



**Contract Rules for Liquid Cocoa Products by  
Tankers (Road and Rail) or  
ISO Tank Containers on Buyer's Call\***  
(Applicable to contracts concluded on or after 01 June 2006)

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# **CONTRACT RULES FOR LIQUID COCOA PRODUCTS BY TANKERS (ROAD AND RAIL) OR ISO TANK CONTAINERS ON BUYER'S CALL**

## **PART 1: GENERAL CONDITIONS**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JUNE 2006*

Unless otherwise stated all the following Contract Rules, which the Parties declare they are familiar with and accept, shall be deemed to be incorporated in and form part of the contract.

Only the English and French versions of these Contract Rules are authentic.

The meaning of the English and French versions of these Contract Rules shall prevail in the event that the meaning of the German translation or any part thereof shall differ therefrom.

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

#### **1.1 Law**

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

The following international conventions 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 FCC Arbitration**

The Federation of Cocoa Commerce Ltd (hereinafter referred to as "FCC") provides Parties with a choice of English or French Arbitration services for the resolution of any dispute arising out of contracts which are subject to these Contract Rules. English Arbitration services are provided in accordance with Rule 1.2.1 (hereinafter referred to as "FCC London") and French Arbitration services are provided in accordance with Rule 1.2.2 (hereinafter referred to as "Chambre Arbitrale of the FCC"). English Arbitration is for disputes referred to the FCC London and French Arbitration is for disputes referred to the Chambre Arbitrale of the FCC.

Parties should agree and specify in the contract their choice of arbitration. In the event that Parties do not specify or agree upon the choice of arbitration or, in the event that there is a dispute as to whether a contract has been concluded then disputes shall be referred to FCC London, unless both Parties agree to refer the dispute to the Chambre Arbitrale of the FCC.

##### **1.2.1 Arbitration under the FCC London**

The Arbitration and Appeal Rules of the FCC London are deemed to be incorporated into contracts where the Parties have chosen English Arbitration for dispute resolution or have not agreed upon the choice of arbitration.

Any dispute arising out of a contract submitted to FCC London shall be settled by arbitration in accordance with the laws of England and the provisions of the Arbitration Act 1996 or of any other

statutory modification or re-enactment thereof. Arbitration and Appeal proceedings shall be conducted by the FCC London on the basis of the English version of these Contract Rules and **Sections 31-38 of the Arbitration and Appeal Rules of the FCC**. The seat of the arbitration proceedings is England.

### 1.2.2 Arbitration under the Chambre Arbitrale of the FCC

The Arbitration and Appeal Rules of the Chambre Arbitrale of the FCC are deemed to be incorporated into contracts where the Parties have chosen French Arbitration for dispute resolution.

Any dispute arising out of a contract submitted to the Chambre Arbitrale of the FCC shall be settled by arbitration, with regard to procedure, in accordance with the French Nouveau Code de Procédure Civile (hereinafter referred to as the “NCPC”). Arbitration proceedings shall be conducted by the Chambre Arbitrale on the basis of the French version of these Contract Rules and **Section 39 of the Arbitration and Appeal Rules of the FCC**. The seat of the arbitration proceedings is France. The contract shall be subject to English law in accordance with Rule 1.1.

## 2. GENERAL DEFINITIONS

*These definitions are only for the purpose of the “Contract rules for liquid cocoa products by tankers (road and rail) or ISO tank containers on Buyer’s call”.*

Unless otherwise stipulated, the following shall apply:

### 2.1 Period

Means a day or a series of days and runs without interruption. The first day of the period is the one following the day on which the event occurred.

#### 2.1.1 Day or calendar day

Means a period of 24 hours, midnight to midnight.

#### 2.1.2 Non-business day

Means Saturdays, Sundays and any public holiday in 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. 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.

#### 2.1.3 Business day

Means any day other than a non-business day.

### 2.2 Party

Means a Buyer or a Seller but not a Broker.

### 2.3 Collection Contract

Means a contract in which the Seller either:

- (a) makes the product available to the Buyer at his premises; or
- (b) is called upon to deliver the product to a carrier appointed by the Buyer; or
- (c) has to contract for carriage but without assuming the risk of loss or damage to the product or additional costs due to events occurring after dispatch.

### 2.4 Delivered Contract

Means a contract in which the Seller has to bear all costs and risks in bringing the product to the place of destination.

**2.5 Call-Off Notice**

Means a request by the Buyer for a delivery/collection date.

**3. TRANSMISSION OF NOTICES****3.1 Mode**

All notices required to be served on the Parties pursuant to this 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**

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. RETENTION OF TITLE**

Notwithstanding the passing of risk in the product to the Buyer in accordance with the other provisions of the contract, the product shall remain the sole and absolute property of the Seller as legal and beneficial owner until such time as the Buyer has paid the full and agreed price in respect of any specific delivery / collection.

Until such time as property in the product shall have passed, the Buyer or any person deriving title therefrom shall be responsible for the safe keeping of such product and shall indemnify the Seller in respect of any loss arising out of failure to take all appropriate steps to safeguard them.

In the event of Buyer's failure to make due payment for the product in accordance with the terms of the contract or as may otherwise be agreed in writing the Seller shall be entitled to repossess the product.

**6. INSOLVENCY****6.1 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) the counterparty may cause the contract to be closed out by notice in writing to that effect, provided that the ability of the other Party to fulfil the contract shall be materially adversely affected. In such circumstances the contract shall be closed out at the market

closing values of the business day following the receipt of the notice by the Party to whom the notice is sent. These values shall be fixed by arbitration in the absence of agreement on the same.

## **6.2 Balance of accounts for insolvency**

If the contract is closed out pursuant to the Rule 6.1 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 contract 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.

## **6.3 Unenforceability**

If this Rule 6, or any part, is prohibited by law or judged by a court to be unlawful, void or unenforceable then this Rule 6 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.

## PART 2: EXECUTION OF CONTRACT

### 7. GENERAL

#### 7.1 Separate Contracts

Each delivery / collection shall be enforced as a separate contract once the delivery / collection date has been confirmed in accordance with Rule 9.2.

#### 7.2 Quality and Condition

The product supplied is warranted to be of merchantable quality, in good condition and to comply with all relevant statutory requirements or regulations relating to the sale of foodstuffs in the country of delivery. On a Collection Contract, quality and condition shall be final on departure. On a Delivered Contract, quality shall be final on departure; condition shall be final upon arrival.

#### 7.3 Type / Grade / Brand Option Contracts

The Seller may exercise his option as to which type(s) / grade(s) / brand(s) will be delivered against this contract or part thereof provided he advises the Buyer in writing prior to commencement of collection / delivery period the name(s) and quantity (ies) of the type(s) / grade(s) / brand(s) he will deliver.

The Buyer must exercise his option for each collection/delivery latest at the time of giving the Call-off Notice.

### 8. DELIVERY

#### 8.1 Delivery terms

ICC INCOTERMS current at the date of the contract to apply, unless expressly agreed otherwise in writing.

#### 8.2 Quantity

The Seller may deliver 3% more or less than the original contract quantity divided by the number of partial deliveries.

The above tolerance shall not apply whenever a contract is closed out by payment of differences between purchase and sale prices.

#### 8.3 Transport

##### 8.3.1 Transport requirements

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

##### 8.3.2 Suitability for foodstuffs

On a delivered contract, the Seller is responsible for ensuring that all tankers and tank containers used for this purpose are dedicated to foodstuffs and comply with the relevant requirements relating to foodstuffs of any competent authority in the countries of collection and delivery.

On a collection contract the Buyer is responsible for ensuring that all tankers and tank containers used for this purpose are dedicated to foodstuffs and comply with the relevant requirements relating to foodstuffs of any competent authority in the countries of collection and delivery.

However, the Seller may refuse to load any tanker or tank container which he reasonably believes fails so to comply, unless and until the Seller receives from the Buyer a written letter of indemnity by which the



Buyer agrees to indemnify the Seller in respect of all and any liabilities arising from Buyer's instructions to load under such circumstances. For avoidance of doubt, the Seller is under no obligation to inspect the tanker or tank container as the case may be.

### 8.3.3. Heating

Acceptable delivery temperatures shall be agreed between the Buyer and the Seller.

In the absence of such agreement on a delivered contract, the Seller is responsible for ensuring that the product arrives at the Buyer's point of discharge at a temperature suitable for pumping. In the event that the product does not so arrive any costs incurred in bringing the product to a pumpable condition shall be for the Seller's account.

## 9. CALL - OFFS

### 9.1 Deliveries / Collections

Where the contract quantity is delivered by way of more than one delivery, then the quantity of each delivery shall be such that the contract quantity is fairly evenly spread over the delivery period, unless otherwise agreed in writing.

### 9.2 Notice Period

Provided the Seller receives a request for a delivery/collection date (the "Call-Off Notice") at least 21 days in advance, the Seller shall accept the requested delivery/collection date with a tolerance of one Business day before or after the requested date, unless in their normal course of business both Parties are operating on Non- Business days. The Seller shall confirm the accepted date in writing within two business days. Once the date is confirmed in writing by the Seller, it is fixed subject to any amendment agreed in writing.

For any notice period of less than 21 days, delivery/collection dates shall be by mutual agreement.

If there is a contract balance for which the Buyer has given a Call-Off Notice only during the last 10 days of the contract delivery period, the Seller has the right to extend the delivery period by up to 10 days and charge appropriate costs. If the Seller does not exercise this right, the Buyer and the Seller shall agree on a new delivery period at an appropriate cost.

For any contract in which the Seller has to contract for carriage and where the normal transit time exceeds 2 days, the notice period shall be extended, and the fixed delivery date shall be extended into a period of more than 1 day, as agreed between the Parties.

### 9.3. Delays of less than 24 hours

Where delivery, arrival, loading or unloading is delayed by less than 24 hours, neither Party has the right to put the other Party in default for having missed the fixed date/period but the matter may be settled between the Parties by the recovery of tanker or tank container demurrage incurred as a result of the delay, in accordance with Rule 15.

## 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 ratio against either:

- (a) i. the applicable Euronext.liffe Cocoa Futures Contract delivery month; or
- ii. the applicable New York Board of Trade ("NYBOT") Cocoa Futures Contract delivery month

- (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 ratio applied 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 Pound Sterling per Metric Tonne for contracts fixed against Euronext.liffe, or US Dollars per Metric Tonne for contracts fixed against NYBOT.

## **10.3 Time of price fixation**

### **10.3.1 Price fixation prior to loading**

In all cases price fixation must occur prior to the loading of the product.

### **10.3.2 Price fixation at Buyer's or Seller's Option**

The Party holding the price fixation option shall request fixation of the contract 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 Euronext.liffe; or
- (b) first notice day, for contracts fixed against NYBOT;

all dates inclusive, in accordance with Rule 10.2 and the procedures in force for the relevant Cocoa Futures Contract.

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

Should at any time Parties fail to mutually agree, price fixation shall be deferred until such time as agreement is reached. However last times 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 tanker or tank container loads or multiples thereof, except when pricing the balance of the total contract quantity.

## **10.5 Closure of either the Euronext.liffe or NYBOT Cocoa futures contracts**

In the event of the closure of the Euronext.liffe or NYBOT 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 product 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 delivery terms at the date of sale, excluding VAT.

The price in the contract is fixed and is not subject to alteration except that the Seller reserves the right to increase the price to reflect any increase in cost to the Seller due to any change in law, regulation, tax, duty or other payment imposed upon the product, by the European Union or by any of the member states of the European Union or by the country where delivery shall be made in so far as such change is introduced or increased between the date of sale and the date of delivery.

In any case, Rule 15 shall apply.

## **12. DOCUMENTS**

The Seller shall provide all necessary document(s) and further agreed document(s) if any. All expenses connected therewith shall be for the Seller's account. The Buyer shall furnish the Seller with all necessary details enabling the Seller to provide the documents in due time.

Should the Seller fail to present the agreed document(s), he will be liable for:

- (a) any extra import duty; and/or
- (b) any tanker or tank container demurrage

incurred and paid by the Buyer as a result of such failure.

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

### **13.1 Weight Basis**

Product shall be invoiced on the basis of Seller's loaded weights. Each delivery shall be supported by a weight note from the Weighbridge in accordance with Rule 16.1.

### **13.2 Place**

All documents required under the contract shall be presented to the Buyer at the place(s) 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.

### **13.3 Payment**

Payment shall be net cash for 100 % of the invoice, by Telegraphic Transfer or equivalent rapid transfer of funds with payment upon receipt of the invoice, unless otherwise agreed.

### **13.4 Non – payment**

If there is an unreasonable delay by the Buyer in making full payment in accordance with Rule 13.3, the Seller may exercise any one or more of the following rights:

- (a) to charge interest in accordance with Rule 14;
- (b) with prior notice, to suspend any further deliveries until payment is made;
- (c) with prior notice, to demand payment in advance before any further deliveries are made.

These rights are not all-inclusive and are without prejudice to all other rights that the Seller may have.

If, at any time when the Seller is entitled to exercise his rights under this Rule, there exist any additional contracts between the same Parties, which incorporate the terms of this Rule, the Seller shall have the same rights under any or all such additional contracts.

## **14. 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.

## **15. CHARGES AND COSTS**

Any charge or cost made by one Party to the other must be accompanied by the appropriate evidence of the charge or cost incurred.

## **16. WEIGHING, SAMPLING AND SUPERVISION**

### **16.1 Weighing and Supervision**

Weighing shall be carried out on the Weighbridge at or nearest to the place of loading. The Weighbridge used must have a current recognised certificate issued by a competent Authority.

The same Weighbridge shall be used for gross and tare weighing. Separate front and back axle weighing not permitted. The Buyer shall be entitled to be represented at weighing at his expense.

### **16.2 Charges**

All charges incurred in weighing at the place of loading shall be paid by the Seller.

### **16.3 Sampling and supervision**

On either a collection or a delivered contract, a representative sample, hereafter called “quality sample”, of not less than 250 grams shall be drawn, sealed and labelled by the Seller at time of loading and shall be final in the event of any claim or dispute on quality. The Buyer shall be entitled to be represented at sampling at his expense, failing which the sample drawn by the Seller shall be final.

On a delivered contract a representative sample, hereafter called “condition sample”, of not less than 250 grams shall be drawn, sealed and labelled by the Buyer from the tanker or tank container at time of unloading and shall be final in the event of any claim or dispute on condition. The Seller shall be entitled to be represented at sampling at the place of delivery at his expense, failing which the sample drawn by the Buyer shall be final.

### **16.4 Sampling, labelling and storage of samples**

Sampling instruments and sample containers shall be clean, dry and made of suitable materials which do not affect the product.

The containers shall be almost, but not quite, filled: a limited air space shall be allowed for expansion.

The container shall be properly closed, sealed and labelled.

Samples shall be stored in cool, dry and hygienic conditions and away from strong light.

## **PART 3: CLAIMS, DISPUTES AND ARBITRATION**

### **17. CLAIMS**

#### **17.1 Quality and/or condition**

On a Collection contract, product must be examined and signed for at the time of loading. Any apparent loss or damages shall be noted by the driver on the usual transport document.

On a Delivered contract, product must be examined and signed for at the time of delivery. Any apparent loss or damages shall be noted by the Buyer on the usual transport document.

For any apparent defects: claims must be made by the end of the business day following the actual arrival at the Buyer's place of discharge.

For any other defects: claims must be made within 8 business days of the actual arrival at the Buyer's place of discharge.

In all cases, claims shall be confirmed in writing within 5 business days of the claim being made.

In any case, the Buyer has the right to refuse to discharge a tanker or tank container if he considers the product is not within the agreed specifications or, on a delivered contract only, out of condition. In case this right is exercised, the Buyer shall inform the Seller immediately. The Seller shall replace the product within a reasonable period of time. In the event of a dispute on quality and/or condition, and failing settlement, the quality or condition sample (whichever is relevant) shall be sent with due dispatch to an independent laboratory, whose analysis results shall be final. This laboratory shall be chosen by mutual agreement.

If the refusal is legitimate, all additional transport, storage, handling and laboratory costs related to the rejection and replacement of the product shall be borne by the Seller, any other loss, damages, charges or expenses being excluded. If not, all additional transport, storage, handling and laboratory costs related to the rejection and replacement of the product shall be borne by the Buyer, any other loss, damages, charges or expenses being excluded.

If Parties fail to agree on a laboratory or to settle on the basis of the analysis results of the nominated laboratory, the claimant may apply for arbitration as per Rule 20.1

#### **17.2 Short weight**

Weights shall be final at time and place of loading, unless the Buyer makes a claim for excessive short weight.

Claims must be made in writing within 5 business days of the arrival of the product at the Buyer's place of discharge.

Any such claim must be supported by a weight note from a Weighbridge at or nearest to the place of unloading.

The Weighbridge used must have a current recognised certificate issued by a competent Authority.

The same Weighbridge shall be used for gross and tare weighing. Separate front and back axle weighing not permitted.

All charges incurred in weighing at the place of delivery shall be paid by the Buyer. The Seller shall be entitled to be represented at weighing at his expense.

The claim must be noted by the Buyer on the usual transport document.

Notwithstanding the above, it shall be the Buyer's responsibility to ensure that the tanker or tank container is completely emptied at the place of discharge.

## **18. FORCE MAJEURE**

### **18.1 Force Majeure**

Should the Seller be prevented from making delivery, or the Buyer from taking delivery of the product sold, by Acts of God, war, strikes, riots, civil commotion, lockouts, fires, interruption of power, sabotage, machinery breakdown or any other event comprehended by the term Force Majeure, the time for physical delivery shall be suspended for the period during which the Seller is prevented from making delivery or the Buyer is prevented from taking delivery as the case may be and extended for 15 days thereafter. Should the period of suspension exist for a period of 60 days or more beyond the contract period, the contract or any unfulfilled part thereof so affected shall be closed out as per Rule 18.2.

The Party invoking this clause shall notify the other Party of such fact forthwith and shall:

- (a) furnish proof of prevention if required by the other Party;
- (b) demonstrate that the event was irresistible so that the event renders the performance impossible;
- (c) either demonstrate the event was unforeseeable or if the event was foreseeable, demonstrate that reasonable steps had been taken to prevent or avoid it.

### **18.2 Close-out for Force Majeure**

If collection/delivery is still prevented at the end of the extended period, the Parties shall agree a price, based on the market price 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 product, 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 product, 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.

## **19. DEFAULT AND/OR INTENTION OF NON - PERFORMANCE**

### **19.1 Payment**

Notwithstanding all provisions set out in Rule 13.4, the Seller has the right to put the Buyer in default for the delivery (ies) made but not paid for.

### **19.2 Delivery**

- (a) if the Buyer fails to call off the contractually agreed quantity(ies) or any part thereof in accordance with Rule 9.2 (subject to Rule 8.2), the Seller may declare the Buyer to be in default on the first business day after the end of the contract delivery period;
- (b) if the Seller fails to agree dates for delivery of the contractually agreed quantity(ies) or any part thereof in accordance with Rule 9.2 (subject to Rule 8.2), the Buyer may declare the Seller to be in default on the first business day after the end of the contract delivery period or the extended contract delivery period as the case may be;
- (c) where delivery, arrival, loading or unloading is delayed by more than 24 hours beyond the fixed date/period of delivery, or is not made at all, the Party not at fault is entitled to put the other Party in default for that delivery only, which will then be closed out following the procedure set out in Rule 19.3.

**19.3 Close out for non-fulfilment**

In default of fulfilment of the contract by either Party the other Party at his discretion shall, after giving notice, have the right to declare the contract balance to be closed out basis the market price on the day of default. In case of any dispute over the date of default or on the market price on that day, the matter shall be referred to Arbitration. The following procedure shall be adopted:

- (a) if the Seller is in default and if at the date of default the market price of the product to be delivered is higher than the contract price, the Seller shall be charged with the difference between that market price and contract price.
- (b) if the Buyer is in default and if at the date of default the market price of the product to be delivered is lower than the contract price, the Buyer shall be charged with the difference between that market price and contract price.

**19.4 Intention of non-performance**

Notwithstanding any other provision in these Rules, if before the fulfilment of the contract either Party displays an intention not to perform or an inability to perform, the counterparty may, by notice in writing to the Party, call for the contract to be closed out.

**20. ARBITRATION AND APPEAL**

*Any dispute arising out of this contract shall be settled in accordance with the Arbitration and Appeal Rules of the FCC London or the Chambre Arbitrale of the FCC applicable on the date of the contract.*

**20.1 Claim for arbitration**

A Party claiming for arbitration shall notify the other Party and the FCC of the claim in accordance with the FCC Arbitration and Appeal Rules.

**20.1.1 For quality and/or condition**

The claim shall be made within 28 days after unloading. The arbitration shall commence not later than 56 days after the samples have been taken.

**20.1.2 For other than quality and/or condition**

The claim shall be made within the time limits stipulated in the FCC Arbitration and Appeal Rules applicable to the contract pursuant to Rule 1.2.1., or to Rule 1.2.2., or in the event of no such time limit being stipulated then within one year after the last delivery under the contract or one year after the last day of the contracted delivery period if such has not taken place.

**20.2 Discretion of arbitrators**

In the event of non-compliance with any of the provisions of the Rule 20.1, claims shall be deemed to be waived and absolutely barred, unless the arbitrators shall, in their absolute discretion, otherwise determine.

**20.3 String arbitration**

In the event that a Party claims that the contract forms part of a string of contracts which are subject to these Contract Rules and are in all relevant material points identical in terms including the choice of arbitration services pursuant to Rule 1.2 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 his contract, the invoice and, when appropriate, confirmation of the Call-off and the proof of collection/delivery, as well as any other relevant information required by the Arbitrators.

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

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



## CP 1 SHORT FORM CONTRACT

SELLER: .....

ADDRESS: .....

BUYER: .....

ADDRESS: .....

All the terms and conditions of the **FCC CONTRACT RULES FOR LIQUID COCOA PRODUCTS BY TANKERS (ROAD AND RAIL) OR ISO TANK CONTAINERS ON BUYER'S CALL** in force on the date of the contract shall be deemed to be incorporated in and form part of this contract. Any dispute arising out of the contract shall be referred to Arbitration under the Arbitration and Appeal Rules of the FCC London or under the Arbitration and Appeal Rules of the Chambre Arbitrale of the FCC, in force on the date of the contract as agreed between the Parties.

**SPECIFY CHOICE OF ARBITRATION SERVICE:**☐ **FCC LONDON** OR ☐ **CHAMBRE ARBITRALE OF THE FCC***(If the choice of arbitration is not specified then disputes shall be referred to FCC London)*

DATE : .....

CONTRACT NO : .....

QUANTITY: : .....

DESCRIPTION : .....

PRODUCT : .....

PERIOD OF COLLECTION / DELIVERY : .....

PRICE : .....

TERMS : .....

PAYMENT CONDITIONS : .....

SPECIAL CONDITIONS : .....

SIGNATURES : .....

SELLER

BUYER