



FEDERATION OF
COCOA COMMERCE

Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB or C&I Terms

(Applicable to contracts concluded on or after 01 July 2021)

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RECORD OF AMENDMENTS

Rule No.	Title	Date of Amendment	Brief Description of Amendment
	Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB or C&I Terms	05 March 2014	Added reference to C&I term
2.4.1	Buyer booking freight	05 March 2014	Revised definition
2.4.2	Seller booking freight	05 March 2014	Revised definition
2.8	Estimated Time of Arrival	05 March 2014	Added definition
2.10	Final Day of Landing	05 March 2014	Added definition
7.3	Option Contracts origin/brand/port at Seller's option	05 March 2014	Combined headings
8	Shipment	05 March 2014	Revised title for consistency with CP3
8.2	Transport Requirements	05 March y 2014	Combined headings
8.4.1	Buyer booking the freight	05 March 2014	Clarified Buyer's responsibilities to the Seller
8.4.2	Seller booking freight	05 March 2014	Revised title as per rule 2.4.2
8.7	Vessel Routes	05 March 014	Added for consistency with CP3
8.8	Ship owner's rights under BL	05 March 2014	Added for consistency with CP3
9	Declaration of Shipment	05 March 2014	Revised title and introduction of additional clauses re: declaration of shipment for consistency with CP3
13.5	Delayed Payment	05 March 2014	Revised title. Added cross reference to default rule
15.1	Supervision	05 March 2014	Added provision for appointment of superintendent
15.2.1	Sampling – quality on departure	05 March 2014	Clarified Buyer's option to sample
15.2.2	Sampling – quality on arrival	05 March 2014	Sampling reference changed from unstuffing of container to FDL Time period for drawing arbitration sample extended.
15.3	Unstuffing of the containers	05 March 2014	Containers to be unstuffed within 21 days from FDL
15.4.1	Shipping weights	05 March 2014	Clarified Buyer's right to weigh the goods.
15.4.2	Shipped weights	05 March 2014	Clarified Seller's obligation to weigh the goods.
15.4.3	Landed weights	05 March 2014	Clarified Buyer's obligation to weigh the goods.
15.4.3.1	Final invoice	05 March 2014	Clarified provision for payment of final invoice for landed weight contracts.

15.5.3	Quality on departure	05 March 2014	Revised for consistency with CP3
16	Insurance	05 March 2014	Revised for consistency with the contract rules for cocoa beans
19	Default, and/or intention of non-performance	05 March 2014	Revised for consistency with the contract rules for cocoa beans
20.3	String arbitration	05 March 2014	Revised for consistency with CP3
20.1.1	Time limits for quality and/or condition	05 March 2014	Deleted reference to hearings
16.1.1	Melting Clause	01 July 2014	Amended to include all cocoa products
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
8.2.1	Transport requirements	01 March 2017	Added clarification that Seller is under no obligation to inspect the vehicle or container
8.2.2	Suitability for Foodstuffs	01 March 2017	Added clause on suitability for foodstuffs in line with the contract rules for cocoa beans
8.4.1	Buyer booking the freight	01 March 2017	Provision for Seller to refuse to load the vessel/vehicle on certain grounds moved from Rule 8.2.2
19.2	Close out for non-fulfilment, disputes and referral to arbitration	01 March 2017	Revised to delete duplication of procedure for seller/buyer in default
19.4	Non-payment	01 March 2017	Added procedure to be adopted by arbitrators for determination of market price
Part 4 Rules 21-24	Sampling procedure for arbitration purposes	01 March 2017	Revised sampling procedure for arbitration purposes more in line with market practice
2.11	Seller's Notification	01 July 2019	Added definition of Seller's Notification
5	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
8.1	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 shipment or delivery.
8.4.1	Buyer booking the freight	01 July 2019	Amended in line with the contract rules for cocoa beans

8.4.2	Seller booking the freight	01 July 2019	Amended in line with the contract rules for cocoa beans
13.2	Late presentation	01 July 2019	Amended in line with the contract rules for cocoa beans
19	Default/Intention of Non-Performance Contract Terms	01 July 2019	Clarified default provisions under the contract terms C&I /FOB Buyer Booking Freight and C&I/FOB Seller Booking Freight
1.1 (e)	Law	01 July 2021	Added clarification that ICC Incoterms do not apply to CP4.
8.4.1	Buyer booking the freight	01 July 2021	Time limit for Buyer to nominate vessel and advise Seller changed to 21 days.
10.3.1	Price fixation	01 July 2021	Revised for Price fixation prior to be prior to presentation of documents.
10.3.2	Price fixation at Buyer's or Seller's Option	01 July 2021	Revised business day period for fixation of contracts
18	Force Majeure	01 July 2021	Revised definition and the provisions for extended shipment period

CONTRACT RULES FOR SHIPMENT OF PACKED COCOA PRODUCTS IN CONTAINERS ON FOB or C&I TERMS

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2021

PART 1: GENERAL CONDITIONS

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 to the contract:

- (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;
- (e) ICC Incoterms

1.2 Incorporation of Rules

- (a) Any contract incorporating these Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB terms known as “CP4” 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 translations of CP4 and 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 CP4 shall be settled by FCC arbitration in accordance with the FCC Arbitration and Appeal Rules.

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

Arbitration and Appeal proceedings shall be conducted in the English language on the basis of the English language versions of CP4 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 CP4 and the FCC Arbitration and Appeal Rules.

2. GENERAL DEFINITIONS

The following definitions are applicable to the Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB Terms.

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

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. The period of shipment and Notices to be given in connection with the same shall not be affected.

2.1.3 Business day

Means any day other than a non-business day.

2.1.4 Shipment

Shipment must be made within the specified calendar month or shipment period(s).

Prompt Shipment – means shipment within thirty days from the date of the contract.

Immediate Shipment – means shipment within fifteen days from the date of the contract.

Date of Shipment – means the date of loading of the goods as shown on the Bill of Lading, (as defined in Rule 2.6), in the absence of evidence to the contrary.

2.2 Party

Means a Buyer or a Seller acting as Principal to the contract.

2.3 Package

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

2.4 Shipment terms

Under these contract terms delivery of the goods takes place on board a vessel at the agreed or declared port of loading.

Under these contract terms one of the following options may apply:

2.4.1 Buyer booking the freight

Under these contract terms the Buyer books and pays for the freight.

2.4.2 Seller booking the freight

Under these contract terms the Seller books the freight, on behalf of the Buyer, on the shipping line nominated by the Buyer and the Buyer pays for the freight.

2.5 Bill of Lading

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

2.6 Weight

2.6.1 Shipping Weight

Means the weight of a parcel of cocoa products calculated by multiplying the number of Packages within the parcel by the weight printed on the outside of each package, the result being recorded on the Bill of Lading.

2.6.2 Shipped Weight

Means the net weight of a parcel of cocoa products weighed prior to shipment and recorded on the Bill of Lading and in a Weight Note which shall also record the tare of the Packages.

2.7 Port of Loading

Means the port agreed in or declared under the contract.

2.8 Estimated Time of Arrival (ETA)

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

2.9 Notice

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

2.10 Final Day of Landing

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

2.11 Seller's Notification

Means a Notice sent by the Seller to the Buyer and his appointed Superintendent specifying the shipping marks, number and location of the goods and/or such other information that will enable the Buyer and his Superintendent immediately to identify the goods.

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. INSOLVENCY

5.1 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;
- (b) or 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.

5.2 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.

5.3 Balance of accounts for insolvency

If the contract is closed out pursuant to Rule 5.2 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 contracts and the additional contracts, if any, and all sums owed between the Parties shall be set off against each other and any amount which remains owing by one Party to the other shall be paid promptly.

5.4 Unenforceability

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

6. SUPERINTENDENTS CLAUSE

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

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

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

PART 2: EXECUTION OF CONTRACT

7. GENERAL

7.1 Separate Contracts

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

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

7.2 Quality and Condition

7.2.1 General

The product supplied is warranted to be of satisfactory quality, in good condition and fit for human consumption. Unless otherwise agreed between the Parties, the standards of the Codex Alimentarius for cocoa products current at the date of the contract will apply.

7.2.2 Quality

Quality shall be final at departure or on arrival as agreed between parties

7.2.3 Condition

Condition shall be final at point of the stuffing of the containers.

7.3 Option Contracts - Origin/Brand/Port at Seller's Option

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

7.4 Charges and Costs

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

8. SHIPMENT

8.1 Quantity

The contract quantity is net of tare and is subject to a tolerance of 0.25%, based on the weight of the product as printed on the Packages (in case of a Shipping Weight contract), or on the packing list (in case of a Shipped Weight contract).

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

8.2 Transport

8.2.1 Transport Requirements

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

The ship's hold, vehicle and/or container must be clean, dry, odourless and in good condition and must be suitably prepared for the transport of cocoa products. Containers shall be sealed after stuffing. For avoidance of doubt and subject to the provisions of Rule 8.2.2., the Seller is under no obligation to inspect the vehicle or container as the case may be.

All vessels must meet the requirements current at the time of shipment of either the Institute Classification Clause or the Police Française d'Assurance Maritime sur Facultés.

8.2.2 Suitability for Foodstuffs

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

Any specific requirements for preparation of containers for shipment of packed cocoa products shall be agreed between the parties at the time of entering into the contract.

8.3 Packaging

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.

8.4 Nomination of vessel

8.4.1 Buyer booking the freight

The Buyer shall nominate the vessel(s) and quantity(ies) required for loading and send a Notice to the Seller advising the ETA of the vessel(s) no later than 21 days prior to the ETA of the Vessel(s) at the Port of Loading, and at the same time, advise the Seller the name of his Superintendent or Sampler, if appointed. Within 5 days thereof the Seller shall send the Buyer a Seller's Notification.

The Buyer may give Notice to the Seller of:

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

provided the Buyer gives such Notice promptly to the Seller and the original shipment period is maintained.

The Buyer will reimburse the Seller for any reasonable, verifiable and foreseeable additional costs which may be incurred by the Seller as a result of any change in the Estimated Time of Arrival of the vessel or substitution of the Vessel.

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

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

Should the Seller fail to complete loading of all or part of the contractual quantity on the duly nominated and arrived vessel(s), then unless Rule 19.1.1.1. applies, the Buyer shall be entitled to hold the Seller in default for the quantity not loaded, subject to the provisions of Rule 19.1.1.2.

The Seller may refuse to load any vessel, vehicle or container booked by the Buyer if the Seller has reasonable grounds to consider that Rule 8.2.2 has not been complied with by the Buyer, unless and until the Seller receives from the Buyer a written letter indemnity by which the Buyer agrees to indemnify the Seller against all and any liability arising from the Buyer's instructions to load under such circumstances.

The Buyer shall ensure that the cargo space is made available within sufficient time to enable the Seller to complete loading of all of the contractual quantity by the last day of the shipment period failing which the Seller shall be entitled to hold the Buyer in default for the quantity not shipped, subject to the provisions of Rule 19.1.2.1.

8.4.2 Seller booking the freight

The Buyer shall give Notice to the Seller nominating the shipping line(s) to be used (i.e. shipping lines that will allow due time for loading by the end of the shipment period), the port of destination and the quantity required for loading at least 15 days before the first day of the shipment period, failing which the above nominations may be made by the Seller.

Upon receipt of such Notice, the Seller shall reserve the freight space with the shipping line(s) nominated by the Buyer.

The Seller shall confirm to the Buyer the vessel so booked, the tonnage and the Estimated Time of Arrival of the vessel at the port of loading. The Seller may substitute any vessel for another, as long as it is of the shipping line(s) nominated by the Buyer and can be loaded within the contracted shipment period.

For quality on departure contracts, the Seller shall give the Buyer at least 10 days' notice of the Estimated Time of Arrival of the Vessel at the Port of Loading and, at the same time send the Buyer a Seller's Notification. Upon receipt of the Seller's Notification, the Buyer shall notify the Seller of the name of his Superintendent and/or Sampler and/or Weigher, if appointed.

Should the Seller fail to complete loading of the contractual quantity within the shipment period on the shipping line(s) nominated by the Buyer, the Buyer shall be entitled to place the Seller in default in accordance with the provisions of Rule 19.1.1.2. in respect of the quantity not shipped.

8.5 Bills of Lading

The Seller shall present clean through Bill(s) of Lading issued by a Liner operator or their agent, stating that the parcel is "loaded on board" or "received on board" or "shipped on board", and specifying the container numbers, the seal numbers, the goods, the net weight and, if appropriate, the number of packages and shipping marks, all of which shall be considered proof of shipment unless the contrary is proved.

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

8.6 Liner terms

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

8.7 Vessel Routes

Carriage shall be either by a direct route or by an indirect route customarily used for the carriage of cocoa products.

8.8 Ship owner's rights under Bill of Lading

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

FOB / C&I - All costs arising therefrom shall be for the Buyer's account.

9. DECLARATION OF SHIPMENT

9.1 Contents

The Seller shall send a notice to the Buyer to be referred to in CP4 as a Declaration of Shipment, which shall contain the following:

- (a) Contract Number and Date,
- (b) Description of goods shipped including their origin,
- (c) Quantity of goods shipped (weight and number of Packages),

- (d) Whether the parcel is in complete or partial fulfilment of the quantity sold,
- (e) Name of the vessel,
- (f) Bill of Lading (or Ship's Delivery Order) date and number,
- (g) Container number(s) and seal number(s),
- (h) Port of loading,
- (i) Port of discharge and, if different, place of final delivery,
- (j) The name of the supervisor appointed by the Seller, if any.

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

9.2 Time of declaration

9.2.1 Shipment Terms

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

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

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

9.2.2 Arrival Terms

The Seller shall send the declarations of shipment required under Rule 9.1 to the Buyer as soon as reasonably practicable after exercising the arrival option.

The Declaration of Shipment shall be accepted by the Buyer provided that, at the time it was sent by the Seller, the goods were Afloat on a vessel expected to arrive during the arrival period.

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

9.2.3 Minimum quantities

Unless otherwise agreed, each Declaration of Shipment shall be for a minimum of one full TEU container-load.

9.2.4 Ship lost or not lost

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

Even in the event of the actual loss or a constructive total loss of the vessel or in the event that the voyage is abandoned, payment shall be made in full by the Buyer based on net Bill of Lading weights against presentation by the Seller of the documents in accordance with Rule 12.1.

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 presentation of documents

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

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

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

- i) the price must be within the range quoted for the specified delivery month of either the 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, five 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 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. EXPORT COSTS

All duties, taxes, levies and other charges as well as the costs of carrying out customs facilities payable upon export of the goods shall be borne by the Seller.

12. DOCUMENTS**12.1 List**

The Seller shall present the following documents:

- (a) The invoice.
- (b) Complete set(s) of on board Bill(s) of Lading as per Rule 8.5
- (c) Certificate of origin
- (d) For Shipped Weight contracts a weight note in accordance with Rule 16.4
- (e) Any other documents agreed by the Parties at the time of concluding the contract.

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

12.2 Guarantees for incomplete documents

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

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

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

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

13.2 Late presentation

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

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

As soon as documents are presented, the Buyer is responsible for ensuring the clearing of the goods from the port of discharge to the place of final delivery without undue delay.

13.3 Amount

The amount of the invoice shall be based on the weight as stated on the Bill of Lading and as provided for in Rule 2.6.

13.4 Mode of payment

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

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

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

13.4.1 Cash Against Documents by Letters of Credit

Letters of Credit must be Irrevocable and confirmed.

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

13.4.2 Cash Against Documents by Documentary Collection

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

Payment shall be by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract. The Buyer is obliged to accept such shipping documents.

The value date for payments made by the Buyer shall be the business day following that on which the documents were presented.

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

13.4.3 Cash Against Documents presented "In Trust"

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

Payment shall be by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract. The Buyer is obliged to accept such shipping documents.

The value date for payments made by the Buyer shall be the business day following that on which the documents were presented.

13.5 Delayed payment

If there is an unreasonable delay by the Buyer in making full payment in accordance with Rule 13, 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, including those under Rule 19.5.

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, SUPERVISION AND WEIGHING

15.1 Supervision – Appointment of a Superintendent

In accordance with Rule 6, any Party may appoint a person to carry out the duties of a Superintendent in relation to weighing and/or sampling.

The appointing party is responsible for all the costs of his Superintendent.

15.2 Sampling

15.2.1 Quality on departure

A representative sample shall be drawn, sealed and labelled by the Seller prior or during stuffing of the container.

The Buyer shall be entitled to sample the product prior or during stuffing of the container, at his expense, according to sampling procedures to be agreed between Parties. In this case the sample drawn by the Buyer shall be the arbitration sample.

The Seller must give the Buyer or his Superintendent, if appointed in accordance with Rule 15.1, reasonable notice of the date, place and time of both the drawing of the representative sample by the Seller and the stuffing of the container.

If Parties fail to agree on a sampling procedure, then the Buyer shall have the right to draw a sample in accordance with Part 4 of these Contract Rules at his expense, and this sample shall become the arbitration sample.

If the Buyer has notified the Seller of the appointment of a Superintendent and the Seller fails to comply with the conditions thereof then the Buyer is entitled to either:

- (a) accept the Seller's sample or;
- (b) change the terms of the contract to quality on arrival.

Should the Buyer not appoint a Superintendent or should the appointed Superintendent fail to be present after having received reasonable notice of the place, date and time of the sampling of the product, then the samples drawn, sealed and labelled by the Seller shall be final.

15.2.2 Quality on arrival

A representative sample shall be drawn, sealed and labelled by the Buyer without unreasonable interruption at the place of final delivery within 28 days from the Final Day of Landing.

In the event that the Buyer considers the quality of the goods not to be in accordance with the contract he must notify the Seller as soon as possible but no later than 28 days after the Final Day of Landing.

If the parties fail to resolve the dispute amicably, arbitration samples must be drawn in accordance with Part 4 of these Contract Rules within 42 days of the Final Day of Landing. The Buyer must give the Seller or his Superintendent, if appointed in accordance with Rule 15.1, due notice of the date, place and time of the drawing of the arbitration samples to ensure that this can be completed within the permitted 42 day period.

If the goods are not sampled in accordance with the above then no quality claim is admissible, except when the Buyer is not responsible for the delay and further provided that the parcel is sampled as soon the Buyer has access to the goods.

If the Seller has notified the Buyer of the appointment of a Superintendent in accordance with 15.1 and the Buyer fails to comply with the conditions thereof such that sampling takes place without the Seller's Superintendent being present, then the Buyer shall lose the right to claim for quality.

Should the Seller not appoint a Superintendent or should the appointed Superintendent fail to be present after having received due notice of the place, date and time of the sampling then the arbitration samples sealed by the Buyer shall be final.

15.3 Unstuffing of the containers

Containers shall be unstuffed at the port of discharge and within a reasonable time after discharge of the vessel but no later than 21 days from the Final Day of Landing.

15.4 Weighing

15.4.1 Shipping Weights

The Buyer has the right to weigh all or part of the goods upon unstuffing of the containers in accordance with Rule 15.3. If he does not do so, the Buyer loses the right to claim for loss in weight.

If the goods are not weighed within the time limits above and the Buyer can demonstrate that he is not responsible for such failure then the parcel shall be weighed as soon as the Buyer has access to the goods.

The Buyer must give the Seller or his Superintendent, if appointed in accordance with Rule 15.1, reasonable notice of the date, place and time of the weighing.

If a parcel is found to contain unsound Packages such Packages shall be segregated from the sound Packages and will not form part of any verification of the shipping weight against actual weight for the purpose of a loss in weight claim.

Any weighing by the Buyer must be done at the place of unstuffing of the containers in the presence of the Seller's Superintendent, if appointed in accordance with Rule 15.1, using weighing equipment with a current recognised certificate issued by a competent authority. If such equipment is not available, then Parties have to agree on a suitable location, near the place of unstuffing.

If the Seller has notified the Buyer of the appointment of a Superintendent in accordance with 15.1 and the Buyer fails to comply with the conditions thereof such that weighing takes place without the Seller's Superintendent being present, then the Buyer will lose the right to claim for loss in weight.

Should the Seller not name a Superintendent or should the Superintendent fail to be present after having received due notice of the place, date and time of the weighing then weight notes certified by the Buyer and provided by the Buyer to the Seller within 30 days of the first day of weighing shall be final.

15.4.2 Shipped Weights

Weighing of goods shipped under each Bill of Lading is mandatory.

The Seller must give the Buyer or his Superintendent, if appointed in accordance with Rule 15.1, reasonable notice of the date, place and time of the weighing.

Weighing shall be carried out at the time and place of stuffing of the containers by the Seller in the presence of the Buyer's Superintendent, if appointed in accordance with Rule 15.1, using weighing equipment with a current recognised certificate issued by a competent authority. If such equipment is not available, then the Parties have to agree on a suitable location, near the place of stuffing the containers.

Should the goods not be weighed in accordance with the above and provided the Buyer can demonstrate that he is not responsible for the failure, then the Buyer is entitled to either:

- (a) accept the Seller's weight notes or;
- (b) accept the parcel on Shipping Weight terms or;
- (c) accept the parcel on Landed Weight terms and make payment for 95% of the amount of the provisional invoice based on the Bill(s) of Lading net weight(s).

Should the Buyer not name a Superintendent or should the Superintendent fail to be present after having received reasonable notice of the place, date and time of the weighing then the Seller's weight notes shall be final.

15.4.3 Landed Weights

The Buyer shall weigh all or part of the goods upon unstuffing of the containers in accordance with Rule 15.3. If he does not do so, the Buyer loses the right to claim for loss in weight.

If the goods are not weighed within the time limits above and the Buyer can demonstrate that he is not responsible for such failure then the parcel shall be weighed as soon as the Buyer has access to the goods.

The Buyer must give the Seller or his Superintendent, if appointed in accordance with Rule 15.1, reasonable notice of the date, place and time of the weighing.

If a parcel is found to contain unsound Packages such Packages shall be segregated from the sound Packages and will not form part of any verification of the shipping weight against actual weight for the purpose of a loss in weight claim.

Any weighing by the Buyer must be done at the place of unstuffing of the containers in the presence of the Seller's Superintendent, if appointed in accordance with Rule 15.1, using weighing equipment with a current recognised certificate issued by a competent authority. If such equipment is not available, then Parties have to agree on a suitable location, near the place of unstuffing.

If the Seller has notified the Buyer of the appointment of a Superintendent in accordance with 15.1 and the Buyer fails to comply with the conditions thereof such that weighing takes place without the Seller's Superintendent being present, then the Buyer will lose the right to claim for loss in weight.

Should the Seller not name a Superintendent or should the Superintendent fail to be present after having received reasonable notice of the place, date and time of the weighing then weight notes certified by the Buyer and provided by the Buyer to the Seller within 30 days of the first day of weighing shall be final

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

15.4.3.1 Final Invoice

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

15.5 Charges

15.5.1 Shipping Weights

The Buyer shall pay all charges/costs/expenses incurred in weighing at the port of discharge or at any other place as agreed between the Parties, except Supervision cost incurred by Seller.

15.5.2 Shipped Weights

The Seller shall pay all charges/costs/expenses incurred in weighing at place of stuffing the container, except Supervision cost incurred by the Buyer.

15.5.3 Quality on departure

The Seller shall pay all charges/costs/expenses incurred in sampling prior or during stuffing the container, except Supervision cost incurred by the Buyer.

If Buyer exercises his right to sample prior or during stuffing of the container, all charges/costs/expenses incurred in sampling are for Buyer's account, except Supervision cost incurred by the Seller.

15.5.4 Quality on arrival

The Buyer shall pay all charges incurred in sampling at the port of discharge or at any other place as agreed between the Parties, except Supervision cost incurred by Seller.

16. INSURANCE

16.1 General

Where under the contract terms the goods are to be insured such insurance shall be effected with First Class Underwriters and/or First Class Insurance Companies (for the purpose of this Rule, First Class means a Standard & Poor's solvency rating of minimum BBB, or the equivalent thereof) who are domiciled or conducting business in the United Kingdom or France or who, for the purpose of any legal proceedings, accept a British or French domicile and provide an address for service of process in London or Paris, on either of the following terms:-

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

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

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

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

16.1.1 Melting clause

Insurance on all contracts for cocoa products must include cover for melting howsoever caused howsoever arising.

16.1.2 Loss and damage

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

16.2 FOB shipment terms

The Buyer shall insure the goods at the contract price from the place of stuffing up to the port of discharge.

As evidence that the Buyer has insured the goods in accordance with Rule 16.1, the Seller may request in writing the Buyer to provide a copy of the insurance certificate or, if this cannot be provided, a letter of guarantee (to be countersigned by a first-class bank acceptable to the Seller – such acceptance not to be unreasonably withheld by the Seller) either confirming that insurance has been effected in accordance with Rule 16.1 or that payment will be made against presentation of documents in accordance with Rule 12.1.

The Buyer shall comply immediately upon the Seller's first written request unless such request is made prior to receipt by the Buyer of the Declaration of Shipment required under Rule 9 in which case the Buyer shall comply immediately upon receipt of the Declaration of Shipment.

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

16.3 C&I shipment terms

The Seller shall insure the goods at the contract price from the place of stuffing up to the place of final delivery or if none is specified then to the port of discharge.

PART 3: CLAIMS, DISPUTES AND ARBITRATION

17. CLAIMS

17.1 Quality

In the event of a dispute on quality, and failing settlement, the arbitration samples taken in accordance with Rule 15.2 shall be sent with due dispatch to an independent accredited 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 20.1.

17.2 Short weight

For Shipping Weight contracts, any short weight established as per Rule 15.4.1. shall be invoiced by the Buyer to the Seller.

18. FORCE MAJEURE

18.1 Force Majeure

Force Majeure means the occurrence of an event or circumstance that prevents a Party (“the claimant”) from performing its contractual obligations, which is:

- (a) irresistible – the event or circumstance must render performance impossible, not merely more onerous, and
- (b) unforeseeable at the time when the contract was concluded, or if the event or circumstance was foreseeable, steps must have been taken to prevent or avoid it, and
- (c) beyond the claimant’s control.

In the absence of proof to the contrary, the following events affecting the claimant’s performance of its contractual obligations shall be presumed to unforeseeable and beyond its control: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

18.2 Extended Shipment Period

Should the Seller be prevented or delayed from making shipment, or the Buyer from taking delivery of the goods sold by a case of Force Majeure as described in Rule 18.1, the time of shipment will be extended by one month, provided the claimant notifies the other Party of the occurrence and cause of such event of Force Majeure promptly and without undue delay. If required, the claimant must promptly produce satisfactory evidence justifying the delay or non-fulfilment as an event of Force Majeure.

18.3 Close-out for Force Majeure

If shipment/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.

19. DEFAULT AND/OR INTENTION OF NON-PERFORMANCE

19.1 Contract Terms – C&I and FOB Buyer Booking Freight

19.1.1 Seller Fails to ship on the duly nominated and arrived vessel

19.1.1.1 Should the Seller fail to complete loading of all or part of the contractual quantity on the duly nominated and arrived vessel but ships with the Buyer's agreement on a substitute vessel and agrees to reimburse the Buyer for any additional expenses incurred by the Buyer then the Seller will not be deemed to be in default of the Contract.

19.1.1.2 Subject to Rule 19.1.1.1:

- a) if the Seller fails to complete loading of all or part of the contractual quantity within the shipment period on the duly nominated and arrived vessel(s) and/or
- b) where the parties have expressly agreed a loading period or if a loading period is implied into the contract, if the Seller fails to complete loading of all or part of the contractual quantity on the duly nominated and arrived vessel(s) within that loading period even if that loading period ends prior to the end of the shipment period

the Buyer shall within 5 business days thereafter be entitled to declare the Seller in default in respect of the quantity not so loaded.

19.1.1.3 If the Buyer does not declare the Seller to be in default within the above-mentioned 5 business days then the shipment period shall be deemed to have been extended until such time as the Buyer gives Notice to the Seller of a new Estimated Time of Arrival of a vessel in accordance with the provisions of Rule 8.4.1. The obligations of the parties under Rule 8.4.1. shall apply afresh.

19.1.1.4 If the Buyer has not declared the Seller to be in default in accordance with the provisions of Rule 19.1.1.2 or has not given Notice to the Seller of a new Estimated Time of Arrival of a vessel in accordance with the provisions of Rule 19.1.1.3 then the Seller, on expiry of the 5 business day Notice period available to the Buyer as per Rule 19.1.1.2, shall be entitled to give a minimum of 28 days Notice to the Buyer of its readiness to perform the outstanding balance of the contract. On receipt of the Seller's Notice, the obligations of the parties under Rule 8.4.1 shall apply afresh.

19.1.2 Buyer fails to provide cargo space within shipment period

19.1.2.1 If the Buyer fails to ensure that cargo space is made available within sufficient time to enable the Seller to complete loading of all of the contractual quantity by the last day of the shipment period, the Seller shall have the option, within 2 business days from the last day of the shipment period, to give Notice declaring the Buyer in default as regards any quantity not so loaded.

19.1.2.2 If the Seller does not declare the Buyer to be in default in accordance with the provisions of Rule 19.1.2.1 then the shipment period shall be deemed to have been extended until such time as the Seller gives the Buyer 7 days Notice of a new deadline by which the Buyer must provide another vessel at the contractual port of loading such deadline to be not less than 21 days from the date of the said Notice. Within 2 business days of receipt of the Seller's Notice, the Buyer shall confirm its readiness to nominate another vessel in accordance therewith. Upon such confirmation being given, the obligations of the parties under Rule 8.4.1 shall apply

afresh. Should the Seller not receive such confirmation from the Buyer then the Seller shall be entitled to declare the Buyer in default and the Buyer shall be deemed to be in default on the day following the expiry of the 2 business day notice period.

- 19.1.2.3 If the Seller has not declared the Buyer to be in default in accordance with the provisions of Rule 19.1.2.1 or has not given Notice to the Buyer to nominate another vessel in accordance with the provisions of Rule 19.1.2.2 then the Buyer, on expiry of the 2 business day notice period available to the Seller as per Rule 19.1.2.1, shall be entitled to give Notice to the Seller of a new Estimated Time of Arrival of a vessel as per Rule 19.1.2.2.

19.2 Contract Terms – C&I and FOB Seller Booking Freight

If the Buyer has not received the Declaration of Shipment by midnight at the Buyer's place of business on the 14th day following the expiry of the shipment period, the Buyer is entitled to declare the Seller to be in default within 2 business days thereof whereupon the contract shall be closed out.

If the Buyer does not declare the Seller to be in default within the above-mentioned 2 business days then the shipment period shall be deemed to have been extended until such time as the Buyer sends a written notice to the Seller requesting a Declaration of Shipment within 14 days thereafter; and if the Buyer has not received a Declaration of Shipment by midnight at the Buyer's place of business on the 14th day following the date on which that notice was sent, then the Seller shall be deemed to be in default on the 15th day following the date on which that notice was sent.

19.3 Close out for non-fulfilment, Disputes and Referral to Arbitration

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. If the Parties cannot agree upon the terms at which to settle the close out, then the dispute shall be referred to arbitration 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.

19.3.1 Seller in default

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

19.3.2 Buyer in Default

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

19.3.3 Additional Losses

In addition to any amounts awarded under 19.3.1 or 19.3.2, arbitrators may, at their discretion, award such amount(s) as they see fit in respect of any proven further loss and/or expense incurred by a Party.

19.4 Passing on of Declaration

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

19.5 Non-Payment

In addition to all provisions set out in Rule 13.5, the Seller has the right to put the Buyer in default for the shipment(s) made but not paid for.

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

If payment is not made within that period, the Seller may freely dispose of the goods and declare the Buyer in default, whereupon the contract shall be closed out. If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration 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 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.
- (b) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, the Buyer is not entitled to claim against the Seller for any difference between the market price and the contract price.

19.6 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 Party receiving the Notice disputes its validity or if the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration 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.

20. ARBITRATION AND APPEAL

Any dispute arising out of a contract incorporating CP4 shall be settled in accordance with the FCC Arbitration and Appeal Rules applicable on the date of the contract.

20.1 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 arbitration shall be submitted to the FCC in accordance with the FCC Arbitration and Appeal Rules.

20.1.1 Time limits for quality and/or condition

For contracts with quality on departure, the claim shall be made within 56 days after stuffing of the container. For contracts with quality upon arrival, the claim shall be made within 56 days from the Final Day of Landing at the place of final delivery.

20.1.2 Time limits for other than quality and/or condition

The claim shall be made within one year from the date of shipment or one year after the last day of the contracted shipment period if such has not taken place.

20.2 Discretion of arbitrators

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

20.3 String arbitration

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

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

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

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

20.4 Loss of rights to be in a string

Either Party to the contract shall be entitled to draw sealed samples as aforesaid but by doing so he shall relinquish any rights to be in a string as specified in Rule 20.3. This provision does not apply to the first Seller or last Buyer in a string.

PART 4 – SAMPLING PROCEDURE FOR ARBITRATION PURPOSES

21. 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 15.2.1 or Rule 15.2.2 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.

22. DEFINITIONS

22.1 Consignment

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

22.2 Primary Sample

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

22.3 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.

22.4 Packaging Unit

Means a single package containing a quantity of cocoa product.

22.5 Production or Lot

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

22.6 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.

23. 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.

24. 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.