



Arbitration and Appeal Rules
(Applicable to contracts concluded
on or after 01 July 2007)

**FEDERATION OF COCOA COMMERCE LTD
FEDERATION DU COMMERCE DES CACAOS
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ARBITRATION/APPEAL RULES

SECTION 31 – GENERAL RULES

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 1ST JULY 2007

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

- 31.1. The objective of the FCC Arbitration/Appeal 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 FCC Arbitration. The parties may, either pursuant to an arbitration clause or by mutual agreement, submit any other dispute to FCC Arbitration.
- 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 of the contract.
- 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.

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.

All samples must be marked "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 JULY 2007

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 JULY 2007

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 JULY 2007

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).

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 JULY 2007

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. CLOSING OUT

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 JULY 2007

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 21st 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 JULY 2007

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 21st 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 JULY 2007

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).

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.