



**Arbitration and Appeal Rules**  
**(Applicable to contracts concluded**  
**on or after 01 June 2006)**

**FEDERATION OF COCOA COMMERCE LTD**  
**FEDERATION DU COMMERCE DES CACAOS**  
**Cannon Bridge House**  
**1 Cousin Lane**  
**London EC4R 3XX**

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## **ARBITRATION/APPEAL RULES**

**The Rules in Sections 31-38 apply to and govern arbitration under the FCC London.**

### **SECTION 31 – GENERAL RULES**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **31.1. – 31.6. PRELIMINARY RULES APPLICABLE TO ARBITRATION/APPEAL**

- 31.1. The objective of the FCC London is the prompt, economical, fair and confidential resolution, by a tribunal, of disputes arising out of transactions in cocoa beans and/or cocoa products concluded under the Market Rules of the FCC.
- 31.2. Any dispute concerning a contract which is subject to the Market Rules of the FCC may be referred to the FCC London. The parties may, either pursuant to an arbitration clause or by mutual agreement, submit any other dispute to the FCC London.
- 31.3. The Seat of the Arbitration shall be England and Wales and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof for the time being in force, shall apply to every Arbitration held under these Rules save insofar as such provisions are modified by, or are inconsistent with, these Rules.
- 31.4. No party to any contract nor any person claiming through or under such party shall bring any action or other legal proceedings against the other party in respect of any such dispute until such dispute shall first have been heard and determined by the Arbitrators or Board of Appeal in accordance with the Rules in force on the date when Arbitration is claimed.
- 31.5. All Arbitrators and members of Boards of Appeal (including employees or agents of the same), together with the Federation and its employees shall not be liable for anything done or omitted in the discharge or purported discharge of their functions under the terms of these Rules unless the act or omission is shown to have been in bad faith.
- 31.6. An arbitration or appeal once lodged with the Federation in accordance with these Rules may not be further pursued by the Claimant if any part of the fees, costs and expenses payable to the Federation relating to an earlier claim and/or award involving the Claimant has not been paid.

#### **31.7 – 31.10. DUTIES AND COMPLIANCE**

- 31.7. All Arbitrators and members of Boards of Appeal shall:
- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of its opponent; and

- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined pursuant to these Rules.

In exercising their judicial functions no Arbitrator or member of a Board of Appeal shall act as a representative of any party to the arbitration or appeal.

31.8. The parties to an Arbitration or an Appeal shall do all things necessary for the proper and expeditious conduct of those proceedings including:

- (a) complying without delay with any determination, order or direction of the Arbitrators or Board of Appeal as to procedural or evidential matters; and
- (b) where appropriate, taking without delay any necessary steps to obtain a decision of the Court on a preliminary question of jurisdiction or law.

31.9. Each party engaging in an Arbitration pursuant to these Rules, whether or not a member of the Federation, is deemed thereby to agree to abide by these Rules and by any direction, order or award of the Arbitrators or Board of Appeal.

31.10. Each party, whether a member of the Federation or not, shall be liable to the Federation (jointly and severally with the other parties to the Arbitration) for all fees, costs and expenses incurred in connection with the Arbitration which said fees and expenses shall, upon notification by the Federation under the provisions of Rules 35.4 and 38.25 become a debt due to the Federation.

#### **31.11. DEFINITIONS**

In these Rules:

- (a) “Claimant” means a party claiming Arbitration in accordance with these Rules and “Respondent” means the party against whom that claim is made;
- (b) “Council” means the Council of the Federation;
- (c) “Court” means the English High Court subject to the provisions of Section 105 of the Arbitration Act 1996;
- (d) “Federation” means the Federation of Cocoa Commerce Limited and any agent, servant or director thereof;
- (e) “Market Rules” means those of the Federation’s contract rules which are incorporated into the contract;
- (f) “Officers” means the Chairman, Vice Chairman, Hon Treasurer and the Secretary of the Federation;
- (g) “Secretary” means the Secretary of the Federation;
- (h) “Senior Arbitrator” means the person appointed by the Council to give general guidance to the Arbitrators and to the Secretary in arbitration and appeal matters;
- (i) “the/these Rules” means the Arbitration and Appeal Rules contained in Sections 31 to 38.

#### **31.12. NOTICES**

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 these 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.

**31.13. DISCRETION TO EXTEND TIME LIMITS**

Whenever it shall appear to the Council that by reason of a state of war, war-like operation, strike, lock-out, riot or civil commotion, parties to contracts which have been or may hereafter be made incorporating these Rules, have been or may be prevented from exercising any of their rights within the limits prescribed by these Rules, the Council shall have, and shall be deemed always to have had, the power to extend any of such time limits at any time and from time to time and to any extent necessary to enable justice to be done between the parties. Such extension may be made generally or with reference to any particular dispute.

In the event of the Council deciding to extend any of such time limits with reference to any particular dispute, notice thereof shall be given by the Council to such of the parties to the contract as can be contacted.

**31.14. SAMPLES**

All samples received by the Federation for Arbitration, testing and/or other purposes shall become and be the absolute property of the Federation.

The Federation will retain such samples pending determination of such Arbitration and/or Appeal or completion of such tests. However, the Federation agrees to receive such samples only on terms that neither it nor its servants nor agents shall be liable for any loss or damage resulting from or connected with any damage or loss or destruction of any such sample howsoever caused.

NB All samples must be marked "samples for the attention of the Federation of Cocoa Commerce Limited" and shall be sent to:-

Euronext.liffe Grading Room

c/o Spaces

85 Stepney Way

Whitechapel

London E1 2EN



## **ARBITRATION/APPEAL RULES**

### **SECTION 32 – PROCEDURE/PRELIMINARY**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **32.1. PLACE OF HEARING**

All hearings shall take place in London unless the Arbitrators or the Board of Appeal shall decide otherwise.

#### **32.2. – 32.9. FEDERATION'S FEES AND DEPOSITS ON ACCOUNT OF ARBITRATION FEES**

32.2. Arbitrators and Board of Appeal members shall be entitled to charge fees as determined by the Council from time to time and published by the Federation.

An Arbitrator or Board of Appeal member travelling internationally to attend an Arbitration or Appeal hearing at such place as may be fixed by the Arbitrators or Board of Appeal pursuant to Rule 32.1 may charge an additional fee as determined by the Council from time to time for each such attendance.

32.3. Arbitrators and Board of Appeal members shall, at their discretion, be entitled to vary the fees referred to in Rule 32.2 in Arbitration or Appeals which they consider, in their absolute discretion, to be of extraordinary complexity and/or value and/or tonnage.

32.4. Where the Arbitrators or Board of Appeal consider it appropriate, in their absolute discretion, to obtain legal advice from the Federation's solicitors on any matter arising from an Arbitration or Appeal or require legal representation at any hearing, the Arbitrators or Board of Appeal shall be entitled to charge to the parties the fees thus incurred in addition to the fees charged under Rule 32.2 or 32.3.

32.5. For each application for Arbitration or Appeal, the Federation shall charge a non-refundable administration fee for members and non-members as determined by the Council from time to time and published by the Federation. In addition to the administration fee, the Federation shall be entitled to charge any extraordinary administrative or legal expenses which may be incurred.

32.6. When the Claimant is a non-member of the Federation he shall, when applying to the Federation for commencement of arbitration:

- (a) pay the fee due to the Federation under Rule 32.5 and
- (b) deposit with the Federation such sum of money as the Federation shall, in its absolute discretion, consider appropriate as security for the estimated fees, costs and expenses in connection with the Arbitration or Appeal.

32.7. At any time after receipt of an application for Arbitration or Appeal, the Federation acting on behalf of the Arbitrators or Board of Appeal, may demand that sums of money be deposited by any party to the dispute with the Federation by way of deposit against any fees, costs or expenses which the Federation or the Arbitrators may incur in connection with the arbitration or appeal. Failure by any party to pay any such sums shall entitle the Arbitrators to suspend or discontinue the progress of any hearing of the dispute until such sums are paid.

32.8. The Federation shall not be liable to pay any interest which may be deemed to have accrued to the Federation upon deposits held by the Federation.

32.9. The Arbitrators or Board of Appeal shall determine how the fees referred to in Rules 32.2 to 32.6 shall be charged between the parties to the contract

**32.10. PANEL OF ARBITRATION AND PANEL OF APPEAL**

As soon as possible after the Annual General Meeting of the Federation the Council shall select Panels of Voting Member's Representatives of the Federation (in these rules referred to as "Panels") to act as Arbitrators in disputes until Panels are appointed after the next Annual General Meeting. A Representative may be appointed to serve on more than one Panel.

The Council may from time to time and at any time appoint additional persons to serve on any Panel. Such appointments shall be subject to an annual review by the Council. The Secretary shall maintain a list of the Panels and the said list shall be exhibited in the offices of the Federation and on the Federation's website.

## **ARBITRATION/APPEAL RULES**

### **SECTION 33 – PROCEDURE FOR CLAIMING ARBITRATION**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **33.1. TIME LIMITS**

The Claimant shall notify the Respondent of an arbitration claim and submit his application for arbitration to the Secretary of the Federation within the time limits stipulated in the Market Rules, or, in the event of no such time limit being stipulated, within 56 consecutive days of the dispute having arisen.

#### **33.2. APPLICATION FOR ARBITRATION**

The Claimant shall apply to the Federation for arbitration in accordance with Rule 33.1 and shall, if requested by the Secretary, pay on demand to the Federation any fees or deposits provided for in Rules 32.5 to 32.7 inclusive. The application must be made in writing, in five copies, and each copy of the application must be accompanied by evidence that:

- (a) the parties have prima facie entered into a contract, subject to these Rules, with details of the contract and of the dispute; and
- (b) notice of the arbitration claim has been given to the Respondent in accordance with Rule 33.1.

#### **33.3. – 33.5. APPOINTMENT OF ARBITRATORS**

- 33.3. (a) Upon receipt of an application for arbitration made in accordance with Rule 33.2, the Secretary shall promptly send one copy of the application to the Respondent and to all other parties to the Arbitration and will request three Arbitrators to accept appointment in the dispute and will send each of them a copy of the evidence provided by the Claimant pursuant to Rule 33.2.
- (b) After having made appropriate verification of any string and ascertained that they are eligible to act in accordance with Rule 33.6, the three Arbitrators shall each advise the Secretary in writing of their acceptance or refusal of the appointment.
- (c) In the event of a refusal by one or more Arbitrators so requested to accept the appointment, the Secretary shall repeat the procedure in Rule 33.3(a) until three acceptances are received, whereupon the Secretary shall give notice to the parties of the Arbitrators so appointed.
- (d) Any challenge by any party to the appointment of any of the three Arbitrators so appointed must be made in writing to the Secretary within 2 business days of the Secretary giving notice of their appointment to the parties. Each party shall only be entitled to challenge without cause one named Arbitrator and any Arbitrator so challenged shall promptly be replaced by the Secretary implementing the aforesaid procedures of this Rule.
- (e) In the event that no such challenge is made or after the constitution of the Tribunal as provided herein, the three Arbitrators shall appoint one of their number as the Chairman of the Tribunal, who shall give notice to the Secretary who shall inform the parties of that

appointment.

33.4. In the event of non-compliance with any of the provisions of Rules 33.1 and 33.2, arbitration claims shall be deemed to be waived and absolutely barred, unless the Arbitrators shall, in their absolute discretion, determine otherwise.

33.5. The Federation shall be entitled to charge £50 to the costs of the Arbitration in respect of each challenge made to the appointment of any Arbitrator, such costs to be borne by the party making the challenge.

### **33.6. – 33.7. ELIGIBILITY OF ARBITRATORS**

33.6. An Arbitrator appointed under these Rules shall be a person nominated from the appropriate Panel, but no person shall be eligible for appointment who is:-

- (a) directly interested in the transaction in dispute or who is a Partner, Director or employee or member of a firm or company named as a party to the Arbitration;
- (b) financially retained by a firm or company named as a party to the Arbitration; or
- (c) a Partner, Director or employee who is financially retained by a firm or company financially associated with any party to the Arbitration;
- (d) aware of any circumstances which may affect his impartiality to act as Arbitrator in the dispute referred to Arbitration.

33.7. If an Arbitrator dies, refuses to act, becomes incapable of acting or fails to proceed with the Arbitration, the Secretary shall appoint a substitute Arbitrator as soon as reasonably possible following notice of such death, refusal, incapacity, or failure to proceed, as the case may be.

### **33.8. WITHDRAWAL OF ARBITRATION**

Once the Arbitrators have received instructions, the submission to Arbitration shall not be withdrawn except by the written agreement of all the parties or when String Arbitration Rules 34.14 to 34.16 inclusive apply. In such event the parties shall agree who is to pay the fees and expenses of the Federation and the Arbitrators (if any) and the parties shall forthwith notify the Secretary of Federation and the Arbitrators of the withdrawal. Agreement as to payment of such fees and expenses shall be a pre-requisite of any such withdrawal.

## ARBITRATION/APPEAL RULES

### SECTION 34 – ARBITRATION PROCEDURE

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **34.1. - 34.4. TIME LIMITS FOR SUBMITTING EVIDENCE**

- 34.1. (a) For Quality and/or Condition Arbitrations  
When applying for arbitration, the Claimant must submit to the Federation five copies of a clear and concise statement of his case and all documentary evidence on which he wishes to rely.
- (b) For other than Quality and/or Condition Arbitrations  
No later than 21 days from the date of applying for arbitration in accordance with Rule 33.2., the Claimant must submit to the Federation five copies of a clear and concise statement of his case and all documentary evidence on which he wishes to rely.
- Upon receipt of any statements and/or documentary evidence from any party in the manner prescribed in Rules 34.1, 34.2 and 34.3 the Secretary shall promptly send one copy to the Arbitrators and to all other parties to the Arbitration.
- 34.2. (a) No later than 21 days after receipt of the Claimant's statement of case and documentary evidence from the Secretary, the Respondent shall submit five copies to the Federation, of a clear and concise statement of his defence and/or counterclaim to the claim and all documentary evidence on which he wishes to rely.
- (b) In the event the Respondent shall have submitted a counterclaim, the Claimant shall within 21 days of receipt of the same submit five copies to the Federation, of his defence to the counterclaim and all documentary evidence on which he wishes to rely.
- 34.3. (a) The above exchanges of submissions and documentary evidence will complete the documentary pleadings of the parties. The Arbitrators may, however, in their absolute discretion, permit either party to submit additional written submissions and documentary evidence. Any such further statements and documentary evidence shall be submitted to the Federation in the manner prescribed in Rules 34.1 and 34.2.
- (b) On completion of the exchange of the parties' submissions and documentary evidence, including the exchange of any further statements and documentary evidence permitted by the Arbitrators, the Arbitrators will advise all parties that they are proceeding with the Arbitration and that the issues referred to in Arbitration will be determined on the basis of the submissions and documentary evidence then before the Arbitrators except that the Arbitrators in their absolute discretion may agree to hear oral evidence from any witness of fact or any expert witness if so requested by a party before the Arbitration hearing starts.
- 34.4. Except when Rule 33.4 applies, the Arbitrators shall have no power to make an order dismissing any claim or counterclaim on the grounds of inordinate and inexcusable delay on the part of any party, which power is expressly reserved to the Court.

**34.5. – 34.6. REPRESENTATION AT THE HEARING**

- 34.5. If any party to the Arbitration wishes to attend the Arbitration hearing he should advise the Arbitrators who shall, on receipt of such advice, inform the parties of the expected date, time and place of the Arbitration hearing. Any party or his representative (not being a solicitor or barrister, or other legally qualified advocate, wholly or principally engaged in private practice in England or elsewhere) shall be entitled to make further submissions orally or in writing in addition to those made under Rules 34.1, 34.2 and 34.3(a). Unless the Arbitrators decide otherwise, no other persons shall be permitted to attend the Arbitration hearing, which shall be in private.
- 34.6. Where the parties have been permitted to be legally represented pursuant to Rule 34.5, the Arbitrators may order one or more parties to provide security for the costs of the Arbitration wherever the Court would have power (in proceedings before the Court) to order a party to provide security for costs, such powers to be exercised on the same principles as the Court. If a party fails to comply with a peremptory order of the Arbitrators to provide security for costs, the Arbitrators may make an award dismissing his claim or counterclaim.

**34.7. – 34.13. JURISDICTION - ARBITRATORS AND BOARD OF APPEAL**

- 34.7. The Arbitrators may rule on their substantive jurisdiction, that is, as to:-
- (a) whether there is a valid Arbitration agreement within the meaning of these Rules;
  - (b) whether the tribunal is properly constituted; and
  - (c) what matters have been submitted to Arbitration in accordance with the Arbitration agreement in the contract provided always that any such objections which shall be taken as a preliminary issue to the substantive jurisdiction of the Arbitrators shall be made promptly pursuant to the terms of Section 31 of the Arbitration Act 1996. The Arbitrators shall forthwith certify in writing as to whether they have jurisdiction and they shall forthwith notify the parties to the dispute and the Federation in writing of their decision. Such decision shall be final and binding upon the parties and upon the Federation, subject to the right of appeal to the Board of Appeal by any party in accordance with the provisions contained in Rule 36.
- 34.8. The Arbitrators and/or the Board of Appeal may in their absolute discretion lay down the procedure to be adopted at the determination of the preliminary issue and may order any one or all of the parties to the dispute to lodge with the Federation within a specified time such fees as the Arbitrators and/or Board of Appeal consider reasonable as a condition of the determination of the preliminary issue.
- 34.9. The Board of Appeal shall either uphold or reverse the decision of the Arbitrators on the preliminary issue which shall be promptly notified in writing to the parties, the Arbitrators and the Federation.
- 34.10. If the Arbitrators (in the event that there is no Appeal) or the Board of Appeal shall certify that they do not have jurisdiction to hear the dispute, then the dispute shall be deemed not to be subject to these Rules which accordingly shall not apply thereto.
- 34.11. If the Arbitrators (in the event that there is no Appeal) or the Board of Appeal shall certify that they have jurisdiction to hear the dispute then:
- (a) the Arbitrators already appointed shall proceed to hear the dispute in accordance with these Rules; and
  - (b) unless otherwise agreed by all the parties, the Arbitrators may continue with the proceedings in accordance with these Rules and proceed to make an award notwithstanding that an application to the Court to determine the question of the substantive jurisdiction of the Arbitrators is pending pursuant to Section 32 of the Arbitration Act 1996.

34.12 The Board of Appeal appointed to determine the preliminary issue shall, on the application of all the parties, have power to hear the merits of the dispute and to make an award thereon in lieu of ordering the dispute to be remitted to Arbitration under Rule 34.11(a) and such award shall be deemed in all respects to be an award of a Board of Appeal under these Rules.

34.13. The Arbitrators or the Board of Appeal shall have absolute discretion to make such order by way of costs in respect of the preliminary issue as is deemed just and equitable.

**34.14. – 34.16. STRING ARBITRATIONS FOR QUALITY AND/OR CONDITION**

34.14 There will be no string Arbitrations except on quality and/or condition disputes.

34.15 As regards disputes in respect of quality and/or condition, where the quantity and the guarantee of quality and/or condition are the same in a string of contracts, and samples have been drawn in each case in accordance with the terms of the contracts, 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 claims to be in the string, shall with due despatch supply his contracts and all relevant information to the Arbitrators, who shall in their absolute discretion determine whether such contracts constitute a string for the purpose of this Rule.

34.16 The Arbitrators appointed by the Federation shall be deemed to have been appointed on behalf of all parties in the string in their selling and buying capacities respectively so that any award so made, hereinafter referred to as a string award, shall, subject to the right of appeal, 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.

**34.17. – 34.19. EVIDENCE**

34.17 The Arbitrators are not obliged to apply the strict rules of evidence and may use their discretion as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered by any party on any matters of fact or opinion. The Arbitrators shall also determine the time, manner and form in which such material should be exchanged and presented.

34.18 The Arbitrators shall not be obliged to take the initiative in ascertaining any facts or any questions of law which are not raised by one of the parties as aforesaid.

34.19 The Arbitrators shall have no power to give directions to a party in relation to any property which is the subject of the proceedings or for the preservation of any evidence in the custody or control of any party.

**34.20. EXPERTS**

Section 37(1) of the Arbitration Act 1996 shall not apply.

(a) A tribunal may appoint experts and/or legal advisers to report to it and/or appoint legal assessors to assist it on technical matters and may allow any such expert, legal adviser or assessor to attend the proceedings.

(b) A tribunal may, in its absolute discretion and on such terms as it may determine, give parties a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

The fees and expenses of any such person for which the Arbitrators are liable are expenses of the Arbitrators and shall be payable as directed by the Arbitrators pursuant to these Rules. Copies of all

written reports or opinions obtained by the Arbitrators pursuant to this sub-Rule shall be sent to the Federation.

**34.21. CONSOLIDATED AND CONCURRENT HEARINGS**

- (a) The Arbitrators shall have the power on their own initiative to order:
  - (i) that two or more disputes may be consolidated; or
  - (ii) that concurrent hearings involving two or more disputes may be held, on such terms as may be ordered by the Arbitrators but only when the same parties are involved in all the disputes.
- (b) When the same parties are not involved in all the disputes, the Arbitrators shall have the powers aforesaid but only after an application for consolidation or concurrent hearings shall have been made in writing to the Federation and that any two of the Chairman, Senior Arbitrator and the Secretary of the Federation shall have first decided that the circumstances concerning the request are exceptional and that it is appropriate for the Arbitrators to order consolidation or concurrent hearings as the case may be.

**34.22. CORRECTION OF AWARDS**

Save as otherwise provided in this Rule, Section 57 of the Arbitration Act 1996 shall apply.

- (a) A tribunal may on its own initiative or on the application of a party correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award. Any application for the exercise of these powers must be made within 21 days of the date of the award. The tribunal must exercise these powers within 21 days of the date the application was received by the tribunal or where the additional award is made by the tribunal on its own initiative, within 21 days of the award.
- (b) A tribunal may on its own initiative or on the application of a party make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award. Any application for the exercise of this power must be made within 21 days of the date of the award. The tribunal must exercise this power within 56 days of the date the application was received by the tribunal or where the additional award is made by the tribunal on its own initiative, within 56 days of the award. This power shall not be exercised by the tribunal without first affording the other parties a reasonable opportunity to make representation to the tribunal.

**34.23. COSTS**

The Arbitrators shall award costs on the general principle that costs should follow the event except where it appears to the Arbitrators that in the circumstances this is not appropriate in relation to the whole or any part of the costs (even to the extent of awarding that the winner shall pay any part of the costs of the losing party).

**34.24. INTEREST**

The Arbitrators may award simple or compound interest from such dates, at such rates and with such rests as they consider meets the justice of the case:-

- (a) on the whole or any part of any amount awarded by the Arbitrators, in respect of any period up to the date of the award;
- (b) on the whole or any part of any amount claimed in the Arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of



any period up to the date of payment; and

- (c) from the date of the award (or any later date) until payment of the outstanding amount of any award (including any award of interest and any award as to costs).

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

**34.25.**

**DEFAULTERS**

In the event of any party to an Arbitration held under these rules neglecting or refusing to carry out or abide by a final award of the Arbitrators made under these Rules, the Council may post on the Federation's Notice Board and/or circularise to members and/or other organisations in any way thought fit notification to that effect. The parties to any such Arbitration shall be deemed to consent to the Council taking such action as aforesaid.

## ARBITRATION/APPEAL RULES

### SECTION 35 – AWARDS OF ARBITRATION

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **35.1. – 35.8. AWARDS OF ARBITRATION GENERALLY**

- 35.1. All awards of Arbitration shall be issued in writing by the Federation and shall be signed by the Chairman of the Arbitrators on behalf of all the Arbitrators. The Arbitrators shall have the power to award the costs and expenses of, and connected with, the arbitration, and may assess their fees. The Federation's fees shall be those for the time being in force as prescribed by the Council.
- 35.2. The award shall state the Arbitrators' reasons and whether any sum awarded carries interest up to the date of the award. In the case of contracts where Pounds Sterling is not the currency of the contract, the Arbitrators shall have an absolute discretion to determine the appropriate base rate.
- 35.3. Awards on the quality and/or condition of cocoa beans shall be issued within the following time limits.
- (a) Quality and/or Condition on arrival  
The Arbitration Award shall be issued promptly and, in any case, no later than 56 days after the final day of landing at the place of final delivery unless the Arbitration Panel advises the parties otherwise.
  - (b) Quality and/or Condition on departure  
The Arbitration Award shall be issued promptly and, in any case, no later than 56 days after the Bill of Lading date unless the Arbitration Panel advises the parties otherwise.
  - (c) Quality and/or Condition in/ex store  
The Arbitration Award shall be issued promptly and, in any case, no later than 56 days after the contracted prompt day unless the Arbitration Panel advises the parties otherwise.
- 35.4. The Arbitrators shall submit to the Federation three official copies of the award of Arbitration duly signed by the Chairman of the Tribunal. The Secretary shall date and sign the award, and shall give notice to the parties named in the award that the award is at their disposal upon payment to the Federation of the fees and expenses of the arbitration proceedings. No party shall be entitled to the award or to any copies thereof until all the said fees and expenses shall have been paid to the Federation.
- 35.5. If the fees for the award are not paid in accordance with Rule 35.4 within 7 consecutive days after the date of the award, the Federation may call upon any one of the parties named in the award to take up the award and in such case the party so called upon shall pay all the fees and expenses as directed.
- 35.6. Where a deposit made under Rules 32.6 and 32.7 exceeds the amount of the fees and expenses of the award, the Federation shall forthwith, on the dating of the award, issue it to the parties and refund to the parties concerned any surplus moneys which have been deposited with the Federation.
- 35.7. Awards of Arbitration (subject to the right of appeal hereinafter mentioned) shall be conclusive and binding on the parties with respect both to the matter in dispute and to all expenses of, and incidental, to the reference and to the award.

35.8. No award shall be challenged or subject to any appeal except as provided for in these Rules and the Arbitration Act 1996.

**35.9. PAYMENT**

All amounts due under any Arbitration award shall be paid within 21 consecutive days from the date of the Award, unless the Arbitrators direct otherwise.

**35.10. DEFAULT AND INVOICING BACK**

Subject always to the provisions in relation to default contained within the contract, 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. Then irrespective of whichever party is in 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 charged with 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 Buyer shall be charged with the difference between the market price and contract price.
- (c) The Arbitrators may, at their discretion, award damages which shall not be more than 10 percent of the market value at the date of default of the goods contracted to be sold, for items of loss not covered by an award based solely on the difference between the market and contract prices and other proven damages.

**35.11. PUBLICATION OF EDITED AWARDS**

By commencing or submitting to Arbitration pursuant to the Arbitration and Appeal Rules, every party to a final award consents to the Council of the Federation publishing the same to members or any of them for any educational or teaching purposes having first deleted the names of the parties and, in the opinion of the Council, any other facts or information which might identify the parties.

The Council shall submit a draft of the Award edited as aforesaid to the parties and each party shall have 14 days in which to submit written comments or objections to the said draft, which comments or objections the Council may accept or reject in its absolute discretion.

## **ARBITRATION/APPEAL RULES**

### **SECTION 36 – PRELIMINARY**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **36.1. TIME LIMITS FOR APPEAL**

Parties have the right to appeal against an arbitration award, provided the following conditions are met:

- (a) The appellant shall give written Notice of Appeal to the Secretary accompanied by a copy of the notice sent by him to the other party to the Arbitration award as required by paragraph (c) of this Rule and (subject to the provisions of paragraph (d) of this Rule) payment to the Federation of the appropriate fee ruling at the date of the giving of notice, such fee being according to whether the Arbitration was under Rule 32.5, 32.6 or 32.7.
- (b) The appellant's Notice of Appeal shall reach the Secretary not later than 12 noon on the 21<sup>st</sup> consecutive day after the date of the Arbitration award.
- (c) The appellant when giving Notice of Appeal, shall also despatch written notice thereof to the other party.
- (d) The total fees and expenses of the Arbitration award shall be paid before the Appeal is heard.

#### **36.2. – 36.4. DEPOSITS**

- 36.2. At any time after an appeal has been lodged, the Federation may demand that sums of money be deposited by any party to the dispute with the Federation by way of deposit against any fees, costs or expenses which the Federation may incur in connection with the Appeal.
- 36.3. Failure by any party to pay any such sums as required by Rule 36.2 shall entitle the Federation to suspend the appointment of a Board of Appeal until such sums are paid. The Federation may set a time limit within which such sums be paid, and if the party fails to pay within the time limit, the Appeal shall be deemed to be withdrawn and the award of Arbitration shall thereupon become final.
- 36.4. The Federation shall not be liable to pay to any person interest which may be deemed to have accrued to the Federation whilst sums paid by way of deposit have been held by the Federation.

#### **36.5. CURRENCY REGULATIONS**

If any appellant is precluded by currency regulations from paying immediately any money due to be paid by him under Rule 36.1 and notifies the Federation in writing (a) in the case of payment of the Appeal fee when giving Notice of Appeal and (b) in the case of any further sum being called for under Rule 36.1(d) or being directed to be paid under Rule 36.2, within 9 consecutive days of the money being demanded, accompanied in every case by evidence from a bank that he has already made application for the transfer of the required sum, he shall be entitled to an extension of up to 35 consecutive days from the date when the said payment became due in which to pay such sum.

## **ARBITRATION/APPEAL RULES**

### **SECTION 37 – BOARD OF APPEAL**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **37.1. APPOINTMENT OF BOARD OF APPEAL**

In respect of each Appeal lodged with the Federation pursuant to Rule 36.1, the Secretary shall, at his discretion, select three members from the Panel of Appeal to constitute a Board of Appeal before whom the disputing parties may state their case in accordance with these Rules.

#### **37.2. ELIGIBILITY OF BOARD MEMBERS**

A member of the Board of Appeal appointed under these Rules shall be a person nominated from the appropriate Panel, but no person shall be eligible for appointment to the Board of Appeal who is:

- (a) directly interested in the transaction in dispute or is a Partner, Director or employee or member of a firm or company named as a party to the Arbitration.
- (b) financially retained by a firm or company named as a party to the Arbitration.
- (c) a Partner, Director or employee or is financially retained by a firm or company financially associated with any party to the Arbitration.
- (d) an Arbitrator in the award subject to Appeal.
- (e) of the same firm or company to which any of the Arbitrators belong.
- (f) aware of any circumstances which may affect his impartiality including appearing as a witness or a representative for one of the parties at the Arbitration.

Not more than one representative of any firm or company and/or associated companies shall be appointed a member of the same Board of Appeal unless, in exceptional circumstances, no other member of the Panel of Appeal is available.

#### **37.3. – 37.4. REPLACEMENT OF BOARD MEMBERS**

37.3. No alteration or vacancy in the Panel of Appeal shall in any way modify or affect the powers of a duly constituted Board of Appeal, and the position and powers of a member of the Board of Appeal shall not be modified or affected by his ceasing to be a member of the Panel of Appeal before the final determination of a case submitted to such Board.

37.4. If a member elected to serve on a Board of Appeal dies, refuses to act, or becomes incapable of acting or fails to proceed with the Appeal, the Secretary shall appoint a substitute member of the Board of Appeal as soon as reasonably possible following notice of such death, refusal, incapacity, or failure to proceed, as the case may be.

#### **37.5. – 37.6. CONDUCT OF APPEALS**

37.5. Once a Board of Appeal has been appointed in accordance with Rule 37.1 it shall appoint one of its members to be its Chairman.

- 37.6. Every Board of Appeal shall regulate its meetings and proceedings as a majority thereof present shall decide.

**37.7. – 37.8. WITHDRAWAL OF APPEALS**

- 37.7. An appellant against an Arbitration award shall have the right, at any time before an award is made, to withdraw his Appeal and the Federation shall forthwith notify all parties to the Arbitration that the Appeal has been withdrawn. After payment of all fees, costs, and expenses incurred to the date of the withdrawal and consequent upon it, the Federation shall refund to the depositor any balance of fees or sum paid on account.
- 37.8. In the event of such withdrawal as aforesaid or a deemed withdrawal under the provisions of Rules 36.3, 38.8 and 38.9 the other party to an award of Arbitration shall have a right of appeal against that award to the Board of Appeal in accordance with the provisions of Rule 36.1, save that the time limit laid down in Rule 36.1(b) shall be 12 noon on the 21<sup>st</sup> consecutive day after the date of the Federation's notice to that party of the aforesaid withdrawal.

## **ARBITRATION/APPEAL RULES**

### **SECTION 38 – APPEAL PROCEDURE**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

#### **38.1. – 38.7. TIME LIMITS FOR SUBMITTING EVIDENCE**

- 38.1. The appellant shall, within 21 consecutive days after giving Notice of Appeal, send to the Secretary of the Federation in five copies a clear and concise statement of his case, together with five copies of the contract and all such documentary evidence as he thinks necessary to support his case.
- 38.2. The Secretary, shall upon receipt of the appellant's statement of the case and supporting documents, forward copies of the same to the Respondent and all other parties to the Appeal who shall not later than 21 consecutive days after receipt from the Secretary of the appellant's statement of case, submit in five copies to the Secretary a clear and concise statement of his defence together with five copies of all such other documentary evidence as he thinks proper.
- 38.3. A copy of the statement of defence and accompanying documents shall be forwarded by the Secretary to the appellant, and all other parties to the Appeal.
- 38.4. The appellant shall be permitted a further period of 21 consecutive days in which to submit to the Secretary five copies of any reply (and any other documentary evidence served in answer) to the statement of the Respondent, and such reply, if any, shall be forwarded by the Secretary to the respondent and all other parties to the Appeal.
- 38.5. The above exchanges of statements of case will complete the documentary pleadings of the parties. The Board of Appeal may, however, in its absolute discretion, permit an extension of time for the submission of evidence, and the submission of additional written pleadings by any party.
- 38.6. On completion of the exchange of statements of case, the Secretary shall advise all parties of the date, time and place of the hearing of the Appeal and of the names of the members of the Board of Appeal.
- 38.7. Except when Rule 38.8 applies the Board of Appeal shall have no power to make an order dismissing an Appeal on the grounds of inordinate and inexcusable delay on the part of any party, which power is expressly reserved to the Court.

#### **38.8. – 38.9. POSTPONEMENT OF HEARING**

- 38.8. If the appellant, on receiving from the Board of Appeal notice of the date fixed for the hearing of the Appeal, requests a postponement of more than 14 consecutive days, or at the first of any subsequent hearing of the Appeal requests an adjournment, then in such event the Board of Appeal may in their absolute discretion direct that, as a condition of granting an adjournment, all or any part of the money required by the terms of the award of Arbitration to be paid by any party to another shall be deposited in such bank in such currency (either in the United Kingdom or abroad) as the Board of Appeal may direct. Such money shall be held by such bank in an account in the name of the Federation and on such terms as the Board of Appeal may direct. The Board of Appeal shall, where such money has been deposited, direct in their award how and to which of the parties the amount so held shall be paid out.

Provided that, if in the opinion of the Board of Appeal after hearing the parties, the appellant shall thereafter be guilty of undue delay in proceeding with his Appeal, he shall, after due warning and if the Board of Appeal so decide, be deemed to have withdrawn his Appeal (with consequences as

stated in Rules 37.7 and 37.8) in which event money on deposit (with interest, if any, less any tax deductible) shall immediately become due and payable to the party and/or parties entitled thereto under the terms of the award of Arbitration.

- 38.9. If the appellant fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal, and within such time as the Board of Appeal stipulates, then, subject to the provisions of Rule 38.10 the Appeal shall be deemed to be withdrawn.

#### **38.10. – 38.11. COMPLIANCE WITH RULES**

- 38.10. Any disputes as to whether any of the conditions referred to in Rules 38.1 to 38.9 inclusive have been complied with shall be heard and determined by the Board of Appeal. If the Board of Appeal shall determine that any of those conditions have not been complied with, it may in its absolute discretion extend the time for compliance (notwithstanding that the time may already have expired) or dispense with the necessity for compliance and may proceed to hear and determine the Appeal as if each and all of those conditions had been complied with. The determination of the Board of Appeal of any matter to which this sub-rule applies shall be final, conclusive and binding.

- 38.11. No appeal award shall be challenged except as provided for in these Rules and the Arbitration Act 1996.

#### **38.12. COSTS**

The Board of Appeal shall award costs on the general principle that costs should follow the event except where it appears to the Board of Appeal that in the circumstances this is not appropriate in relation to the whole or any part of the costs (even to the extent of awarding that the winner shall pay any part of the costs of the losing party). The Board of Appeal shall apply this general principle to any order of costs made by the Arbitrators when they set aside or vary the award of the Arbitrators.

#### **38.13. – 38.14 REPRESENTATION OF APPEALS**

- 38.13. Any party to an Appeal may appear personally or be represented by an agent engaged, or who has been engaged, in the Trade and duly appointed in writing but shall not be represented at the hearing of such Appeal by a solicitor or barrister or other legally qualified advocate, wholly or principally engaged in private practice, in England or elsewhere, unless special leave shall previously have been obtained in writing from the Board of Appeal, which leave the Board of Appeal may in its absolute discretion grant or refuse.

- 38.14. Where the parties have been permitted to be legally represented pursuant to Rule 38.13, the Board of Appeal may order one or more parties to provide security for the costs of the Appeal wherever the Court would have power (in proceedings before the Court) to order a party to provide security for costs, such powers to be exercised on the same principles as the Court. If a party fails to comply with a peremptory order of the Board of Appeal to provide security for costs, the Board of Appeal may make an award dismissing his claim or counterclaim.

#### **38.15. – 38.16. POWERS ON APPEAL**

- 38.15. An Appeal involves a new hearing at which fresh evidence may be submitted, and the Board of Appeal may by a majority confirm, vary, amend or set-aside the award of the Arbitrators. In particular, (but not by way of restriction) the Board of Appeal may:

- (a) vary an award by increasing or reducing, if the Board shall see fit, the liability of any party;
- (b) correct any errors in the award or otherwise alter or amend it (see also Rule 38.23);



- (c) award interest on any sum(s) awarded by way of damages and costs (see also Rule 38.24); and/or
- (d) award the payment of costs and expenses incidental to the hearing of the Arbitration and the Appeal; such costs and expenses shall normally follow the event (see also Rule 38.12)

38.16. The award of the Board of Appeal whether confirming, varying, amending, or setting aside the original award of Arbitration shall state the Board of Appeal's reasons and shall be signed by the Chairman on behalf of all members of the Board of Appeal, and when so signed shall be deemed to be the award of the Board of Appeal and shall be final, conclusive and binding in all respects.

### **38.17. APPEALS ON STRING CONTRACTS**

In any case in which a string award shall have been made by Arbitrators pursuant to Rules 34.14 to 34.16 inclusive if the first Seller, or the last Buyer, or any intermediate party bound thereby shall be dissatisfied therewith (whether the award shall be in his favour or against him), the first Seller, the last Buyer, and any intermediate party (as the case may be) or any of them shall be entitled to appeal against that award to a Board of Appeal provided that each of the following provisions, in addition to the provisions of Rule 36.1 shall first have been complied with:-

- (a) If the appellant is an intermediate party he shall state in such Notice of Appeal whether he is appealing as a Buyer or Seller.
- (b) If the appellant is the first Seller or the last Buyer he shall, when giving Notice of Appeal, also despatch written notice thereof to the intermediate party in immediate contractual relationship with him.
- (c) If the appellant is an intermediate party and is appealing as a Buyer or a Seller he shall, when giving Notice of Appeal also despatch written notice thereof to his own immediate Seller or Buyer, as the case may be.
- (d) Every notice given to an intermediate party by a first Seller, a last Buyer, or by any intermediate party, shall be passed on with due despatch, and such passing on shall, as between any party passing the same on and the party to whom the same is passed on, be deemed to be in compliance with the said conditions relating to appeals.
- (e) All appeals to which this Rule applies shall be held in the like manner in which the corresponding Arbitrations are required by Rules 34.16 and 34.17 to be held. Any award by a Board of Appeal shall in all respects have the like effect and shall be enforceable in the like manner as is provided in those Rules in the case of awards made in the corresponding Arbitration.

### **38.18. – 38.20. EVIDENCE**

- 38.18. The Board of Appeal is not obliged to apply the strict rules of evidence and may use its discretion as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered by any party on any matters of fact or opinion. The Board of Appeal shall also determine the time, manner and form in which such material should be exchanged and presented.
- 38.19. The Board of Appeal shall not be obliged to take the initiative in ascertaining any facts or any questions of law which are not raised by one of the parties as aforesaid.
- 38.20. The Board of Appeal shall have no power to give directions to a party in relation to any property which is the subject of the proceedings or for the preservation of any evidence in the custody or control of any party.

**38.21. EXPERTS**

Section 37(1) of the Arbitration Act 1996 shall not apply.

- (a) A Board of Appeal may appoint experts and/or legal advisers to report to it and/or appoint legal assessors to assist it on technical matters and may allow any such legal expert, legal adviser or assessor to attend the proceedings.
- (b) A Board of Appeal may, in its absolute discretion and on such terms as it may determine, give parties a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

The fees and expenses of any such person for which the Board of Appeal are liable are expenses of the Board of Appeal and shall be payable as directed by the Board of Appeal pursuant to these Rules. Copies of all written reports or opinions obtained by the Board of Appeal pursuant to this sub-Rule shall be sent to the Federation.

**38.22. CONSOLIDATED AND CONCURRENT HEARINGS**

- (a) The Board of Appeal shall have the power on its own initiative to order:
  - (i) that two or more appeals may be consolidated; or
  - (ii) that concurrent hearings involving two or more appeals may be held, on such terms as may be ordered by the Board of Appeal but only when the same parties are involved in all the appeals.
- (b) When the same parties are not involved in all the appeals, the Board of Appeal shall have the powers aforesaid but only after an application for consolidation or concurrent hearings shall have been made in writing to the Federation and that any two of the Chairman, Senior Arbitrator and the Secretary shall have first decided that the circumstances concerning the request are exceptional and that it is appropriate for the Board of Appeal to order consolidation or concurrent hearings as the case may be.

**38.23. CORRECTION OF AWARDS**

Save as otherwise provided in this Rule, Section 57 of the Arbitration Act 1996 shall apply.

- (a) A Board of Appeal on its own initiative or on the application of a party correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award. Any application for the exercise of these powers must be made within 21 days of the date of the award. A Board of Appeal must exercise these powers within 21 days of the date the application was received by the Board of Appeal or where the additional award is made by the Board of Appeal on its own initiative, within 21 days of the award.
- (b) A Board of Appeal may on its own initiative or on the application of a party make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the Board of Appeal but was not dealt with in the award. Any application for the exercise of this power must be made within 21 days of the date of the award. A Board of Appeal must exercise this power within 56 days of the date the application was received by the tribunal or where the additional award is made by the Board of Appeal on its own initiative, within 56 days of the award. This power shall not be exercised by the Board of Appeal without first affording the other party a reasonable opportunity to make representation to the Board of Appeal.

**38.24. INTEREST**

The Board of Appeal may award simple or compound interest from such dates, at such rates and with such rests as they consider meets the justice of the case:-

- (a) on the whole or any part of any amount awarded by the Board of Appeal, in respect of any period up to the date of the award;
- (b) on the whole or any part of any amount claimed in the Arbitration and outstanding at the commencement of the arbitral proceedings but paid before the Appeal award was made, in respect of any period up to the date of payment; and
- (c) from the date of the award (or any later date) until payment of the outstanding amount of any award (including any award of interest and any award as to costs).

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

**38.25. – 38.27. TAKING UP AND PAYING APPEAL AWARDS**

38.25. The Federation may call upon any of the parties to take up the award of the Board of Appeal, and in such case the party so called upon shall take up the award and pay all the fees, costs and expenses. No party shall be entitled to the award or any copies thereof until all the said fees and expenses shall have been paid to the Federation.

38.26. Where a deposit made under Rule 36.2 exceeds the amount of fees and expense of the award, the Federation shall, forthwith, on the dating of the Appeal award issue it to the parties and refund to the parties concerned any surplus funds which have been deposited with the Federation.

38.27. All amounts due under any Appeal award shall be paid within 28 consecutive days from the date of the award, unless the Board of Appeal directs otherwise.

**38.28. DEFAULTERS**

In the event of any party to an Appeal held under these rules neglecting or refusing to carry out or abide by a final award of the Board of Appeal made under these Rules, the Council may post on the Federation's Notice Board and/or circularise to members or other organisations in any way thought fit notification to that effect. The parties to any such Appeal shall be deemed to consent to the Council taking such action as aforesaid.

## **SECTION 39 – RULES OF THE CHAMBRE ARBITRALE OF THE FCC**

**The Rules in Section 39 apply to and govern arbitration under the Chambre Arbitrale of the FCC.**

*APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JUNE 2006*

### **39.1. – 39.5. PRELIMINARY PROVISIONS**

- 39.1. The objective of the Chambre Arbitrale is the prompt, economical, fair and confidential resolution by a tribunal, without recourse, of disputes arising out of transactions in cocoa beans and/or cocoa products concluded under the Market Rules of the FCC.
- 39.2 Any dispute concerning a contract which is subject to the Market Rules of the FCC may be referred to the Chambre Arbitrale. The parties may, either pursuant to an arbitration clause or by mutual agreement, submit any other dispute to the Chambre Arbitrale.
- 39.3. It shall be for the tribunal to decide the place or places where the arbitration proceedings or any part of the arbitration proceedings shall be conducted. The seat of the arbitration is France.
- 39.4. Any arbitration conducted under the auspices of the Chambre Arbitrale shall, unless otherwise specified in these Rules, be subject to the provisions of Book Four of the NCPC.
- 39.5. In these Rules,  
- “Chambre Arbitrale” means the French Chambre Arbitrale of the FCC;  
- “Claimant” means a party claiming arbitration in accordance with these Rules;  
- “Council” means the Council of the Federation  
- “Federation” means the Federation of Cocoa Commerce Limited and any agent, servant or director thereof;  
- “Market Rules” means those of the Federation’s contract rules which are incorporated into the contract;  
- “NCPC” is the acronym of the French Nouveau Code de Procédure Civile;  
- “President of the Chambre Arbitrale” means the President, or in his absence the Vice-President, of the Chambre Arbitrale;  
- “Respondent” means the party against whom that claim is made;  
- “Secretariat” means the Secretariat of the Chambre Arbitrale;  
- “Secretary” means the Secretary of the Federation;  
- “the/these Rules” means the rules contained in Section 39;  
- “Tribunal” means the Arbitration Tribunal;

### **39.6. – 39.28. GENERAL PROVISIONS APPLICABLE TO ALL ARBITRATIONS**

#### **39.6. - 39.11. ARBITRATORS**

- 39.6. Arbitrators shall serve as judges with all the rights and obligations attached to that office. They shall undertake to be diligent, to make themselves available according to the needs of their task and to carry that task through to its conclusion. No arbitrator shall sit if he has any personal interest in the case, or subsequently acquires such an interest. Each arbitrator shall be and must remain independent and impartial towards the parties. Arbitrators are nominated by the Chambre Arbitrale and approved

by the Council. The Secretary shall maintain a Panel of appointed arbitrators which shall be exhibited in the offices of the Federation and on the Federation's website.

An arbitrator not registered on the FCC Panels may only be appointed in one of the following situations:

- a) if the number of arbitrators unavailable through abstentions, circumstances preventing their attendance, loss of civil rights, withdrawals, dismissals, challenges held to be valid or death is such that the composition of a full Tribunal would otherwise be impossible;
- b) if all the parties so request;
- c) if the President of the Chambre Arbitrale so decides in the light of the circumstances of the case and the nature of the dispute.

- 39.7. On accepting an appointment, an arbitrator shall give a personal undertaking in writing, declaring himself independent and impartial, explicitly addressed and promptly sent to the parties and the Secretariat. Any arbitrator failing to make such a declaration in writing shall be considered not to have accepted the appointment and might become liable to sanctions under Rule 39.68 below if his failure to do so is found to be dilatory.

The composition of the Tribunal shall not be completed until all the arbitrators nominated have accepted their appointments.

- 39.8. If, when accepting an appointment and declaring his independence or at any time during the subsequent proceedings, an arbitrator should suspect that there is any aspect of his personal position that might put his independence or impartiality in doubt in the eyes of the parties, he must so inform the parties and the Secretariat. He may continue in his appointment if both parties give their consent in writing within the time limit stipulated in Rule 39.9 below.

- 39.9. Any request by a party to challenge an arbitrator shall be reasoned, on pain of inadmissibility, and shall reach the Secretariat not later than seven days after the notification to the parties of the composition of the Tribunal or pursuant to Rule 39.8 above.

The request to challenge shall be notified to the other party, which shall have seven days from the despatch of such notification to submit its comments to the Secretariat.

If the request is accepted by the other party or the arbitrator withdraws, he shall be replaced in accordance with Rule 39.10 below. Otherwise, the request shall be submitted for a decision to the President of the Chambre Arbitrale, who shall be the sole judge of its validity and whose decision need not be reasoned and shall be final.

- 39.10. In the event of an arbitrator duly appointed in accordance with these Rules subsequently dying, being prevented from attending, losing his civil rights, abstaining, withdrawing, or being challenged or dismissed, the party which appointed him shall have seven days from the despatch of the Secretariat's notification in which to nominate another arbitrator, failing which the President of the Chambre Arbitrale shall make the appointment on its behalf.

If the arbitrator referred to in this Rule is the arbitrator appointed by the President of the Chambre Arbitrale, the President shall appoint his replacement and the Secretariat shall notify the parties of the name of the newly appointed arbitrator.

The time limit for the arbitration shall be automatically suspended from the date of notification by the Secretariat of the reason justifying replacement, until the date on which the new arbitrator accepts his appointment.

- 39.11. The Chairman of the Arbitration Tribunal appointed in accordance with Rule 39.12 shall conduct and direct proceedings. More generally, working with his fellow arbitrators, he shall ensure that the arbitration proceeds correctly.

With the agreement of the other arbitrators, the Chairman of the Arbitration Tribunal shall deal directly with any procedural problems.

**39.12. – 39.23. TRIBUNAL OF FIRST INSTANCE**

**39.12. – 39.18. (a) Composition of the Tribunal - procedure**

- 39.12. The Tribunal of first instance shall consist of three members, with each party appointing an arbitrator and the President of the Chambre Arbitrale appointing the third arbitrator, who shall chair over the Arbitration Tribunal. Should the President and Vice-President both be appointed to the same arbitration, the third arbitrator shall be appointed by the Secretary.
- 39.13. Notwithstanding the provisions of Rule 39.12 above, the parties may agree either to jointly appoint a single arbitrator who shall then be the sole arbitrator, or to ask the President of the Chambre Arbitrale to make the appointment.
- 39.14. The Tribunal shall be the sole judge of its competence and of the validity and scope of its task; it shall be empowered to rule on the existence, validity and nature of the arbitration agreement (arbitration clause or mutual agreement).
- 39.15. On pain of inadmissibility, a plea of incompetence shall be entered by the party concerned before any consideration of the merits of the case.
- 39.16. The arbitrators shall rule according to the law.
- The parties may however decide, by express agreement, to ask the Tribunal to act as an “amiable compositeur” and so to rule according to equity, in which case the Tribunal may moderate the effects of provisions of the law and contractual stipulations so that the dispute may be settled according to equity.
- The Tribunal must in all circumstances take the FCC Market Rules into consideration.
- 39.17. In examining the case, the Tribunal may decide to make such investigations and enquiries as it considers necessary. A report on such investigations shall be sent to the parties, which shall have the option to make any comments within seven days of despatch of the report by the Secretariat.
- In examining the case, the Tribunal may also decide on any consultations of any nature whatsoever, the results of which shall be sent to the parties for any comments, as indicated in the previous paragraph.
- The parties shall be required to cooperate with the Tribunal, which shall draw its own conclusions if they fail or refuse to do so.
- The Tribunal may make any interim award, order any measures, appoint any experts of its choice and require the parties to produce any evidence at their disposal.

39.18. The Tribunal's proceedings shall be confidential; any breach of that confidentiality is a serious offence and shall be liable to the sanctions provided for in Article L.226-13 of the French Code Pénal and in Rule 39.68 below.

**39.19. – 39.23. (b) Arbitration award**

39.19. The Tribunal of first instance shall have the following time limit in which to make its award:

- for quality disputes: fifty-six days from the date of completion of landing from the vessel, or forty days from the presentation of documents concerning the goods in the case of tender in store;
- for technical disputes: six months from the date on which the Secretariat notifies the parties of the composition of the Tribunal.

The time limit may be extended once by the President of the Chambre Arbitrale, in either a general or a specific decision, by up to:

- one extra month for quality disputes,
- three extra months for technical disputes.

Any further extension shall require written agreement between the parties.

Every extension shall be notified to the parties by the Secretariat, and noted in the draft award.

39.20. The Tribunal shall take a majority decision; it shall, in the first instance, make a draft award which shall comprise the following:

- the information serving to identify the subject of the case submitted to it,
- the surnames and forenames or trade names of the parties, with their addresses or registered offices;
- the names of all individuals having represented or assisted the parties in hearings;
- the names of the arbitrators;
- its date;
- its place;
- the breakdown of the costs of arbitration between the parties, as determined by the Tribunal.

The draft award must be reasoned and must contain, in addition to the above-mentioned items, a succinct statement of the grounds and claims of each party.

39.21. The draft award shall be signed by all the arbitrators. However, if a minority refuses to sign it, the others shall note this and the draft shall have the same effect as if it had been signed by all the arbitrators.

39.22. The draft award shall become the final award if arbitration of second instance is not requested within 21 days of despatch by the Secretariat of the said draft. In the absence of such request, the parties shall be deemed to have accepted the draft award as the final award.

39.23. A final award is enforceable immediately. Where necessary the parties are responsible for making arrangements for the final award to be enforced through the appropriate Court

#### **39.24. – 39.29. TRIBUNAL OF SECOND INSTANCE**

##### **39.24.- 39.27. (a) Composition of the Tribunal - procedure**

39.24. A party wishing to refer to the Tribunal of second instance must make an application to the Chambre Arbitrale within the time limit indicated in Rule 39.22 above.

The Secretariat shall notify the other party of this application.

If either party should withdraw such an application or fail to comply with the formalities stipulated in Rule 39.22 above within the time limit set, the other party shall be granted a further 21 days, from the date of notification, in which to make an application to the Tribunal of second instance.

39.25. The Tribunal of second instance shall consist of three arbitrators for both quality and technical disputes.

These arbitrators shall all be appointed by the President of the Chambre Arbitrale, who shall also appoint the Chairman of the Arbitration Tribunal.

Each of the parties shall be entitled to have one of these arbitrators replaced in accordance with Rule 39.9

The request for replacement must, in order to be considered, reach the Secretariat within seven days of the notification by the Secretariat of the composition of the Tribunal.

An arbitrator who has sat on the Tribunal of first instance cannot sit on the Tribunal of second instance. The Secretariat shall provide the Tribunal of second instance with the dossier of the original arbitration.

39.26. Apart from the provisions set out in Rules 39.24 and 39.25 and those relating to the sending of samples, copies of contracts and/or statements of grounds and claims, the procedure before the Tribunal of second instance shall follow the same Rules as those of first instance.

39.27. All matters judged after full consideration of arguments on both sides in the first instance are taken as having been so judged in the second instance, even if one of the parties present or represented in the first instance fails to appear.

##### **39.28. – 39.29. (b) Arbitration award**

39.28. From the date on which its composition is notified to the parties, the Tribunal of second instance shall have the following time limit in which to make its award:

- three weeks for quality disputes,



- six months for technical disputes.

The time limit may be extended once by the President of the Chambre Arbitrale, in either a general or a specific decision, by up to:

- three extra weeks for quality disputes;
- three extra months for technical disputes.

Any further extension shall require written agreement between the parties.

Every extension shall be notified to the parties by the Secretariat, and noted in the draft award.

- 39.29. The award by the Tribunal of second instance shall be final and considered to be the only award made in the case.

### **39.30. – 39.34. ARBITRATION COSTS**

- 39.30. Submission fees shall be due to the Chambre Arbitrale on receipt by the Secretariat of the request for arbitration.

These fees may vary for members and non-members of the FCC, for the first and the second instance and for the different types of arbitration; they are determined by the Council of the FCC, from time to time, on the basis of proposals from the President of the Chambre Arbitrale, and published.

- 39.31. In payment for their services, the arbitrators shall receive fees, the level of which may vary for the first and the second instance, and for the different types of arbitration; they are determined by the Council of the FCC, from time to time, on the basis of proposals from the President of the Chambre Arbitrale, and published.

- 39.32. The Tribunal may ask the Secretariat to call for an additional deposit in order to cover specific costs, such as the additional costs of investigations or consultations as referred to in Rule 37.17 above.

- 39.33. The request for arbitration binds the claimant to pay a sum representing the amount of arbitration costs mentioned in Rules 39.30, 39.31 and 39.32 above, at the Secretariat's first request; in the event of non-payment in spite of formal notice, the Tribunal may rule that the request has lapsed once the time limit has expired.

- 39.34. If the claimant withdraws its claim before any meeting of the Tribunal has been held, the arbitration costs shall be reimbursed, after deduction of the submission fees and other costs already incurred by the Secretariat and the Tribunal.

### **39.35. – 39.37. TIME LIMITS**

- 39.35. The time limits referred to in the present Rules are in terms of calendar days. Any period expiring on a Saturday, Sunday or non-business day shall be extended to the next business day.

- 39.36. When time limits are not specified in the contract, they shall be determined by agreement between the parties, failing which by the Tribunal.

- 39.37. If the forwarding of samples or documents is delayed due to exceptional circumstances, the Tribunal may grant any extension it considers necessary, notifying its decision to the parties; the granting of any extensions shall be noted in the draft award or in the final award.

#### **39.38. – 39.42. MISCELLANEOUS PROVISIONS**

- 39.38. The Chambre Arbitrale shall consist of all the arbitrators duly approved by the Council and whose names appear on the Panel of arbitrators published by the Federation. The Panel shall be divided into two sections 1) Quality and 2) Technical. Any arbitrator may at the discretion of the Council be appointed to one or both sections of the Panel.

- 39.39. The arbitration proceedings shall be conducted in French, except under exceptional circumstances left to the discretion of the Tribunal. The Tribunal may declare inadmissible any document written in a foreign language and require the party concerned to provide translations at its own cost and risk, where necessary made by a sworn translator. The award shall always be written in French.

- 39.40. If during the course of a quality dispute, either party raises a problem concerning a technical matter, the Tribunal shall decide whether the two issues are to be dealt with separately or jointly. If the Tribunal decides to settle the issues in a single arbitration, the procedure and costs of the said arbitration shall be those for technical disputes, the arbitrators then having competence to rule on all aspects. Any arbitrator who is not registered with both committees referred to in Rule 39.62 below shall be replaced, subject to possible application of the second paragraph of Rule 39.6.

- 39.41. By accepting these Rules, the parties waive the option of lodging an appeal against any FCC award. However a demand for annulment of the award by a Civil Court is legally acceptable but, in the event of any proceedings for annulment of the award, the parties shall oppose any ruling or decision by the Civil Court which is based on the merits of the case.

In the event of an annulment of an award, and if the dispute is still unsettled, a new Arbitration Tribunal shall be set up at the request of either party in accordance with these Rules.

- 39.42. (a) The Chambre Arbitrale reserves the right to publish or distribute awards made, deleting the names of the parties and any information by which they could be identified, so as to maintain confidentiality.
- (b) In the event of any party to an Arbitration held under these Rules neglecting or refusing to carry out or abide by a final award of the Arbitrators made under these Rules, the Council may post on the Federation's Noticeboard and/or circularise to members and/or other organisations in any way thought fit, notification to that effect.

#### **ADDITIONAL PROVISIONS APPLICABLE TO QUALITY DISPUTES**

#### **39.43. – 39.49. SUBMISSION OF THE CASE AND COMPOSITION OF THE TRIBUNAL**

##### **39.43. – 39.45. Obligations of the claimant**

- 39.43. The request for arbitration shall:
- be in writing;
  - specify that the dispute relates to quality;
  - contain all information allowing the cause of dispute to be identified;
  - identify the respondent;

- indicate the name of the arbitrator appointed by the claimant.

39.44. The claimant shall send its request for arbitration to the respondent and to the Secretariat of the Federation of Cocoa Commerce Ltd in London within the time limit specified in the contract.

The claimant shall also send to the Secretariat:

- a copy of the contract covering the transaction,
- its sealed sample for the arbitration.

**N.B.** The sample must be marked:

*“SAMPLE FOR THE ATTENTION OF THE FEDERATION OF COCOA COMMERCE LIMITED”*  
*“CHAMBRE ARBITRALE”*

and sent to the following address:

Euronext. liffe Grading Room

c/o spaces

85 Stepney Way

Whitechapel

London E1 2EN

UK

39.45. Receipt of the request by the respondent shall suspend the limitation of the claimant's action as determined by statute or in the contract.

#### **39.46. – 39.47. String arbitration**

39.46. Where there is a string of sales, the named respondent shall promptly forward:

- the request for arbitration to its seller;
- a copy to the Secretariat.

Each successive counterparty, moving upstream, claiming to be part of the string shall do the same; by this action it shall abandon its own right to arbitration. Where necessary, the Tribunal may call for the purchase and sale contracts from any party which has claimed to be part of the string.

The first seller shall comply with the provisions of Rule 39.48 below.

Where each of the participants has met its obligations with regard to forwarding the request for arbitration or appointing an arbitrator, it cannot be claimed that any time limit for arbitration stipulated in the contract has been exceeded.

The award shall be binding on all participants.

39.47. Any seller claiming to be part of the string but failing to comply with the requirements of Rule 39.46 above shall lay itself open to being considered by the Tribunal as the first seller.

#### **39.48. Obligations of the respondent**

Within seven days of receipt of the request for arbitration, the respondent shall send the Secretariat the name of its appointed arbitrator. It shall in addition promptly send the Federation of Cocoa Commerce Limited in London:

- a copy of the contract covering the transaction,
- its sealed sample for the arbitration.

**N.B.** The sample must be marked:

"SAMPLE FOR THE ATTENTION OF THE FEDERATION OF COCOA COMMERCE LIMITED"  
"CHAMBRE ARBITRALE"

and sent to the following address:

Euronext. liffe Grading Room

c/o spaces

85 Stepney Way

Whitechapel

London E1 2EN

UK

If the respondent has not appointed an arbitrator within the prescribed time limit, the President of the Chambre Arbitrale shall appoint one on its behalf; the Secretariat shall notify the name of this arbitrator to the parties.

**39.49. Obligations of the Chambre Arbitrale**

The President of the Chambre Arbitrale shall appoint a third arbitrator who shall preside over the Arbitration Tribunal; the Secretariat shall notify him and the parties of the complete composition of the Tribunal.

**39.50. – 39.51. PROCEDURE**

39.50. Each party shall send the Secretariat all documents, notes or memos that it considers relevant, by the quickest means and not later than seven days after despatch of the notification mentioned in Rule 39.48. The Secretariat shall forward them to the other party and to the Tribunal. There shall be no oral debate unless requested within the same time limit.

39.51. If, without legitimate grounds, one of the parties has not submitted its evidence and/or samples, the Tribunal shall rule on the evidence and/or samples at its disposal on the day that it gives its ruling, and the case shall be deemed to have been decided after full consideration of the arguments on both sides.

**ADDITIONAL PROVISIONS APPLICABLE TO TECHNICAL DISPUTES**

**39.52. – 39.57. SUBMISSION OF THE CASE AND COMPOSITION OF THE TRIBUNAL**

**39.52. – 39.55. Obligations of the claimant**

39.52. The request for arbitration shall:

- be in writing;
- specify that the dispute relates to a technical matter;
- contain all information allowing the cause of dispute to be identified;
- identify the respondent;
- set out the facts concisely;
- indicate the name of the arbitrator appointed by the claimant.

39.53. The claimant shall send its request for arbitration to the respondent and to the Secretariat within the time limit specified in the contract.

39.54. The request shall be accompanied by a statement of the claimant's grounds and claims, if necessary quoting figures. If the statement is not attached to the request, the claimant must, on pain of nullity of the claim, send it in quintuplicate to the Secretariat within 21 days of the date of the request for arbitration. The Secretariat shall forward copies to the other party and to the Tribunal.

- 39.55. Receipt of the request by the respondent shall suspend the limitation of the claimant's action as determined by statute or in the contract.

**39.56. – 39.57. Obligations of the respondent**

- 39.56. Within seven days of receipt of the request for arbitration, the respondent shall send the Secretariat the name of its appointed arbitrator.

If the respondent has not appointed an arbitrator within the prescribed time limit, the President of the Chambre Arbitrale shall appoint one on its behalf; the Secretariat shall notify the name of this arbitrator to the parties.

- 39.57. The respondent shall send its statement of defence in quintuplicate to the Secretariat within 21 days of the day when the claimant's statement of grounds and claims was sent to it by the Secretariat. The Secretariat shall forward copies to the other party and to the Tribunal.

**39.58. – 39.61. PROCEDURE**

- 39.58. Each party shall send the Secretariat all documents, complementary notes or memos that it considers relevant, by the quickest means and not later than fifteen days before the date set by the Arbitration Tribunal for the hearing under Rule 39.59 below. The Secretariat shall forward them to the other party and to the Tribunal. Any document reaching the Secretariat after this time limit may be set aside by the Tribunal.

- 39.59. According to the state of progress in the procedure or to forecasts in a procedural calendar determined in advance, and always having regard to any urgent circumstances, the Tribunal shall set the date for the arbitration hearing, of which it shall give the parties at least three weeks' notice. It shall assess the legitimacy of any request for adjournment of the hearing submitted by one or both of the parties, on which it shall decide at its absolute discretion.

It may also invite one or both of the parties to produce supplementary evidence.

- 39.60. During the arbitration hearing, the parties may appear in person or by a duly accredited representative and/or advocate. They may also be accompanied by advisers.

If one of the parties fails to appear or to be represented, or does not produce its evidence or written arguments, the Tribunal shall rule on the basis of the information at its disposal at the time of the hearing, and the matter shall be deemed to have been decided after full consideration of arguments on both sides, as long as that party has systematically been kept informed and given every opportunity to participate in the proceedings and to attend the hearing.

- 39.61. Unless it decides to continue the case in a further hearing or authorizes the parties to submit additional notes to it within a set period, the Tribunal shall bring the proceedings to a close by winding up the hearing and retire to deliberate.

From that point on, no further request may be made and no further argument may be raised. Similarly, no observation may be presented and no evidence produced.

The Tribunal may however decide to reopen the proceedings if necessary.

In the event of a continuation or reopening of proceedings, the Tribunal shall set the date for the next hearing.

**39.62. – 39.68. SPECIAL PROVISIONS: ARBITRATORS – APPLICATION, EXAMINATION, REGISTRATION**

39.62. Persons wishing to be appointed as arbitrators shall submit their applications to the Council of the FCC or the President of the Chambre Arbitrale, indicating the section of the Panel (quality and/or technical) to which they wish to be appointed. They must be sponsored by two arbitrators who have been members of the Chambre Arbitrale for more than two years.

They must have exercised, for more than two years, managerial or executive duties in an enterprise involved in an activity related to international trade in an agricultural commodity.

They must be in full possession of their civil rights.

39.63. Candidates shall undergo a theoretical and practical examination before a board set up for the purpose and appointed by the President of the Chambre Arbitrale.

The results of this examination shall be referred to the Council of the Federation, accompanied by the recommendation of the examining board and the President of the Chambre Arbitrale.

39.64. The Council shall decide on the action to be taken on each application, in particular the section of the Panel to which the candidate is to be appointed. Its decision, for which it does not have to give reasons, shall be final.

39.65. No application for appointment may be re-submitted within one year of a rejection.

39.66. Applications for appointment to the Panels of members of the Chambre Arbitrale shall be renewed in writing before the end of each year, and be confirmed by the Council of the FCC and the Chambre Arbitrale.

39.67. The names on the Panel referred to in Rules 39.38 and 39.66 shall be sent to all FCC members; they shall be available for consultation at the Federation's headquarters and on the website [www.cocoafederation.com](http://www.cocoafederation.com). They shall also be made available to any other person on request.

39.68. The Council of the FCC and the President of the Chambre Arbitrale may, for reasons of a serious nature brought to their attention, decide, at the request of the President of the Chambre Arbitrale, or the Vice-President of the Chambre Arbitrale or four members of the Chambre Arbitrale, to suspend or definitively withdraw the appointment of an arbitrator. Any such decision shall be notified by registered post with acknowledgement of receipt to the person concerned who may, within 15 days of receipt of the notification, request a hearing. The final decision of the Council of the FCC and the President of the Chambre Arbitrale shall not be open to appeal.

**39.69. DISCRETIONARY POWER TO EXTEND TIME LIMITS**

If the Council decides that circumstances due to force majeure have made it impossible or extremely difficult for parties to an FCC contract or arbitration to exercise or uphold their rights, it may extend any of the time limits specified in these Rules so as to afford them effective access to arbitration and to ensure fair conduct of the arbitration procedure.

Such extensions may be granted either on a general basis or in relation to a particular dispute.

When deciding to extend any such time limit in relation to a particular dispute, the Council shall ensure, through the Secretariat, that all parties interested in that dispute which can be contacted are informed of its decision.

**39.70. -39.72. ADMINISTRATION OF THE CHAMBRE ARBITRALE**

- 39.70. A general meeting of the Chambre Arbitrale of the FCC shall be convened annually, on at least three weeks' notice, to elect a President and a Vice-President. These two persons together with the Secretary shall constitute the Board of the Chambre Arbitrale.
- 39.71. The President, or in his absence, the Vice-President, or in the absence of both, the Secretary shall have the powers devolved to the Chambre Arbitrale in accordance with these Rules.
- 39.72. The administrative and financial support shall be provided by the Federation.