



**FEDERATION OF
COCOA COMMERCE**

Contract Rules for Packed Cocoa Products on Buyer's Call

(Applicable to contracts concluded on or after 01 July 2019)

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RECORD OF AMENDMENTS

Rule No.	Title	Date of Amendment	Brief Description of Amendment
10	Price Fixation	29 September 2014	Updated to reflect migration of LIFFE Futures Contract to ICE Futures Europe
3.1	Mode – transmission of notices	01 March 2017	Deleted reference to telex
19.1.1	Time limits for quality and/or condition arbitration claim	01 March 2017	Deleted reference to hearing in line with the Arbitration & Appeal rules
Part 4 Rules 20-23	Sampling procedure for arbitration purposes	01 March 2017	Introduced sampling procedure for arbitration purposes in line with CP3 and CP4
2.3	Collection Contract	01 July 2019	Deleted provision for seller to contract for carriage and not assume risk of loss/damage to the product after dispatch.
6	Insolvency	01 July 2019	Amended to clarify the circumstances in which a party is deemed to be considered insolvent as well as the notice for closing out the contract
8.2	Quantity	01 July 2019	Added clarification that tolerance shall not apply whenever a contract is closed out by payment of differences between purchase and sale prices in lieu of delivery.

CONTRACT RULES FOR PACKED COCOA PRODUCTS ON BUYER'S CALL

PART 1: GENERAL CONDITIONS

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2019

1. APPLICATION OF CONTRACT RULES

1.1 Law

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

The following shall not apply:

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

1.2 Incorporation of Rules

- (a) Any contract incorporating these Contract Rules for Packed Cocoa Products on Buyer's Call known as "CP2" shall also be deemed to incorporate the FCC Arbitration and Appeal Rules, which the Parties declare they are familiar with and agree to, and shall form part of the contract.
- (b) The FCC publishes French and German translations of CP2 and a French translation of the FCC Arbitration and Appeal Rules but the original English language versions shall always take precedence.

1.3 FCC Arbitration

Any dispute arising under a contract which incorporates CP2 shall be settled by arbitration in accordance with the FCC Arbitration and Appeal Rules.

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

Arbitration and Appeal proceedings shall be conducted in the English language on the basis of the English language versions of CP2 and the FCC Arbitration and Appeal Rules, unless and always subject to Rule 1.2 (b) the Parties have agreed and specified in the contract that proceedings are to be conducted in the French language on the basis of the French language versions of CP2 and the FCC Arbitration and Appeal Rules.

2. GENERAL DEFINITIONS

The following definitions are applicable to the Contract Rules for Packed Cocoa Products on Buyer's Call.

2.1 Period

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

2.1.1 Day or calendar day

Means a period of 24 hours, midnight to midnight.

2.1.2 Non-business day

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

Should the time limit for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter.

2.1.3 Business day

Means any day other than a non-business day.

2.2 Party

Means a Buyer or a Seller but not a Broker.

2.3 Collection Contract

Means a contract in which the Seller either:

- (a) makes the product available to the Buyer at his premises; or
- (b) is called upon to deliver the product to a carrier appointed by the Buyer.

2.4 Delivered Contract

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

2.5 Package

Means bags, sacks, cartons, drums and flexible intermediate bulk containers (FIBC) unless otherwise agreed between the Parties.

2.6 Call-Off Notice

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

3. TRANSMISSION OF NOTICES

3.1 Mode

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

appointed pursuant to the FCC Arbitration and Appeal Rules, that the notice was actually transmitted to the addressee. If required by the sender, the receiver shall acknowledge receipt of a notice by one of the same methods.

3.2 Passing on

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

4. ASSIGNMENT OF INTEREST IN THE CONTRACT

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

5. RETENTION OF TITLE

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

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

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

6. INSOLVENCY

6.1 Meaning of "Insolvent"

For the purposes of this Rule 5, a Party shall be deemed to be insolvent if:

- (a) it is unable to pay its debts as they fall due or it ceases or suspends payment of any of its debts, or gives notice to any of its creditors that it has suspended or is about to suspend payment of its debts; or
- (b) it enters into any arrangement, compromise or composition in satisfaction of its debts with its creditors (other than for solvent amalgamation or reconstruction purposes); or
- (c) a resolution is passed for its winding-up (other than for solvent amalgamation or reconstruction purposes); or
- (d) a petition is presented or any proceeding is commenced seeking an order for its winding up or liquidation or a judgment of insolvency or bankruptcy or any other relief under bankruptcy or insolvency law or any other law affecting creditors' rights which either (i) results in any such order, judgment or other relief being granted or (ii) is not dismissed, discharged, stayed or restrained within 15 days of presentation or commencement; or
- (e) it seeks or becomes subject to the appointment of an administrator, provisional liquidator, receiver, trustee or other similar official for it or all or substantially all its assets; or
- (f) the holder of a floating charge over its assets has appointed an administrative receiver; or

- (g) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced against, the whole or a substantial part of its assets and such attachment or process is not dismissed, discharged, stayed or restrained within 15 days; or
- (h) it being a partnership, a bankruptcy order is made against any of its partners; or
- (i) any event occurs, or proceeding is taken, with respect to it in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in subparagraphs a. to h. above.

6.2 Close-out for insolvency

If before the fulfilment of the contract a Party becomes insolvent:

- (a) such Party (the “Insolvent Party”) shall immediately inform the other Party of the same by notice in writing;
- (b) whether or not notice has been given to it pursuant to subparagraph (a) above, the other Party may cause the contract to be closed out by giving notice in writing to that effect to the Insolvent Party provided that at the time when the notice is given the Insolvent Party remains insolvent and the Insolvent Party’s actual and/or prospective ability to fulfil the contract is materially adversely affected by its becoming insolvent.
- (c) If the Parties do not agree upon the terms on which to settle the close out then the dispute may be referred to arbitration.
- (d) If the Arbitrators determine that the contract has been validly closed out, they shall so declare and shall determine the market price on the date of closing out (the “closing out date”). If the market price on the closing out date of the goods contracted to be sold is higher than the contract price of the goods, the Seller shall be liable to the Buyer for the difference between the market price and the contract price. If the market price on the closing out date of the goods contracted to be sold is lower than the contract price of the goods, the Buyer shall be liable to the Seller for the difference between the market price and the contract price.
- (e) In addition to any amounts awarded under subparagraph (d) above, the Arbitrators may, in their discretion, award such amount(s) as they see fit in respect of any proven further loss and/or expense incurred by either Party.

6.3 Balance of accounts for insolvency

If the contract is closed out pursuant to the Rule 6.2 and there exist any additional contracts between the same Parties which are subject to any FCC Rules (whether relating to cocoa beans or cocoa products) then the additional contracts shall be deemed to be closed out at the same time as the contract is closed out.

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

6.4 Unenforceability

If this Rule 6, or any part, is prohibited by law or judged by a court to be unlawful, void or unenforceable, then this Rule 6 or any such part shall, to the extent required, be deemed removed and any remaining part shall continue in full force and effect and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

PART 2: EXECUTION OF CONTRACT

7. GENERAL

7.1 Separate Contracts

Each delivery / collection shall be enforceable as a separate contract once the delivery / collection date has been confirmed in accordance with Rule 9.2. The terms of the contract shall be deemed to be the terms of each separate contract.

7.2 Quality and Condition

The product supplied is warranted to be of satisfactory quality, in good condition and to comply with all relevant statutory requirements or regulations relating to the sale of foodstuffs in the country of delivery.

On a Collection Contract, quality and condition shall be final on departure.

On a Delivered Contract, quality shall be final either on departure or upon arrival as agreed between Parties; condition shall be final upon arrival.

7.3 Type/Grade/Brand Option Contracts

7.3.1 Seller's Option

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

7.3.2 Buyer's Option

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

7.4 Charges and Costs

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

8. DELIVERY

8.1 Delivery terms

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

8.2 Quantity

The seller may deliver 0.25% more or less than the original contract quantity.

The original quantity is net of tare and the weight of the products is as printed on the packages or on the packing list.

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

8.3 Transport

8.3.1 Transport requirements

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

8.3.2 Suitability for foodstuffs

On a delivered contract the Seller is responsible for ensuring that all vehicles and containers used for this purpose are suitable for the transportation of foodstuffs. The vehicle or container must be clean, dry, odourless and in good condition.

On a collection contract the Buyer is responsible for ensuring that all vehicles and containers used for this purpose are suitable for the transportation of foodstuffs. The vehicle or container must be clean, dry, odourless and in good condition.

However, the Seller may refuse to load any vehicle or container which he reasonably believes fails so to comply, unless and until the Seller receives from the Buyer a written letter of indemnity by which the Buyer agrees to indemnify the Seller in respect of all and any liabilities arising from Buyer's instructions to load under such circumstances. For avoidance of doubt, the Seller is under no obligation to inspect the vehicle or container as the case may be.

Use of Methyl Bromide as fumigant is forbidden under all circumstances.

8.4 Packaging

Unless supplied in bulk, cocoa products shall be packed in new hygienic packages suitably lined and in wrappings of sufficient strength to withstand the transit and storage, and which are suitable for food contact use.

9. CALL-OFFS**9.1 Deliveries / Collections**

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

9.2 Notice Period**9.2.1 For packed cocoa butter**

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

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

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

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

9.2.2 For packed cocoa liquor, cocoa cake and cocoa powder

Provided the Seller receives a request for a delivery/collection date (the "Call-Off Notice") at least 42 days in advance, the Seller shall accept the requested delivery/collection date with a tolerance of one Business day before or after the requested date, unless in their normal course of business both Parties are operating on Non-Business days. The Seller shall confirm the accepted date in writing within two

business days. Once the date is confirmed in writing by the Seller, it is fixed subject to any amendment agreed in writing.

For any notice period of less than 42 days, delivery/collection dates shall be by mutual agreement.

If there is a contract balance for which the Buyer has only given the Call-Off Notice during the last 14 days of the contract delivery period, the Seller has the right to extend the delivery period by up to 28 days and charge appropriate costs. If the Seller does not exercise this right, the Buyer and the Seller shall agree on a new delivery period at an appropriate cost.

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

9.2.3 Less than full vehicle / container loads

For any delivery of less than a full vehicle/container load, the fixed delivery/collection date may be extended into a period of more than 1 day, as agreed between the Parties.

9.3 Delays of less than 24 hours

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

10. PRICE FIXATION

10.1 Price fixation terms

If the price of the contract is to be on a price fixation basis, the contract shall state the ratio against either:

- (a)
 - i. the applicable ICE Futures Europe ("IFEU") Cocoa Futures Contract delivery month; or
 - ii. the applicable ICE Futures US ("IFUS") Cocoa Futures Contract delivery month.
- and
- (b) whether price fixation shall be at the Seller's option, at the Buyer's option, or by mutual agreement.

10.2 Contract price and tonnage

The contract price shall be determined by the specified ratio applied to either:

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

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

10.3 Time of price fixation

10.3.1 Price fixation prior to loading

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

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

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

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

all dates inclusive, in accordance with Rule 10.2.

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

10.3.3 Price fixation by mutual agreement

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

10.4 Amount to be fixed

The Party holding the price fixation option may request fixation of any part of the contract provided that the quantity fixed shall be vehicle or container loads or multiples thereof, except when pricing the balance of the total contract quantity.

10.5 Closure of either the IFEU or IFUS Cocoa futures contracts

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

11. PRICE

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

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

In any case, Rule 7.4 shall apply.

12. DOCUMENTS

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

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

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

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

13. PRESENTATION AND PAYMENT OF INVOICES

13.1 Weight Basis

Product shall be invoiced based on the weight of the product as printed on the packages, or on the packing list.

13.2 Place

All documents required under the contract shall be presented to the Buyer for payment at the place(s) specified in the contract. If no place for presentation is stated, then it shall be at the Buyer's address as shown on the contract.

13.3 Payment

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

13.4 Non-payment

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

- (a) to charge interest in accordance with Rule 14;
- (b) with prior notice, to suspend any further deliveries until payment is made;
- (c) with prior notice, to change the basis of the contract to payment in advance or such other terms as the Seller may deem appropriate. Any additional costs arising therefrom shall be for the Buyer's account.

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

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

14. INTEREST

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

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

15. SAMPLING AND SUPERVISION

15.1 Sampling and Supervision

- (a) On contracts where quality and/or condition are final on departure, a representative sample shall be drawn, sealed and labelled by the Seller prior to delivery. Buyer shall be entitled to sample the product at loading at his expense failing which the sample drawn by the Seller shall be final. These samples shall be the “quality and condition samples” on such contracts.
- (b) On contracts where quality and/or condition are final upon arrival, a representative sample shall be drawn, sealed and labelled by the Buyer upon arrival. Seller shall be entitled to be represented at sampling at unloading, at his expense. This sample shall be the “ the quality and condition sample” on such contracts.
- (c) On contracts where quality is final on departure and condition is final upon arrival, the “quality sample” shall be that taken under 15.1 (a) and the “condition sample” shall be that taken under 15.1 (b).

15.2 Sampling, labelling and storage of samples

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

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

The containers/bags shall be airtight and be properly closed, sealed and labelled.

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

PART 3: CLAIMS, DISPUTES AND ARBITRATION

16. CLAIMS

16.1 Quality and/or condition

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

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

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

For any other defects: claims must be made within 28 business days of the actual arrival time at the Buyer's place of discharge.

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

In the event of a dispute on quality and/or condition, and failing settlement, the sample(s) taken under Rule 15 shall be sent with due dispatch to an independent laboratory, whose analysis results shall be final. This laboratory shall be chosen by mutual agreement.

If parties fail to agree on a laboratory or to settle on the basis of the analysis results of the nominated laboratory, the claimant may apply for arbitration as per Rule 19.1.

16.2 Short weight

Weights as invoiced per Rule 13.1 shall be final, unless the Buyer makes a claim for excessive short-weight.

Claims for missing packages must be made in writing within 5 business days after collection/delivery took place. Any such claim must be supported by the duly noted usual transport document.

Claims for underweight packages must be made in writing within 28 days of the actual arrival of the product at the Buyer's place of discharge.

17. FORCE MAJEURE

17.1 Force Majeure

Should the Seller be prevented from making delivery, or the Buyer from taking delivery of the product sold, by Acts of God, war, strikes, riots, civil commotion, lockouts, fires, interruption of power, sabotage, machinery breakdown or any other event comprehended by the term Force Majeure, the time for physical delivery shall be suspended for the period during which the Seller is prevented from making delivery or the Buyer is prevented from taking delivery as the case may be and extended for 15 days thereafter. Should the period of suspension exist for a period of 60 days or more beyond the contract period, the contract or any unfulfilled part thereof so affected shall be closed out as per Rule 17.2.

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

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

17.2 Close-out for Force Majeure

If collection/delivery is still prevented at the end of the extended period, the Parties shall agree on the market price for the contracted product at the end of the extended period, to close out the contract.

Irrespective of which Party claimed Force Majeure the following procedure shall be adopted:

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

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

18. DEFAULT AND/OR INTENTION OF NON-PERFORMANCE

18.1 Payment

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

18.2 Delivery

- (a) if the Buyer fails to call off the contractually agreed quantity(ies) or any part thereof in accordance with Rule 9.2 (subject to Rule 8.2), the Seller may declare the Buyer to be in default on the first business day after the end of the contract delivery period;
- (b) if the Seller fails to agree dates for delivery of the contractually agreed quantity(ies) or any part thereof in accordance with Rule 9.2 (subject to Rule 8.2), the Buyer may declare the Seller to be in default on the first business day after the end of the contract delivery period or the extended contract delivery period as the case may be;
- (c) where delivery, arrival, loading or unloading is delayed by more than 24 hours beyond the fixed date/period of delivery, or is not made at all, the Party not at fault is entitled to put the other Party in default for that delivery only, which will then be closed out following the procedure set out in Rule 18.3.

18.3 Close out for non-fulfilment

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

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

18.4 Intention of non-performance

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

If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to the FCC Arbitration and Appeal Rules. If the Arbitrators decide that a

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

The following procedure shall be adopted:

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

19. ARBITRATION AND APPEAL

Any dispute arising out a contract incorporating CP2 shall be settled in accordance with the FCC Arbitration and Appeal Rules applicable on the date of the contract.

19.1 Claim for arbitration

A Party claiming for arbitration shall notify the other Party of the claim in accordance with the time limits stipulated below. Applications for arbitrations shall be submitted to the FCC in accordance with the FCC Arbitration and Appeal Rules.

19.1.1 Time limits for quality and/or condition

The claim shall be made within 56 days after unloading.

19.1.2 Time limits for other than quality and/or condition

The claim shall be made within one year after the last delivery under the contract or one year after the last day of the contracted delivery period if such has not taken place.

19.2 Discretion of arbitrators

In the event of non-compliance with any of the provisions of the Rule 19.1, and unless the arbitrators in their absolute discretion determine otherwise, claims shall be deemed to be waived and absolutely barred.

19.3 String arbitration

In the event that a Party claims that the contract forms part of a string of contracts which are subject to these Contract Rules and are in all relevant material points identical except as to price, any arbitration for quality and/or condition may be held between the first Seller and the last Buyer in the string as though they were the only contracting Parties, provided that every Party against whom arbitration is claimed and who in turn claims to be in the string, shall have supplied his contract, the invoice and, when appropriate, confirmation of the Call-off and the proof of collection/delivery as well as any other relevant information required by the Arbitrators.

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

Any arbitration under this Rule shall be conducted in the language of the contract agreed between the first Seller and first Buyer pursuant to Rule 1.3.

Any award so made between the first Seller and the last Buyer shall, subject to any rights of appeal available under the Arbitration and Appeal Rules of the FCC, be binding on all intermediate Parties in the

string and may be enforced by an intermediate Party against his immediate contracting Party as though a separate award had been made under each contract.

PART 4 – SAMPLING PROCEDURE FOR ARBITRATION PURPOSES

20. APPLICABILITY

Parties may agree at the time of entering into the contract upon the applicable sampling procedures for the purposes of quality determination in accordance with Rule 15 as appropriate. Unless otherwise agreed between the parties, for disputes referred to FCC Arbitration only samples prepared in accordance with the following procedures will be permitted. Under these Rules only cocoa products packed in sound Packaging Units up to a maximum weight of 1200kg may be sampled.

21. DEFINITIONS

21.1 Consignment

Means a container (1 teu or 2 teu, as appropriate) or vehicle load of Packaging Units.

21.2 Primary Sample

Means a quantity of cocoa product of not less than 50g drawn from a Packaging Unit.

21.3 Composite Sample

Means a sample of a minimum of 150g (or such larger quantity as may be required in accordance with standard recognised analytical tests for the identified defective(s) upon which the claim for arbitration is based) and formed from the homogenous mixing of Primary Samples drawn from and representative of each selected Packaging Unit and which will be used for the purposes of assessing the quality of the Consignment against the contract specification.

21.4 Packaging Unit

Means a single package containing a quantity of cocoa product.

21.5 Production or Lot

Means the unique identification assigned to a number of Packaging Units produced from a single operation.

21.6 Defectives

Means those aspects of the quality which, on analysis of a Composite Sample prepared from Primary Samples which have been drawn from the Consignment in accordance with the Sampling Plan, are found not to be in accordance with the contract specification.

22. APPARATUS AND MATERIALS OF SAMPLING

Sampling instruments, apparatus and sample containers shall be clean (and where appropriate sterilised), dry and made of materials which are chemically and microbiologically inert to the product being sampled.

After samples have been drawn, the Packaging Units must be securely and hygienically resealed and repaired as necessary and clearly marked to show that the unit has been subject to sampling. Samples and the corresponding Packaging Units must be clearly labelled in this respect in order to ensure traceability of the sample and the date and place of sampling and the name of the sampler.

23. SAMPLING PLAN

A Composite Sample shall be taken for each separate Production or Lot loaded in one Consignment. Unless otherwise agreed, the costs of sampling and analysis for a maximum of 2 samples per Consignment shall be for the account of the Buyer; the costs of any subsequent sample(s) shall be for the account of the Seller.

The number of Packaging Units from which the Primary Samples are to be taken, shall be the square root of the total number of Packaging Units with the same Production or Lot loaded in one Consignment, rounded up to the nearest whole number. All Primary Samples shall be combined to form a Composite Sample which shall be used for the purpose of assessing the quality of that specific Production or Lot.

For Packaging Units weighing up to and including 50kg net per unit, 1 Primary Sample shall be drawn from each of the Packaging Units, selected at random.

For Packaging Units weighing more than 50kg net per unit, 3 Primary Samples shall be drawn from each Packaging Unit, selected at random. The samples shall be drawn from the top, centre and bottom of each Packaging Unit.

The weight of each Primary Sample shall be a minimum of 50g and shall be sufficient to form a Composite Sample of a minimum of 150g (or such larger quantity as may be required in accordance with the standard recognised analytical tests for the identified Defectives upon which the claim for arbitration is based.

All Primary Samples taken from one Production or Lot shall form the Composite Sample representing the quality of the respective Production or Lot.