/O) or its corresponding equivalent as used in multimodal transportation.

**2.5 BUSINESS DAY**

Means any day other than a non-business day.

**2.6 COCOA BEAN**

Means a raw cocoa bean, which is the whole seed of the cocoa tree (*Theobroma cacao* L.).

**2.7 DAY**

Means a period of 24 hours, midnight to midnight.

**2.8 ESTIMATED TIME OF ARRIVAL (ETA)**

Means the estimated day of arrival of the vessel(s) at the port of loading as per the schedule published by the Shipping Line/Company at the time of the notice of the vessel's nomination.

**2.9 FCC**

Means the Federation of Cocoa Commerce Limited.

**2.10 FINAL DAY OF LANDING**

Means the day on which delivery of the goods is completed at the place of final delivery specified in the Bill of Lading, except for containers short shipped or short delivered.

**2.11 IMMEDIATE DELIVERY**

Means for in store/on truck/on railcar/on barge terms tender of the goods within 15 days from the date of the contract.

**2.12 IMMEDIATE SHIPMENT**

Means shipment within 15 days from the date of the contract.

**2.13 LANDED WEIGHT**

Means the pro rata weight of the full and sound bags landed applied to the total number of bags shipped as shown on the Bill of Lading.

**2.14 MONTH**

Means a calendar month unless the context otherwise requires.

**2.15 NON-BUSINESS DAY**

Means Saturdays, Sundays and the officially recognised and/or legal holidays of the country where the Party required to do the act or to give any notice resides or carries on business or in the country where the act has to be done or the notice has to be received and any day which the FCC may declare as non-business days for specific purposes.

Should the time limit for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of shipment and notices to be given in connection with the same shall not be affected.

**2.16 NOTICE**

Means any communication which one Party is contractually obliged to send to the other Party pursuant to and in accordance with the terms of the contract.



- 2.17 PARTY**  
Means a Buyer or a Seller acting as a Principal to the contract.
- 2.18 PLACE OF FINAL DELIVERY**  
Means the place so specified on the Bill of Lading or, if none is so specified, then the Port of Discharge.
- 2.19 PORT OF DISCHARGE**  
Means the port so specified in the Bill of Lading.
- 2.20 PORT OF LOADING**  
Means the port so specified in the Bill of Lading
- 2.21 PROMPT DAY**  
Means the latest day when payment for goods sold on in store/on truck/on railcar/on barge terms must be made which shall be the fifth business day after the Declaration of Tender with the exception of goods sold on spot terms, where the Prompt Day shall be the fifth business day after the date of the contract.
- 2.22 PROMPT DELIVERY**  
Means delivery within 30 days from the date of the contract.
- 2.23 PROMPT SHIPMENT**  
Means shipment within 30 days from the date of the contract.
- 2.24 SELLER'S NOTIFICATION**  
Means a Notice sent by the Seller to the Buyer and his appointed Superintendent specifying the shipping marks, number and location of the goods and/or such other information that will enable the Buyer and his Superintendent immediately to identify the goods.
- 2.25 SHIP'S DELIVERY ORDER**  
Means a document issued by or on behalf of the carrier authorizing the release of import cargo identified thereon and manifested under a single Bill of Lading
- 2.26 SHIPMENT**  
Means a transit of the goods which commences by sea from an ocean or estuarial port of loading, possibly completing by road and/or rail and/or air to the place of final delivery. In the case of a land-locked country Shipment shall be effected from an ocean or estuarial Port of Loading at Seller's option in a nearby country.
- 2.27 SHIPPED WEIGHT**  
Means:  
(a) for cocoa beans in bags the net weight of cocoa beans as weighed immediately prior to shipment and recorded on the Weight Note which shall also state the tare of the bags.  
(b) for cocoa beans in bulk the net weight of cocoa beans weighed immediately prior to being loaded into container or ship's hold as applicable and recorded on the Weight Note which shall state the tare when applicable.
- 2.28 SHIPPING WEIGHT**  
Means the nominal weight, according to the custom of the origin port of loading, of a bag of cocoa beans multiplied by the total number of bags shown on the Bill of Lading.
- 2.29 SHORT FORM CONTRACT**  
Means those terms expressly agreed between the Parties including the Parties' agreement to incorporate applicable FCC Rules. The Short Form Contract for Cocoa Beans published by the FCC incorporates the FCC Rules as defined in the preamble to these Contract Rules for Cocoa Beans.
- 2.30 SPOT TERMS**  
Means that when parcels are sold in store/on truck/or railcar/on barge terms they shall be ready for delivery at the date of the contract.

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

#### **3.1 MODE**

All notices required to be served on the Parties pursuant to the contract shall be communicated rapidly in legible written form and contain evidence of the date and time of transmission. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as either telex, or letter if delivered by hand on the date of writing, or facsimile, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of dispute, establish, to the satisfaction of the Arbitrators or Board of Appeal appointed pursuant to the FCC Arbitration and Appeal Rules, that the notice was actually transmitted to the addressee. If required by the sender, the receiver shall acknowledge receipt of a notice by one of the same methods.

#### **3.2 PASSING ON OF NOTICES**

Unless otherwise expressly agreed by the Parties, all notices received by one Party shall be deemed to have been passed on in due time provided that the said notice is despatched by midnight local time to the other Party on the first business day following receipt of the said notice.

### **4. ASSIGNMENT OF INTEREST IN THE CONTRACT**

No Party shall assign any interest in the contract without the consent in writing of the other Party which consent shall not be unreasonably withheld.

### **5. INSOLVENCY**

#### **5.1 CLOSE – OUT FOR INSOLVENCY**

The following shall apply if before the fulfilment of the contract a Party becomes bankrupt or insolvent or resolves to become the subject of liquidation proceedings or winding up proceedings or receivership or a moratorium or proceedings or procedures which are equivalent or corresponding thereto or an application for the same:

- (a) such Party shall immediately inform the Counterparty of the same;
- (b) provided that the ability of the other Party to fulfil the contract shall be materially adversely affected, the Counterparty may cause the contract to be closed out by notice in writing to that effect to the other Party, whereupon the contract shall be closed out as at the date of the notice.

The Parties shall agree upon any appropriate remedy for any loss/cost/expense incurred by either Party. In the absence of such agreement the matter may be referred to arbitration and the arbitrators shall, in their absolute discretion, decide upon any appropriate remedy for any loss/cost/expense incurred by either Party. Unless the arbitrators consider it inappropriate, the market price at the date of the closing out shall be deemed to have been the market price at close of business on the date of the notice.

#### **5.2 BALANCE OF ACCOUNTS FOR INSOLVENCY**

If the contract is closed out pursuant to Rule 5.1 and there exist any additional contracts between the same Parties which are subject to any FCC Rules (whether relating to cocoa beans or cocoa products) then the additional contracts shall be deemed to be closed out at the same time as the contract is closed out.

An account shall then be taken promptly by the Parties of all sums due from each Party to the other in respect of the contracts and the additional contracts, if any, and all sums owed between the Parties shall be set off against each other and any amount which remains owing by one Party to the other shall be paid promptly.

**5.3 UNENFORCEABILITY**

If this Rule 5, or any part, is prohibited by law or judged by a court to be unlawful, void or unenforceable then this Rule 5 or any such part shall to the extent required, be deemed removed and any remaining part shall continue in full force and effect and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

**6. SUPERINTENDENTS CLAUSE****6.1 APPOINTMENT OF SUPERINTENDENT**

Any Party may appoint a person to carry out the duties of a Superintendent in relation to weighing and/or sampling and/or otherwise. The Party must inform his Counterparty of such appointment in accordance with the appropriate provisions of the FCC Sampling Rules and/or FCC Weighing Rules and/or other provisions of the contract.

The appointed person, whether described as Superintendent, Supervisor, Surveyor, Representative or otherwise must be an FCC Member Superintendent except where:

- (a) no FCC Member Superintendent(s) is/are available or proximate to the port(s) concerned;
- (b) there is only one FCC Member Superintendent proximate to the port concerned and that Member Superintendent has been retained by the other Party to the contract;
- (c) the national laws or regulations require the exclusive use of governmental or other agencies not recognised by the FCC.

**6.2 CHARGES**

The Party appointing the Superintendent is responsible for all costs.

## PART 2: EXECUTION OF CONTRACT

### 7. GENERAL

#### 7.1 SEPARATE CONTRACTS

Each Bill of Lading quantity shall be enforceable as a separate contract and the terms of the contract shall be deemed to be the terms of each such separate contract.

Any container quantity delayed and/or short shipped and/or short delivered shall be enforceable as a separate contract and the terms of the contract shall be deemed to be terms of each such separate contract.

#### 7.2 QUALITY AND CONDITION

The goods supplied are warranted to be of satisfactory quality and in good condition.

#### 7.3 GRADE OPTIONS

The Seller may relinquish his option as to which origin(s)/grade(s)/brand(s) will be delivered against the contract or part thereof provided he advises the Buyer in writing prior to the commencement of the shipment period of the names and quantity(ies) of the origin(s)/grade(s)/brand(s) he will deliver.

When the goods have been sold on FOB terms with the option to the Seller as to which origin(s) will be delivered, the Seller must advise the Buyer in writing at least 15 days prior to the actual shipment/delivery of the names and quantity(ies) of the origin(s) he will deliver.

#### 7.4 CHARGES AND COSTS

A demand for reimbursement of any charge/cost/expense incurred by one Party on behalf of the other Party must be accompanied by appropriate evidence of the charge/cost/expense incurred.

### 8. CONTRACT TERMS

#### 8.1 DELIVERY TERMS

Contracts under these Contract Rules for Cocoa Beans are for the sale/purchase of cocoa beans whether in bags or in bulk and can be made on any terms to/at any destination/location that may be agreed between the Parties and set out in a Short Form Contract.

#### 8.2 QUALITY

##### 8.2.1 Quality Assessment

Quality shall be assessed in accordance with the FCC Quality Rules and the FCC Sampling Rules as follows:

- (a) On arrival - after arrival of the parcel at the Place of Final Delivery.
- (b) On departure, either:
  - i) prior to stuffing of container or loading of the parcel - at the agreed place of sampling, or
  - ii) during stuffing of container or loading of the parcel - at the Port of Loading
- (c) In store/on truck/on railcar/on barge – at the warehouse after payment for the parcel has been made by the Buyer.
- (d) In store sold by sample - in accordance with the provisions of Rule 7 of the FCC Sampling Rules.

##### 8.2.2 All faults

For cocoa beans sold under the description 'all faults' or 'tel quel' the Buyer shall not be entitled to claim arbitration for quality and/or condition.

### 8.3 QUANTITY

#### 8.3.1 Cocoa Beans

The contract quantity is net of any tare and is subject to a tolerance of plus or minus 1.5 per cent at time of shipment or at time of delivery for in store/on truck/on railcar/on barge contracts.

#### 8.3.2 Non-applicability of tolerances

The tolerances referred to in Rule 8.3.1 shall not apply whenever a contract is closed out by payment of differences between purchase and sales prices in lieu of shipment or delivery.

#### 8.3.3 Franchise for Shipping Weight Terms for cocoa beans in bags only

Parties must agree a franchise representing the weight loss which could be expected due to natural shrinkage during the voyage. In the event that Parties do not agree, a franchise of 1.5% shall apply.

### 8.4 SHIPMENT, DELIVERY AND OPTION CONTRACTS

#### 8.4.1 Shipment Contracts

##### 8.4.1.1 CIF, C&F and FOB (Seller booking freight)

For all contracts in which the Seller books the freight and the port(s) of discharge is/are at the Buyer's option, the Buyer must declare his option not later than 15 days before the first day of the shipment period, failing which the option shall be exercised by the Seller. Should the Seller fail to complete loading of the contractual quantity within the shipment period, he shall be deemed to be in default in respect of the quantity not shipped.

For quality on departure contracts the Seller shall give the Buyer at least 10 days notice of the Estimated Date of Arrival of the Vessel at the Port of Loading and, at the same time send the Buyer a Seller's Notification.

Upon receipt of the Seller's Notification, the Buyer shall notify the Seller of the name of his Superintendent and/or Sampler and/or Weigher, if appointed.

##### 8.4.1.2 C&I and FOB (Buyer booking freight)

The Buyer shall nominate the vessel(s) and quantity(ies) required for loading and give a minimum of 15 days notice to the Seller of the Estimated Date of Arrival at the port of loading and, at the same time notify the Seller of the name of his Superintendent and/or Sampler, if appointed. Within 5 days thereof the Seller shall send the Buyer a Seller's Notification.

Provided the Buyer acts promptly and the original shipment period is maintained, the Buyer may give a notice to the Seller of:

- (a) a change in the Estimated Date of Arrival and/or
- (b) a substitution of the nominated vessel.

Should the Seller fail to load on the duly nominated and arrived vessel (s) he shall be deemed to be in default.

If the loading cannot commence by the day after the Estimated Date of Arrival because of late arrival of the vessel the Buyer shall reimburse the Seller the extra costs incurred from the second day following the Estimated Date of Arrival to the actual date of arrival in the port of shipment of the delayed or substituted vessel, provided that the goods are ready for loading.

If the loading cannot commence after the actual date of arrival because of a refusal by the carrier to accept the goods on board then, unless the Seller is at fault, the Buyer shall reimburse the Seller the extra costs incurred from the date of such refusal to the date the carrier accepts the goods on board, provided that the goods are ready for loading.

The Buyer must ensure that the cargo space is made available within sufficient time to enable the Seller to complete loading of the goods by the last day of the shipment period, failing which the Buyer shall be deemed to be in default for the quantity not shipped.

#### 8.4.1.3 Bills of Lading

The Seller shall present clean through Bill(s) of Lading stating that the parcel is “loaded on board” or “received on board” or “shipped on board”, and specifying the goods, the net weight and, if appropriate, the number of bags and shipping marks, all of which shall be considered proof of shipment unless the contrary is proved.

The date of loading shown on the Bill of Lading shall be regarded as the date of shipment, unless the contrary is proved.

#### 8.4.1.4 Liner Bill(s) of Lading Terms

Only Liner Bill(s) of Lading in a form customarily used for shipment of the goods from the port of loading shall be issued and presented for payment under the contract.

Carriage shall be either by a direct route or by an indirect route customarily used for the carriage of cocoa beans from the Port of Loading to the Place of Final Delivery. Transhipment shall be at the Seller’s option and subject to Rule 9.1.5.

Any vessel chartered by a conference line shall not be acceptable unless the conference line confirms that the vessel is on a time charter.

When a shipowner, in exercise of any purported rights under the terms of the Bill of Lading discharges the cargo at a port other than that named in the Bill of Lading, that port becomes the port of discharge for all settlements under the contract.

#### 8.4.1.5 Chartered Ship

(a) In the event of shipment on a chartered vessel booked and arranged by the Seller which is discharged at a port other than the port of discharge as a result of a charterparty dispute between the Seller and the vessel owner, the Seller shall be obliged, at his expense, to forward the cargo to the Place of Final Delivery within a reasonable time, otherwise the Buyer may declare the Seller to be in default.

(b) In addition, the Seller shall be obliged immediately to provide a written Letter of Indemnity to the Buyer, issued or countersigned by a first class bank acceptable to the Buyer (such acceptance not to be unreasonably withheld by the Buyer) indemnifying the Buyer in full against inability to obtain prompt release of the goods either on unloading at the port of discharge or at delivery at the Place of Final Delivery.

(c) Notwithstanding the Seller’s compliance with this Rule 8.4.1.5 the Buyer may declare the Seller to be in default if the Buyer is unduly prejudiced by the event referred to at (a).

#### 8.4.1.6 Containers

The Parties agree that it is best practice for containers to be:

- (a) shipped promptly after stuffing from the Port of Loading
- (b) cleared from the Port of Discharge and
- (c) delivered to the Place of Final Delivery and
- (d) unstuffed/stripped at the Place of Final Delivery

promptly and without undue delay.

If the Buyer makes an arbitration claim the arbitrators shall take into consideration the extent to which this best practice was followed and whether or not each of the Parties behaved reasonably in all the circumstances of the case.

### 8.4.2 In store/on truck/on railcar/on barge Delivery Contracts

#### 8.4.2.1 Location of Goods

The goods tendered for sale in store shall be in a warehouse suitable in all respects for the storage of cocoa beans.

#### 8.4.2.2 Acceptable Warehouses and Warehousekeepers

The warehousekeeper(s) through whom delivery shall be made and the warehouse(s) at which delivery shall be made shall be agreed between the Parties before the Seller issues the Declaration of Tender and the Buyer shall not unreasonably refuse to agree to the Seller’s proposal in this regard.

**8.4.3 Arrival and/or Delivery in store/on truck/on railcar/on barge Option Contracts (“+1” Contracts)****8.4.3.1 Exercise of Arrival Option**

When the goods have been sold on shipment terms with the option to the Seller to deliver them on arrival terms, the Seller must exercise the said option by notice to be received by the Buyer before the expiration of the 14th day from the end of the shipment period.

(See also Rule 9.1.2.2)

**8.4.3.2 Late Arrival of Vessel**

When the Seller has exercised the arrival option pursuant to Rule 8.4.3.1 but the vessel arrives at the port of discharge after the expiry of the arrival period specified in the contract, then the Buyer shall accept the goods at a fair allowance, provided that the goods arrive within one month from the end of the arrival period. Failing agreement between the Parties, the allowance is to be settled by arbitration. Should the goods arrive after one month from the end of the arrival period, the Buyer may declare the Seller to be in default.

**8.4.3.3 Exercise of in store/on truck/on railcar/on barge Option**

When the goods have been sold on shipment terms with an option to the Seller to deliver them in store/on truck/on railcar/on barge, Parties must agree at the time of the contract on the location(s) and costs related to this option. The Seller must exercise the said option by notice to be received by the Buyer before the expiration of the 14th day from the end of the shipment period. Failing agreement between the Parties the matter shall be resolved by arbitration.

The Buyer shall reimburse the Seller with all the agreed costs involved in delivering the goods as per the requirements of Rules 9.2.3 or 9.2.4 as applicable.

**8.5 PACKING - BAGGED COCOA BEANS**

Cocoa beans shall be packed in new, clean, sound, non-returnable bags of sufficient strength to withstand the transit and storage of the goods. The bags shall be woven from natural fibres and shall be suitable for food contact use.

**8.6 SUITABILITY OF MODE OF TRANSPORT****8.6.1 Transport Requirements**

All means of transport have to comply with the relevant requirements of any competent authority in the countries of shipment, collection, transit and delivery.

The ship's hold, vehicle and/or container must be clean, dry, odourless and in good condition and must be suitably prepared for the transport of cocoa beans. Containers shall be sealed after stuffing.

All vessels must meet the requirements current at the time of shipment of either the Institute Classification Clause or the Police Française d'Assurance Maritime sur Facultés. However OBO carriers or oil tankers shall not be used under any circumstances for the transport of cocoa beans.

**8.6.2 Suitability**

The Party booking the freight is responsible for ensuring that all vessels, vehicles and containers booked are suitable for the transportation of cocoa beans.

However the Seller may refuse to load any vessel, vehicle or container booked by the Buyer if the Seller has reasonable grounds to consider that this Rule has not been complied with by the Buyer, unless and until the Seller receives from the Buyer a written letter of indemnity by which the Buyer agrees to indemnify the Seller against all and any liability arising from the Buyer's instructions to load under such circumstances.

## **9. DECLARATION OF SHIPMENT OR DELIVERY**

### **9.1 SHIPMENT TERMS**

#### **9.1.1 Declaration of Shipment**

The Seller shall send a Notice, to be referred to in these Contract Rules for Cocoa Beans as a Declaration of Shipment, to the Buyer which shall contain the following:

- (a) Contract Number and Date
- (b) Description of goods shipped, including their origin
- (c) Shipping marks and numbers if applicable
- (d) Quantity of goods shipped (weight and number of bags if applicable)
- (e) Whether the parcel is in complete or partial fulfilment of the quantity sold
- (f) Mode of shipment, e.g. break-bulk, container and number(s), if any
- (g) Name of the vessel
- (h) Bill of Lading (or Ship's Delivery Order) date and number
- (i) Port of loading
- (j) Port of discharge and, if different, place of final delivery
- (k) The name of the Supervisor appointed by the Seller, if any

The Declaration of Shipment shall not be withdrawn nor substituted without the consent of the Parties. The Buyer may not refuse the Declaration of Shipment because of insignificant errors or omissions.

#### **9.1.2 Time of Declaration of Shipment**

##### **9.1.2.1 Shipment Contracts**

The first Seller shall send the Declaration of Shipment to his Buyer as soon as reasonably practicable after shipment of the goods. Each subsequent Seller shall pass the said Declaration of Shipment to his Buyer in accordance with Rule 3.2.

For goods sold "afloat" the first Seller shall send the Declaration of Shipment to his Buyer no later than midnight Seller's local time on the day the terms of the contract are agreed, failing which the Buyer is entitled to put the Seller in default.

A Party who fails to send declarations of shipment in accordance with all the terms hereof shall indemnify the other Party for all extra expenses unavoidably incurred by that other Party arising directly from the late sending of the Declaration of Shipment.

##### **9.1.2.2 Arrival Option Contracts**

The Seller shall send the Declaration of Shipment required under Rule 9.1.1 to the Buyer as soon as reasonably practicable after exercising the arrival option pursuant to Rule 8.4.3.1. The Declaration of Shipment shall be accepted by the Buyer provided that at the time it was sent by the Seller the goods were afloat on a vessel expected to arrive during the arrival period.

No claim shall be made by the Buyer against the Seller if, after the declaration has been sent to the Buyer the vessel becomes a casualty which prevents the goods arriving within the arrival period.

#### **9.1.3 Minimum quantities**

Each Declaration of Shipment shall be for a minimum of:

- (a) cocoa beans in bags - 25 tonnes net
- (b) cocoa beans in bulk in containers - 50 tonnes net
- (c) cocoa beans in bulk other than in containers - 250 tonnes net

except for the fulfilment of the outstanding balance on the contract quantity sold.

#### **9.1.4 Bills of Lading as separate contracts**

In the event that the Declaration of Shipment refers to:

- (a) two or more Bills of Lading; or
- (b) the splitting of any Bill of Lading quantity into two or more parcels by reference to separate Ship's Delivery Orders (subject to Rule 9.1.3.);



then separate Declarations of Shipment shall be deemed to have been made in respect of each Bill of Lading or parcel, as the case may be. Each Declaration of Shipment shall be deemed to be by way of performance of separate contracts.

#### **9.1.5 Transhipment**

In the case of a voyage including transhipment(s) covered by more than one Bill of Lading, a Notice confirming the name of the last ocean-going vessel and/or carrier shall be sent to the Buyer by the Seller not later than 4 days before the arrival of that vessel at the port of discharge. The Seller shall indemnify the Buyer for all loss/cost/expense caused directly by either the omission or the late sending of the above Notice unless such omission or the late sending of the Notice is beyond the Seller's control.

#### **9.1.6 Ship lost or not lost**

With the exception of "Afloat" and "Arrival Terms" contracts, the Seller shall be entitled to declare a shipment against the contract, ship lost or not lost.

Even in the event of the actual loss or a constructive total loss of the vessel or in the event that the voyage is abandoned, payment shall be made in full by the Buyer based on net Bill of Lading weights against presentation by the Seller of conforming documents in accordance with Rule 12.1. If one of the aforesaid events occurs after payment of the provisional invoice in accordance with Rule 13.3, then the Seller shall be entitled to issue the final invoice immediately based on Bill of Lading net weights.

### **9.2 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE TERMS**

#### **9.2.1 Declaration of Tender**

The Seller shall send a **Notice** to be referred to in these Contract Rules for Cocoa Beans as a Declaration of Tender, to the Buyer which shall contain the following:

- (a) Contract Number and Date
- (b) Whether goods are sold in store/on truck/on railcar/on barge terms
- (c) Description of goods including their origin
- (d) Shipping marks and numbers if applicable
- (e) Quantity of goods (weight and number of bags if applicable)
- (f) Whether the parcel is in complete or partial fulfilment of the quantity sold
- (g) Name of the warehouse and warehousekeeper
- (h) Warehouse Warrant or Warehouse Delivery Order number
- (i) Prompt day
- (j) Final Day of Landing or final day of delivery, if applicable
- (k) Last day of weighing
- (l) The name of the Supervisor appointed by the Seller, if any

The Declaration of Tender shall not be withdrawn nor substituted without the written consent of the Parties. The Buyer may not refuse a Declaration of Tender because of insignificant errors or omissions.

#### **9.2.2 Minimum quantities**

Each Declaration of Tender shall be:

- (a) for a minimum of 25 tonnes net
- (b) of one shipping mark
- (c) in one warehouse.

A Declaration of Tender for less than 25 metric tonnes is only applicable for the fulfilment of the outstanding quantity sold in which case the balance tendered may be of more than one mark provided it is in one warehouse.

#### **9.2.3 In Store**

The Seller shall deliver the sound goods to the Buyer within the warehouse.

**9.2.4 On truck/on railcar/on barge**

The Seller shall deliver the sound goods to the Buyer on truck/on railcar/on barge at the exit of the warehouse.

**10. PRICE FIXATION****10.1 PRICE FIXATION TERMS**

If the price of the contract is to be on a price fixation basis, the contract shall state the premium or discount for cocoa beans against either:

- (a) i. the applicable Liffe Administration and Management ("Liffe") Cocoa Futures Contract delivery month; or
- ii. the applicable Intercontinental Exchange Futures US ("ICE") Cocoa Futures Contract delivery month,

and

- (b) whether price fixation shall be at the Seller's option, at the Buyer's option, or by mutual agreement.

**10.2 CONTRACT PRICE AND TONNAGE**

The contract price shall be determined by the specified premium or discount to either:

- (a) the price at which Parties exchange Futures Contracts ("Against Actuals"/"Exchange for Physicals"); or
- (b) the Cocoa Futures' ask price for the specified market delivery month in the case of price fixation at the Buyer's option, subject to availability of volume on the Futures Market; or
- (c) the Cocoa Futures' bid price for the specified market delivery month in the case of price fixation at the Seller's option, subject to availability of volume on the Futures Market; or
- (d) a mutually agreed price.

Unless otherwise agreed between the Parties the resultant price shall be expressed in either Pounds Sterling per Metric Tonne for contracts fixed against Liffe, or US Dollars per Metric Tonne for contracts fixed against ICE.

**10.3 TIME OF PRICE FIXATION****10.3.1 Price fixation prior to presentation of documents**

In all cases fixation must occur prior to the presentation of documents.

**10.3.2 Price fixation at Buyer's or Seller's option**

The Party holding the price fixation option shall request fixation pursuant to Rule 10.4 subject to the following provisions:

- i) the price must be within the range quoted for the specified delivery month of either the Liffe or ICE (as applicable) Cocoa Futures Contract on that day; and
- ii) the time of fixation must be on any business day of the relevant Cocoa Futures Contract, starting from the date of the contract to the close of business on a date which is, in respect of the specified delivery month, two business days prior to the:
  - (a) last trading day, for contracts fixed against Liffe; or
  - (b) first notice day, for contracts fixed against ICE;

all dates inclusive, in accordance with Rule 10.2.

Notwithstanding the above, the Party holding the option to price-fix can request that the fixation be transacted by way of an “Against Actuals”/“Exchange For Physicals” transaction at any price within the price range established in respect of the delivery month to date, subject also to this being in accordance with the current Liffe or ICE requirements, as relevant. Nevertheless, this must be at both Parties’ mutual consent, failing which, provisions (i) and (ii) above shall prevail.

### **10.3.3 Price fixation by mutual agreement**

Should at any time the Parties fail to mutually agree, price fixation shall be deferred until such time as agreement is reached. However latest dates for price fixation as in Rules 10.3.1 and 10.3.2 still apply.

### **10.4 AMOUNT TO BE FIXED**

The Party holding the price fixation option may request fixation of any part of the contract provided that the quantity fixed shall be ten metric tonnes or multiples thereof, except when pricing the balance of the full contract quantity.

### **10.5 CLOSURE OF EITHER THE LIFFE OR ICE COCOA FUTURES CONTRACTS**

In the event of the closure of the Liffe or ICE Cocoa Futures Contract under emergency provisions or Force Majeure the price for any unfixed portion of the contract shall be fixed in accordance with the settlement procedures of the relevant Cocoa Futures Contract.

## **11. PRICE**

The price payable for the goods shall be as agreed between Buyer and Seller in the contract and, unless otherwise agreed, includes all applicable taxes, duties, levies and costs in accordance with the agreed shipment or delivery terms at the date of sale, excluding VAT.

## **12. DOCUMENTS**

### **12.1 SHIPMENT TERMS**

#### **12.1.1 List**

The Seller shall present the following documents:

- (a) Invoice calculated in accordance with Rule 13.3.2.
- (b) Complete set(s) of Bill(s) of Lading as per Rule 8.4.1.3 or corresponding Ship’s Delivery Order(s).
- (c) Marine insurance certificate as required by Rule 18.1, if the contract is on Cost Insurance and Freight or Cost and Insurance terms.
- (d) For Shipped Weight contracts a weight note.
- (e) Any other documents required and agreed by the Parties.

If the Seller fails to present any document required under this Rule then the Seller shall be liable for any extra cost incurred, including import duties, and paid by the Buyer.

#### **12.1.2 Guarantees for incomplete documents**

The Seller may present one original out of any set(s) of Bill(s) of Lading together with a letter of guarantee for any missing Bill(s) of Lading which the Buyer may require to be issued or countersigned by a first-class bank acceptable to the Buyer - such acceptance not to be unreasonably withheld by the Buyer.

The Seller may provide letter(s) of guarantee for any other missing document(s) which the Buyer may likewise require to be issued or countersigned by a first-class bank acceptable to the Buyer - such acceptance not to be unreasonably withheld by the Buyer.

**12.2 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE TERMS****12.2.1 List**

The Seller shall present the following documents:

- (a) Invoice based on net warehouse warrant weights. On exercise of an option under Rule 8.4.3.3 in respect of shipping weight contracts with an in store/on truck/on railcar/on barge delivery option, invoices shall be based on shipping weights and subject to loss in weight claims pursuant to Rule 14.1.
- (b) Warehouse warrant(s) and/or Warehouse Delivery Order(s), subject to Rule 12.2.2
- (c) Any other documents agreed by the Parties.

**12.2.2 Warehouse Delivery Order**

As an alternative to warehouse warrants the Seller may, with the Buyer's consent, present a Delivery Order issued by the warehousekeeper or arrange a release to the Buyer by the warehousekeeper, any such release to be binding on the Parties.

**13. PRESENTATION AND PAYMENT OF DOCUMENTS****13.1 MODE OF PAYMENT**

Payment shall be Cash Against Documents on first presentation and, unless otherwise agreed, the Parties must specify within the contract the mode of payment from one of the options below.

If the Parties do not agree upon the mode of payment in accordance with this Rule then all charges, excluding the transfer costs of Buyer's bank, shall be for Seller's account.

If one of the Parties, having agreed upon a mode of payment at the time of entering into the contract, subsequently requests the other Party to consent to a different mode of payment, then all additional charges arising therefrom shall be for the account of the Party requesting the change. The Party to whom the request is made shall not unreasonably withhold its consent to such a change in the payment terms.

**13.1.1 Cash Against Documents by Letters of Credit**

Presentation of documents under a Letter of Credit shall be governed by the edition of the Uniform Customs and Practice for Documentary Credits ("UCP") current at the time of opening the Letter of Credit together with any modifications to the UCP or further editions of the UCP which become current between the opening of and negotiation of the Letter of Credit.

**13.1.2 Cash Against Documents by Documentary Collection**

Presentation of documents as a Documentary Collection shall be governed by the edition of the Uniform Rules for Collections current at the time of presentation of documents.

When documents are presented through the banking system as a collection, bank charges of Seller's bank are for Seller's account and bank charges of Buyer's bank are for Buyer's account.

**13.1.3 Cash Against Documents presented "In Trust"**

Documents may be presented directly to the Buyer during normal office hours. If a Seller elects to send documents in trust all charges, excluding the transfer costs of Buyer's bank, are for Seller's account.

**13.2 PLACE**

All documents required under the contract shall be presented to the Buyer for payment at the place specified in the contract. If no place for presentation is stated, then it shall be at the Buyer's address as shown on the contract. If requested by the Seller, the Buyer shall immediately provide the name and address of a first class bank through which documents may be presented.

### 13.3 SHIPMENT AND ARRIVAL OPTION TERMS

#### 13.3.1 Presentation

##### 13.3.1.1 Earliest time

Documents may not be presented for payment earlier than the first business day following the receipt of the Declaration of Shipment. In the case of transshipment, documents can only be presented after loading onto the main ocean-going vessel.

##### 13.3.1.2 Late presentation

If the documents are not presented to the Buyer before arrival of the vessel at the Port of Discharge, any related loss/costs/expense and/or any bank guarantee charges necessarily incurred shall be borne by the Seller.

If the vessel owner confirms in writing the terms of a letter of indemnity, which the Seller is prepared to provide, and pursuant to which the vessel owner is prepared to discharge in the absence of Bill(s) of Lading, then the Buyer shall be obliged to accept discharge.

#### 13.3.2 Amount

##### 13.3.2.1 Shipping weight contracts

Net cash for 100 per cent of the amount of the invoice based on the Bill(s) of Lading net weight, by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract which the Buyer is obliged to accept.

Payment for the goods must be made for value within two business days from the first presentation of documents.

##### 13.3.2.2 Shipped weight contracts

Net cash for 100 per cent of the amount of the invoice based on the net weight shown on the Bill(s) of Lading as per the Weight Note, by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract which the Buyer is obliged to accept.

Payment for the goods must be made for value within two business days from the first presentation of documents.

##### 13.3.2.3 Landed weight contracts

Net cash for 99 per cent of the amount of the provisional invoice based on the Bill(s) of Lading net weight, by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract which the Buyer is obliged to accept.

Payment for the goods must be made for value within two business days from the first presentation of documents.

### 13.4 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE TERMS

#### 13.4.1 Presentation

The Seller shall present documents for payment on the prompt day. Should the Buyer wish to take up documents earlier, the Seller must be given notice on the business day prior to the day the Buyer wishes the documents to be presented.

#### 13.4.2 Amount

The Buyer shall accept the warehouse warrant net weights in the absence of evidence of fraud or negligence.

- (a) For goods tendered in store – payment shall be made for 100 per cent net of the invoice amount established on the net warehouse warrant weights or, where reweighing is required in

accordance with Rule 14.4, provisional invoice payment shall be made for 99 per cent of the net warehouse warrant weights.

- (b) For goods tendered on truck/railcar/on barge - payment shall be made for 100 per cent net of the invoice amount established on the net warehouse warrant weights or re-weights as agreed between the Parties.

Payment for the goods must be made for value latest on the prompt day or within 24 hours after presentation of documents whichever is the earlier.

## **13.5 DELIVERY OPTION TERMS**

### **13.5.1 Presentation**

The Seller shall present documents for payment on the prompt day. Should the Buyer wish to take up documents earlier, the Seller must be given notice on the business day prior to the day the Buyer wishes the documents to be presented.

### **13.5.2 Amount**

For contracts based on landed weight terms payment for goods tendered in store/on truck/on railcar/on barge terms shall be made for 100 per cent net of the invoice amount established on the net warehouse warrant weights and in accordance with Rule 14.4.

For contracts based on shipping weight terms payment for goods tendered in store/on truck/on railcar/on barge terms shall be made for 100 per cent of the invoice amount established on the Bill(s) of Lading net weight.

Payment for the goods must be made for value latest on the prompt day or within 24 hours after presentation of documents whichever is the earlier.

## **14. FINAL INVOICING AND LOSS IN WEIGHT CLAIMS**

### **14.1 SHIPPING WEIGHT TERMS**

The Seller shall be liable to the Buyer for any loss in weight in excess of the franchise agreed between the Parties in accordance with Rule 8.3.3.

Any loss in weight exceeding the franchise calculated on the net weight of the sound and full bags delivered, but applied to the Bill of Lading quantity, shall be borne by the Seller at the contract price.

If the Seller has exercised the option to deliver the goods in store/on truck/on railcar/on barge pursuant to Rule 8.4.3.3, any loss in weight on slack bags calculated at contract price on the net weight of the sound and full bags shall be for the account of the Seller.

### **14.2 SHIPPED WEIGHT TERMS**

The shipped weight to be invoiced shall be calculated on the actual net weight of the cocoa beans as weighed in accordance with the FCC Weighing Rules and immediately prior to shipment as evidenced by the Weight Note.

### **14.3 LANDED WEIGHT TERMS**

#### **14.3.1 Cocoa Beans in Bags**

The net landed weight to be invoiced shall be calculated by multiplying the average net weight of the sound and full bags on arrival by the number of bags shown on the Bill of Lading.

#### **14.3.2 Cocoa Beans in Bulk**

The net landed weight to be invoiced shall be the weight calculated in accordance with the FCC Weighing Rules.

**14.3.3 Time of issuing of invoice**

The Seller shall issue and despatch the final invoice within 30 days either from the last day of weighing or receipt of the weight notes from the Buyer and attach to it a copy of the Supervisor's report. If the Seller fails to issue the final invoice as aforesaid, the Buyer is entitled to issue a final invoice which shall be binding on the Parties.

**14.3.4 Weight tolerance**

Where the net landed weight exceeds the contract quantity by 1.5 per cent or more, the Buyer shall have the option to refuse the total excess over the contract quantity or accept it at the market value at the close of business on the last day of weighing.

Where the net landed weight is less than the contract quantity by 1.5 per cent or more the total shortfall shall be the subject of a settlement based on the difference between the contract price and the market value on the last day of weighing provided that the market price at the close of business is higher than the contract price.

**14.4 REWEIGHING FOR IN STORE PARCELS**

If on the day of the Declaration of Tender 12 months have expired from the last date of weighing, the Buyer shall be entitled to reweighing, at the Seller's expense, within 28 days from the day of the declaration.

If delivery from Warehouse is due to take place within 28 days from the day of Declaration of Tender or any extension of the period agreed between the Parties, reweighing shall take place at the time of delivery.

If delivery from Warehouse is not due to take place within 28 days from the day of the Declaration of Tender and the Parties have not agreed upon an extension of the period for reweighing, the Buyer shall be entitled to reweighing and rehousing at the Seller's expense.

The final invoice shall be settled on the basis of the net re-weights.

For contracts on shipping weight terms Rule 14.1 applies.

**14.5 TIME OF PAYMENT**

For landed weight contracts and loss in weight claims, the final invoice shall be paid promptly but no later than 14 days from the date of the final invoice or loss in weight claim.

**15. INTEREST**

Interest shall be payable on all sums which become due, whether by debt or damages, from the date on which such sums become due to the date of payment, whether such payment is made before or after the commencement of arbitration or proceedings for recovery of the same.

If the Parties fail to agree on the interest payable for the currency (ies) in which the debt(s) was/were incurred, then either of them may refer the dispute to arbitration.

**16. EXPENSES AND TAXES****16.1 SHIPMENT AND ARRIVAL OPTION TERMS**

All unloading costs, charges, taxes and customs duties incurred at the port of discharge and/or within the country of final destination (other than those included in the payment of the freight) shall be borne by the Buyer.

If the Place of Final Delivery is not a customary cocoa port and is not the Port of Discharge then any additional costs over and above those that would have been incurred at the Port of Discharge, including those of supervision, shall be paid by the Buyer.

**16.2 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE TERMS****16.2.1 Warehouse Rent, Insurance and Fumigation**

Warehouse Rent, insurance and fumigation shall be paid by the Seller up to and including the prompt day.

**16.2.2 Handling and other charges**

All handling and other charges not specified under Rule 16.2.1 up to the point and time of delivery of the goods shall be for the Seller's account.

**16.2.3 Bonded goods (if dutiable)**

The goods shall be sold "in bond" and the Buyer shall pay all duties thereon unless otherwise agreed.

**16.3 COST INSURANCE AND FREIGHT WITH ARRIVAL AND/OR DELIVERY ON IN STORE/ON TRUCK/ON RAILCAR/ON BARGE OPTION**

If Cost Insurance and Freight documents are presented all charges incurred are subject to Rule 16.1 and those, as applicable, contained under the FCC Sampling Rules and the FCC Weighing Rules.

**17. SAMPLING AND WEIGHING**

Sampling and Weighing shall be carried out in accordance with the FCC Sampling Rules and the FCC Weighing Rules, which form part of these FCC Contract Rules for Cocoa Beans pursuant to Rule 1.2 and which govern the Parties' contractual obligations and liabilities.

**18. INSURANCE AND RISK****18.1 MARINE INSURANCE**

If the Seller is required under the contract terms to insure the goods it shall be on the following terms unless otherwise agreed. The Seller shall insure the goods at the contract price plus 1.5% up to the Place of Final Delivery with First Class Underwriters and/or First Class Insurance Companies (for the purpose of this rule, First Class means a Standard & Poor's solvency rating of minimum BBB, or the equivalent thereof) who are domiciled or conducting business in the United Kingdom or France or who, for the purpose of any legal proceedings, accept a British or French domicile and provide an address for service of process in London or Paris, on either of the following terms:-

- (a) as per Institute Commodity Trades Clauses (A) without any deductible, Institute War Clauses (Commodity Trades) and Institute Strikes Clauses (Commodity Trades) current in England at the time of shipment.
- (b) as per "All Risks" cover of the French Marine Cargo Insurance Policy without any deductible and according to "Conventions Spéciales pour l'Assurance des Facultés (Marchandises) transportées par voie maritime contre les Risques de Guerre et Risques Assimilés" current in France at the time of shipment.

Always provided that the Seller has used reasonable endeavours to comply with the provisions of this Rule, he shall not be responsible for the solvency of the Underwriters or Insurance Companies.

Any increase above 0.05% in Seller's insurance premiums under the contract for war, riots, strike and civil commotion which may arise after the contract has been concluded as a result of any increase in risk in respect to the freight route or port of destination, may be passed on to the Buyer always provided that such increases are supported by appropriate documentary evidence.

In the event of total or partial loss of goods covered by this insurance or damages leading to abandonment to the insurers, the Seller shall not be bound to replace them.

**18.1.1 Loss and damage**

In the event of loss or damage to the goods, the Buyer shall be responsible for preserving and pursuing all rights of recovery against the Carrier, any Charterer or other person interested in the vessel and the insurers.



**18.1.2 Additional premium**

The Buyer may claim from the Seller any additional premium paid as a result of the vessel not meeting the specifications set out in Rule 8.6.1 and the Seller shall indemnify the Buyer in respect of any loss arising from any insurance on the goods which is avoided or diminished as a direct result of non-compliance with this definition.

**18.1.3 Letter of Guarantee for C&F or FOB contracts**

For sales on C&F or FOB (or similar) terms where the Seller is not obliged to insure the goods, the Buyer must provide the Seller immediately on receipt of the declaration of shipment required under Rule 9.1.1 with a copy of a certificate of insurance of the goods on terms equivalent to the terms of Rule 18.1. or, if so required by the Seller, a letter of guarantee, (to be countersigned by a first-class bank acceptable to the Seller— such acceptance not to be unreasonably withheld by the Seller), either confirming that insurance has been effected in relation to the goods on terms of Rule 18.1. or that payment will be made against presentation of documents in accordance with the terms of Rule 9.1.

If neither a copy of a certificate of insurance nor a letter of guarantee is provided by the Buyer, the Seller shall have the right to place such insurance at the Buyer's risk and expense.

**18.2 WAREHOUSE INSURANCE****18.2.1 Seller's risk**

The risk of loss or damage to goods sold on in store/on truck/on railcar/on barge terms shall pass to the Buyer either at 1500 hours (Buyer's local time) on the day of payment or on the prompt day, whichever is the earlier.

**18.2.2 Loss and damage**

In the event of the goods being damaged or destroyed while in warehouse at the risk of the Seller, the Seller shall have the option of:

- (a) replacing original Declaration of Tender provided always that the Buyer has consented to the same, notwithstanding Rule 9.2.1; or
- (b) replacing damaged or destroyed portion of the goods with goods of the same contract description; or
- (c) buying back the damaged or destroyed portion at a price mutually agreed with the Buyer with immediate settlement of any price difference or, failing mutual agreement, at a price to be decided by arbitration.

## **PART 3: NON-PERFORMANCE, DISPUTES AND ARBITRATION**

### **19. DEFAULT**

#### **19.1 SHIPMENT AND ARRIVAL OPTION TERMS**

With the exception of contracts sold “Afloat”, if the Buyer has not received the Declaration of Shipment by midnight local time on the 14th day following the expiry of the shipment period, the Buyer is entitled to declare the Seller to be in default within 2 business days thereof whereupon the contract shall be closed out.

If the Buyer does not declare the Seller to be in default within the above-mentioned 2 business days then the contract will be considered to remain in force with the shipment/arrival period extended until such time that the Buyer declares the Seller to be in default after having given the Seller 14 days written notice in which to send the declaration. Should the Buyer not receive a declaration by the end of the 14-day notice period then the date of default shall be considered to have occurred on the day following the 14-day notice period.

If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to Rule 5.10 of the FCC Arbitration and Appeal Rules.

If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

The following procedure shall be adopted:

- (a) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, the Seller shall be liable for the difference between that market price and contract price.
- (b) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods the Seller is not entitled to claim against the Buyer for any difference between the market price and the contract price.

#### **19.2 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE**

For sales on in store/on truck/on railcar/on barge terms or where the Seller has exercised his option to deliver on such terms, if the Buyer has not received the Declaration of Tender by the close of business on the last day of the delivery period the Buyer is entitled to declare the Seller to be in default whereupon the contract shall be closed out. If the Parties cannot agree upon the terms at which to settle the close out, then the dispute shall be referred to arbitration and will be subject to Rule 5.10. of the FCC Arbitration and Appeal Rules.

If the Buyer does not declare the Seller to be in default within two business days after a default situation has arisen then the contract will be considered to remain in force with the delivery time extended until such time that the Buyer declares the Seller to be in default after having given the Seller 14 days written notice in which to send the declaration. Should the Buyer not receive a declaration by the end of the 14-day notice period then the date of default shall be considered to have occurred on the day following the 14-day notice period.

If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

The following procedure shall be adopted:

- (a) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, the Seller shall be liable for the difference between that market price and contract price.
- (b) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods the Seller is not entitled to claim against the Buyer for any difference between the market price and the contract price.

**19.3 PASSING ON OF DECLARATIONS**

No Seller may be declared to be in default if the Seller can prove that the Declaration of Shipment or tender has been passed on to the Buyer in accordance with Rule 3.2.

**19.4 NON-PAYMENT**

In the event of non-payment at sight by the Buyer for documents complying with the conditions of the contract, the Seller may give the Buyer formal notice to pay within two business days and may claim loss of interest from the date payment is due to the date payment is received.

If payment is not made within that period, the Seller may freely dispose of the goods and declare the Buyer in default, whereupon the contract shall be closed out. If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to Rule 5.10. of the FCC Arbitration and Appeal Rules.

If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

The following procedure shall be adopted:

- (a) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods, the Buyer shall be liable for the difference between the market price and the contract price.
- (b) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods the Buyer is not entitled to claim against the Seller for any difference between the market price and the contract price.

**19.5 INTENTION OF NON-PERFORMANCE**

Notwithstanding any other provision in these Contract Rules for Cocoa Beans, if before the fulfilment of their respective contractual obligations either Party displays an intention not to perform or an inability to perform, the Counterparty may, by notice in writing to the Party, declare the Party to be in default and call for the contract to be closed out.

If the Party receiving the notice disputes its validity or if the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to Rule 5.10. of the FCC Arbitration and Appeal Rules. If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

The following procedure shall be adopted:

- (a) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, and the Party in default is the Seller, the Seller shall be liable to the Buyer for the difference between the market price and the contract price.
- (b) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods, and the Party in default is the Seller, the Seller is not entitled to claim against the Buyer for any difference between the market price and the contract price.
- (c) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods, and the Party in default is the Buyer, the Buyer shall be liable to the Seller for the difference between the market price and the contract price.
- (d) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, and the Party in default is the Buyer, the Buyer is not entitled to claim against the Seller for any difference between the market price and the contract price.

**20. ARBITRATION AND APPEAL**

Any dispute arising under the Contract Rules for Cocoa Beans must be referred to FCC Arbitration to be settled in accordance with the FCC Arbitration and Appeal Rules applicable on the date of the contract.

**20.1 QUALITY AND/OR CONDITION ARBITRATIONS**

Any dispute relating to quality and/or condition may be referred to arbitration.

The quality of cocoa beans is to be determined in accordance with the FCC Quality Rules using the arbitration sample(s) drawn in accordance with the FCC Sampling Rules:

For arbitrations referred to the FCC in accordance with Rule 1.3, at the time of making the claim, the Buyer shall send one arbitration sample prepared in accordance with Rule 3 of the FCC Sampling Rules to:

NYSE Liffe Grading Room  
c/o Spaces  
85 Stepney Way  
Whitechapel  
London E1 2EN

Samples must be marked for the attention of the Federation of Cocoa Commerce Ltd.

The arbitrators shall decide, at their absolute discretion, if the quality is inferior to that agreed in the contract:

If the Buyer has asked for an allowance, the arbitrators may award an amount as they consider appropriate;

If the Buyer has asked for replacement of the goods or an allowance, the arbitrators may either:

- (a) award that the goods be replaced within a period of time with all relevant losses and costs to be paid by the Seller; or
- (b) award that the Seller pay to the Buyer an allowance as they consider appropriate.

**20.1.1 Time Limits**

- (a) For contracts on arrival  
The Buyer shall notify the Seller as soon as possible of any claim for inferiority of quality and/or condition and, in any case, no later than 28 days from the Final Day of Landing at the Place of Final Delivery. Applications for arbitration must be submitted to the Federation no later than 28 days from the Final Day of Landing at the Place of Final Delivery.
- (b) For contracts on departure  
The Buyer shall notify the Seller as soon as possible of any claim for inferiority of quality and/or condition and, in any case, no later than 28 days from the Bill of Lading date. Applications for arbitration must be submitted to the Federation no later than 28 days from the Bill of Lading date or 28 days from the end of the shipment period, if shipment has not taken place.
- (c) For in store/on truck/on railcar/on barge contracts  
The Buyer shall notify the Seller as soon as possible of any claim for inferiority of quality and/or condition and, in any case, no later than 28 days from the prompt day. Applications for arbitration must be submitted to the Federation no later than 28 days from the Prompt Day.

**20.2 OTHER THAN QUALITY AND/OR CONDITION ARBITRATIONS****20.2.1 Time Limits**

- (a) For shipment contracts  
A Party shall notify the other Party of any claim within one year of the Final Day of Landing. Applications for arbitration must be submitted to the Federation within one year of the Final Day of Landing.

- (b) For shipment contracts where shipment has not taken place  
A Party shall notify the other Party of any claim within one year from the end of the contractual shipment period. Applications for arbitration must be submitted to the Federation within one year from the end of the shipment period.
- (c) For arrival contracts where shipment has not taken place  
A Party shall notify the other Party of any claim within one year from the end of the arrival period. Applications for arbitration must be submitted to the Federation within one year from the end of the arrival period.
- (d) For in store/on truck/on railcar/on barge contracts  
A Party shall notify the other Party of any claim within one year of the Prompt Day or one year after the last scheduled date of the Declaration of Tender if such has not taken place. Applications for arbitration must be submitted to the Federation within one year of the Prompt Day or one year after the last scheduled date of the Declaration of Tender if such has not taken place.

### **20.3 DISCRETION OF ARBITRATORS**

In the event of non-compliance with any of the provisions of Rules 20.1.1 and/or 20.2.1, and unless the arbitrators in their absolute discretion determine otherwise, claims shall be deemed to be waived and absolutely barred.

### **20.4 STRING ARBITRATION**

In the event that a Party claims that the contract forms part of a string of contracts which are subject to the FCC Rules and are in all relevant material points identical in terms, except as to price, any arbitration for quality and/or condition may be held between the first Seller and the last Buyer in the string as though they were the only contracting Parties, provided that every Party against whom arbitration is claimed and who in turn claims to be in the string, shall have supplied copies of his contract, the invoice and the Declaration of Shipment as well as any other relevant information required by the Arbitrators. Any arbitration under this Rule shall be conducted in the language of the contract agreed between the first Seller and first Buyer pursuant to Rule 1.3.

The Arbitrators shall at their absolute discretion decide whether such contracts constitute a string for the purpose of this Rule.

Any award so made by the Arbitrators shall, subject to the right of appeal available under the FCC Arbitration and Appeal Rules, be binding on all Parties in the string and may be enforced by any Party in the string against his immediate contracting Party as though a separate award had been made under each contract.

### **20.5 LOSS OF RIGHTS TO BE IN A STRING**

Either Party to the contract shall be entitled to draw sealed samples as aforesaid but by doing so he shall relinquish any rights to be in a string as specified in Rule 20.4. This provision does not apply to the first Seller or last Buyer in a string.

## **21. FORCE MAJEURE**

Failure of performance can be attributable to Force Majeure if, without any fault of the Party claiming to be excused ("the claimant"), an event occurs which is:

- (a) irresistible - the event must render performance impossible not merely more onerous, and
- (b) unforeseeable - if the event was foreseeable, steps must have been taken to prevent or avoid it, and
- (c) external - the event must be outside the claimant's sphere of responsibility.

### **21.1 EXTENDED SHIPMENT PERIOD**

Should shipment be prevented or delayed by a case of Force Majeure as described above in Rule 21, the time of shipment shall be extended by one month, provided the claimant notifies the other Party of the occurrence and cause of such event of Force Majeure promptly but not later than 8 days after the expiry of the shipment period, failing which no claim for Force Majeure shall be admissible. If required, the claimant must promptly produce satisfactory evidence justifying the delay or non-fulfilment as an event of Force Majeure.

## **21.2 EXTENDED DELIVERY PERIOD**

For contracts on in store/on truck/on railcar/on barge terms, should delivery be prevented or delayed by Force Majeure as described in Rule 21 above, the time of delivery shall be extended by one month, provided the claimant notifies the other Party of the occurrence and cause of such event of Force Majeure promptly but no later than 4 days before the expiry of the delivery period, failing which no claim for Force Majeure shall be admissible. If required, the claimant must promptly produce satisfactory evidence justifying the delay or non-fulfilment as an event of Force Majeure.

## **21.3 CLOSE-OUT**

If the shipment or delivery, as the case may be, is still prevented at the end of the extended period, the Parties shall agree on the market price for the contracted goods at the end of the extended period, to close out the contract. Irrespective of which Party claimed Force Majeure the following procedure shall be adopted:

- (a) If the close-out price is higher than the contract price of the goods, the Seller shall pay the Buyer the difference between the close-out price and the contract price.
- (b) If the close-out price is lower than the contract price of the goods, the Buyer shall pay the Seller the difference between the close-out price and the contract price.

Failing an amicable agreement on the existence of Force Majeure or the close out price, the matter may be referred to arbitration.

## **21.4 SHIPMENTS UNDER THE ARRIVAL OPTION**

Where the Seller has exercised the option to deliver the goods on arrival terms pursuant to Rule 8.4.3.1, a claim for Force Majeure can only be made in respect of events occurring after the exercise of the said option.

## **PART 4: COCOA BEAN INFESTATION**

The following Cocoa Bean Infestation Rules only apply for cocoa beans sold for shipment with quality on arrival and in store/on truck/on railcar/on barge terms.

### **22. COCOA BEAN INFESTATION**

#### **22.1 IN STORE/ON TRUCK/ON RAILCAR/ON BARGE SALES BY SAMPLE**

The Buyer shall have no claim for infestation if he has accepted the sample drawn pursuant to the FCC Sampling Rules.

#### **22.2 AGREEMENT ON PRESENCE OF INFESTATION**

If, at the time of weighing and/or sampling, pursuant to the FCC Weighing Rules and the FCC Sampling Rules, the Buyer considers that live infestation is present in the goods, the Buyer shall invite the Seller or his Supervisor to agree to the same, and if the Seller so agrees, the Buyer may proceed with fumigation of the goods.

#### **22.3 FAILURE TO AGREE ON INFESTATION**

If the Seller or his Supervisor disputes the presence of live infestation in the goods, the Buyer shall refer the matter to a local official body (e.g. Environmental Health) or to a competent independent surveyor whose decision on the presence or absence of live infestation shall be final and binding on both Parties.

#### **22.4 SELLER FAILS TO APPOINT A SUPERVISOR**

If the Seller fails to appoint a Supervisor to inspect the goods after having been given notice to do so by the Buyer, then the decision, in writing, of the Buyer or his representative as to the presence or absence of live infestation shall be final and binding on the Seller.

#### **22.5 COSTS**

If pursuant to any of the above Rules, goods are agreed or deemed to be infested, the Seller shall reimburse the Buyer for all necessarily incurred costs related to fumigation of the goods and for all necessarily incurred additional costs/expenses which would not have been incurred if live infestation had not been present. The Buyer shall undertake to do all that is reasonable to protect the Seller's rights of redress against third Parties arising out of the infestation of the goods.

## PART 5: SPECIAL CLAUSES

The following special clauses are not applicable unless expressly incorporated in the contract.

### 23. GHANA FREIGHT RATES

The price of this contract is based on the freight rate to the UK as published by the Cocoa Marketing Co. (Ghana) Ltd for the cocoa season, excluding any bunker surcharge. Any bunker surcharge or subsequent variation in the basis freight during the said season will be for the Buyer's account, as will any premium charge or discount allowed by the Cocoa Marketing Co. (Ghana) Ltd, for ports other than those in the UK.

### 24. OPTIONAL QUALITY CLAUSES

The optional quality clauses set out in the FCC Quality Rules are not applicable unless expressly incorporated in the contract.

Where applicable, an independent analyst must be mutually agreed upon by the Buyer and Seller. If the Parties fail to agree on an independent analyst, the dispute may be referred to Arbitration.



**SHORT FORM CONTRACT**

COMPANY'S REGISTERED NAME: .....

ADDRESS: .....

FULL NAME AND ADDRESS OF SELLER/BUYER:  
.....  
.....

This contract is subject to the FCC Contract Rules for Cocoa Beans (which rules shall be deemed to incorporate the FCC Quality Rules, the FCC Sampling Rules, the FCC Weighing Rules and the FCC Arbitration and Appeal Rules) in force on the date of this contract, as though such rules had been set out in full in this contract. Any dispute arising out of or in connection with this contract shall be referred to arbitration in accordance with the FCC Arbitration and Appeal Rules in force on the date of this contract

**SPECIFY CHOICE OF ARBITRATION LANGUAGE:**☐ ENGLISH OR ☐ FRENCH*(If the choice of arbitration language is not specified then proceedings shall be conducted in English)***SHORT FORM CONTRACT**

DATE : .....

CONTRACT NO. : .....

WE HAVE THIS DAY  
BOUGHT FROM/SOLD TO YOU : .....

QUANTITY : .....

DESCRIPTION : .....

QUALITY ON ARRIVAL/  
STORAGE LOCATION : .....SHIPMENT/ARRIVAL/  
STORAGE LOCATION : .....DESTINATION/  
STORAGE LOCATION : .....

PRICE : .....

TERMS : .....

PAYMENT : .....

INSURANCE TO BE COVERED BY : .....

WEIGHTS : .....

SPECIAL CONDITIONS : .....

SIGNATURES : .....

SELLER : .....

BUYER : .....