

## **THE REFINED SUGAR ASSOCIATION**

### **RULES RELATING TO CONTRACTS**

#### **QUANTITY**

1. In a contract in which the quantity is subject to a franchise stated to be "for chartering purposes" the party arranging the freight shall when shipment is effected in more than one vessel be restricted to exercising the franchise option on the last vessel to commence loading. The quantity on which the franchise shall be exercised shall be the difference between the contract quantity and the total quantity shipped by vessels other than the last to commence loading.

#### **PACKING**

2. The Sugar shall be packed in new sound bags suitable for export. Bag marks, if any, shall not be contrary to the terms of the contract.

#### **WEIGHT**

3. For the purpose of calculation 1,016.05 kilograms (kg) equals a long ton of 2,240 English pounds (lbs). The word "tonne" means a metric ton of 1,000 kilograms or 2,204.6 English pounds (lbs). When the word "about" is used in the contract with reference to the contract quantity and or packing it shall mean two per cent. more or less. When the word "about" is omitted the weight of the sugar in each bag shall not be less than the weight stipulated in the contract.

#### **QUALITY**

4. (i) All sugars shipped or delivered shall conform to the contractual specifications and unless stated otherwise in the contract shall be free flowing and of the crop or season current at the time of shipment or delivery designated in the contract.

(ii) All sugars shall be fit for human consumption and shall conform to the Public Health regulations in force in the country of origin. Unless stated otherwise in the contract, all sugars shall be free from impurities other than trace elements inherent in sugar.

## SUPERVISION

5. The Seller and the Buyer shall have the option of appointing supervisors at their own expense. Supervision, where required, shall be effected by an internationally recognised superintendence company.

Should the Seller and the Buyer both elect to appoint a supervisor such supervision shall be carried out conjointly at the time of loading [and in any event the following Rules shall apply].

- (i) Prior to loading, the supervisor/s shall inspect the vessel's holds and ensure that they are clean, dry, odourless and fit to receive white sugar.
- (ii) The supervisor/s shall report on the condition of the packing and shall be satisfied that the sugar is packed in accordance with Contract Rule 2 or as otherwise stated in the Commercial Contract.
- (iii) At loading the Seller shall provide satisfactory equipment, labour and facilities for weighing. Check-weighing shall be at random and the supervisor/s shall be satisfied as to the accuracy of the weighing equipment. Unless stated otherwise in the Commercial Contract, check-weighing shall be carried out on not less than 1 per cent. of each one-thousand tonnes or part thereof of the sugar delivered from each supplier. Unless mutually agreed between the Seller and the Buyer, net individual bag weights shall not be derived from weighbridge results.
- (iv) Unless stated otherwise in the Commercial Contract sampling shall be carried out on not less than 1 per cent. of each 1,000 tonnes or part thereof of the sugar delivered from each supplier. Samples shall be drawn at random and be representative of each lot of one-thousand tonnes or part thereof.
- (v) In the event that a supervisor objects to the condition and/or quality of the sugar and/or packing or finds a discrepancy in the weight of the bags, such objection or discrepancy shall immediately be notified to the other party's representative, prior to the sugar being stowed on board the vessel.

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<sup>1</sup> 15/10/2004 Rule 5 (iii) and 5 (iv) amended

- (vi) Composite samples representing each lot of one-thousand tonnes, or part thereof, drawn for analysis in accordance with (iv) above shall be placed in new clean suitable containers and sealed in a manner to ensure that the containers remain airtight until opened. These samples shall be analysed by a recognised analytical chemist in accordance with the methods laid down by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA) or another internationally recognised method for sugar analysis. The analysis results of each sample must comply with the quality specification stipulated in the Commercial Contract. Unless stated otherwise in the contract the method for the determination of White Sugar Solution Colour shall be ICUMSA method GS2/3-9 (2000). If the Buyer elects to appoint a supervisor but the supervisor is prevented from effecting the supervision for reasons beyond his control, the Buyer shall retain his rights under Rule 6.

#### CLAIMS

6. In order for claims to be made in respect of packing, weight and quality the following shall apply.

- (i) The Buyer shall give notice (see Contract Rule 25) to the Seller of claims not later than 7 days after the completion of discharge at the port of destination. For shipment in containers, completion of discharge is the date on which the container seal is broken, or at the time of delivery to final receiver, or 40 days after discharge onto quay, whichever is the sooner.
- (ii) In the event of a claim, samples shall be obtained by the Buyer in triplicate. These shall be sealed average samples, drawn at the Buyer's expense, by an internationally recognised superintendence company. The samples shall be drawn from not less than 5 per cent. of the bags involved, packed into new clean suitable containers, marked accordingly and sealed in a manner to ensure that the containers remain airtight until opened.
- (iii) A sealed average sample drawn as specified in (ii) above shall be sent to the Seller without delay to support a claim respecting quality. One sample shall be held by the Buyer for his own inspection and the other shall be retained for Arbitration purposes in case of need.

## DELIVERY

### FAS, FOB and FOB and Stowed Contracts

7. In cases of FAS, FOB and FOB and Stowed contracts the Seller shall have the sugar ready to be delivered to the Buyer at any time within the contract delivery period. The Buyer has the option of taking delivery of the contract quantity in one or more lots during the contract delivery period.

In the case of FAS contracts, the Seller shall deliver the sugar alongside the vessel/s, free of charge, risk and expense to the Buyer, to within reach of the vessel's tackle and in accordance with the terms of the contract. Unless otherwise agreed in the contract, the Seller shall be responsible for clearing the sugar for export and the Buyer shall provide any information for such clearance.

The Buyer having given reasonable notice, shall be entitled to call for delivery of the sugar between the first and last working day inclusive of the contract delivery period. The Buyer must give notice (see contract Rule 25) to the Seller of the name/s of the vessel/s on which the sugar is to be shipped and the vessel/s expected time of arrival at the loadport and the tonnage to be loaded.

If requested by the Seller, the Buyer must provide details of vessel/s demurrage/despatch rates prior to the tendering of the vessel's notice of readiness to load.

The Buyer shall have the right to substitute the vessel declared and such substitution shall not be considered as a new declaration provided that the substitute vessel is suitable for the loading and carriage of sugar at the port of loading and always providing the substitution is for the same cargo quantity. The Buyer shall be responsible for any proven costs incurred by the Seller by reason of any substitution. Should the substitute vessel arrive before the expected time of arrival of the originally declared vessel the notice period effective from the original declaration shall apply.

If the vessel/s has presented herself in readiness to load within the contract delivery period, and loading has not been completed by the last day of the period, the Seller shall be bound to deliver and the Buyer bound to accept delivery of the balance of the cargo or parcel up to the contract quantity.

If the vessel/s has presented herself in readiness to load within the contract delivery period but has failed to be presented within 5 calendar days of the date contained in the notice above calling for delivery of the sugar the Buyer shall be responsible for any proven costs incurred by the Seller by reasons of such delay exceeding the 5 calendar days commencing on the day following the 5<sup>th</sup> calendar day.

#### C&F/CFR and CIF Contracts

8. In cases of C&F/CFR and CIF contracts the Seller must provide freight and shall not plead that no freight is available except when contract Rules 12 or 14 apply. The Seller has the option of delivering the contract quantity in one or more lots during the contract delivery period.

The Seller shall declare without undue delay the approximate quantity shipped and the name/s of the vessel/s by which shipment has been effected.

Where the contract delivery period is a period of shipment, the contract quantity must be shipped within the contract delivery period.

Where the contract delivery period is a period for arrival, shipment must be effected to ensure that, in the ordinary course of events, the sugar will arrive at the port of discharge within the contract delivery period.

Any proven additional insurance premium paid on the cargo by reason of age, flag or classification of the vessel/s declared, shall be for Seller's account. The additional premium shall not exceed that currently quoted by Lloyd's or a first class insurance company/companies in London.

9. Any contract for delivery by instalments shall not be cancelled on account of delay or failure in the delivery of any instalments. Each instalment shall be deemed a separate contract. However, should the Buyer fail to make payment for any instalment according to the contract, the Seller shall be entitled to withhold further deliveries without prejudice to his rights under the contract.

10. The term "First Half" of the month means the 1st to the 15th inclusive of that month. The term "Second Half" means the 16th to the last day inclusive of that month. The terms "beginning", "middle" or "end" of a month shall be construed respectively as from the 1st to the 10th, the 11th to the 20th and the 21st to the last day of each month inclusive.

#### FORCE MAJEURE

Where the Contract specifies the place of origin of the sugar and, in the case of any other contract, once the Seller has declared an origin, the following rules shall apply.

#### FAS, FOB and FOB and Stowed Contracts

11. (a) Should ice in the shipping port, war, strikes, rebellion, insurrection, political or labour disturbances, civil commotion, fire, stress of weather, Act of God or any cause of force majeure (whether or not of like kind to those before mentioned) beyond the Seller's control prevent directly or indirectly within the contract delivery period specified in the contract, the supply to or delivery at shipping port in whole or in part of the sugar allocated by the Seller against the contract, the Seller shall immediately notify the Buyer of such fact and the quantity so affected (see contract Rule 25). If the Seller is prevented from advising the Buyer immediately through circumstances beyond his control he shall notify the Buyer as soon as possible.

Upon giving such notice, the contract delivery period shall be extended as follows:

- (i) where the force majeure event(s) prevents performance for up to 3 days, the contract delivery period shall be extended by 7 days
- (ii) where such event(s) prevents performance for more than 3 days, the contract delivery period shall be extended by 45 days.

The Seller shall notify the Buyer immediately that the force majeure event(s) terminates. If delivery is still prevented at the end of the 45 day extended contract delivery period, the contractual rights and obligations of the parties shall be cancelled, save only that the sugar shall be invoiced back at the prevailing market price at the end of the extended period or at

such price as an arbitration tribunal in its absolute discretion decides. If the invoicing back price is higher than the contract price, the difference shall be paid by the Seller to the Buyer. If the invoicing back price is lower than the contract price, the difference shall be paid by the Buyer to the Seller.

The provision shall apply notwithstanding the occurrence of events which would otherwise frustrate the contract.

- (b) Should the Buyer be prevented from accepting delivery of the whole or part of the sugar within the contract delivery period by reason of loss or delay of the vessel/s declared due to ice in the shipping port, war, strikes, rebellion, insurrection, political or labour disturbances, civil commotion, fire, stress of weather, Act of God or any cause of force majeure (whether or not of like kind to those before mentioned) beyond the Buyer's control, the Buyer shall immediately notify the Seller of such fact (see contract Rule 25).

If the Buyer is prevented from advising the Seller immediately through circumstances beyond his control he shall notify the Seller as soon as possible. Upon giving such notice, the contract delivery period for the affected quantity shall be extended, without extra charge to the Buyer, as follows:

- (i) where the force majeure event(s) prevents the Buyer from accepting delivery for up to 3 days, the contract delivery period shall be extended by 7 days.
- (ii) where such event(s) prevents the Buyer from accepting delivery for more than 3 days, the contract delivery period shall be extended by 45 days.

The Buyer shall notify the Seller immediately that the force majeure event(s) terminates. If the Buyer is still prevented from accepting delivery at the end of the 45 day extended contract delivery period the contractual rights and obligations of the parties shall be cancelled, save only that the sugar shall be invoiced back at the prevailing market price at the end of the extended period or at such price as an arbitration tribunal in its absolute discretion decides. If the invoicing back price is higher than the contract price, the difference shall be paid by the Seller to the Buyer. If the invoicing back price is lower than the contract price, the difference shall be paid by the Buyer to the Seller.

The provision shall apply notwithstanding the occurrence of events which would otherwise frustrate the contract.

If performance of the contract is prevented by a force majeure event more than once during the contract delivery period (as extended in accordance with these rules) the provision of these rules shall apply to each such event. However, in no circumstances shall that contract delivery period be extended for more than 45 days.

#### C&F/CFR and CIF Contracts

12. Should Ice in the shipping port, war, strikes, rebellion, insurrection, political or labour disturbances, civil commotion, fire, stress of weather, Act of God or any cause of force majeure (whether or not of like kind to those before mentioned) beyond the Seller's control prevent directly or indirectly within the contract delivery period specified in the contract, as defined in Rule 8

- (a) the supply to or delivery at shipping port in whole or in part of the sugar allocated by the Seller against the contract and/or
- (b) the vessel/s declared from loading the sugar and should the Seller or his agent be unable to supply other vessel/s of similar character to enable him to effect shipment or to ensure arrival at the port of discharge within the contract delivery period

the Seller shall immediately notify the Buyer of such fact and the quantity so affected (see Contract Rule 25). If the Seller is prevented from advising the Buyer immediately through circumstances beyond his control, he shall notify the Buyer as soon as possible. Upon giving such notice, the contract delivery period shall be extended as follows:

- (i) where the force majeure event(s) prevents performance for up to 3 days, the contract delivery period shall be extended by 7 days.
- (ii) where such event(s) prevents performance for more than 3 days, the contract delivery period shall be extended by 45 days.



The Seller shall notify the Buyer immediately that the force majeure event(s) terminates.

If delivery is still prevented at the end of the 45 day extended contract delivery period the contractual rights and obligations of the parties shall be cancelled, save only that the sugar shall be invoiced back at the prevailing market price at the end of the extended period or at such price as an arbitration tribunal in its absolute discretion decides. If the invoicing back price is higher than the contract price, the difference shall be paid by the Seller to the Buyer. If the invoicing back price is lower than the contract price, the difference shall be paid by the Buyer to the Seller.

The provision shall apply notwithstanding the occurrence of events which would otherwise frustrate the contract

If performance of the contract is prevented by a force majeure event more than once during the contract delivery period (as extended in accordance with these rules) the provisions of these rules shall apply to each such event. However, in no circumstances shall that contract delivery period be extended for more than 45 days.

13. The party claiming force majeure shall within fourteen days from the initial notification of the facts relied upon deliver to the other party evidence of the existence of those facts. If evidence is not delivered in accordance with this provision, the right to invoke force majeure shall be forfeited unless an arbitration tribunal in its absolute discretion decides otherwise.

14. Where sugar is due to be shipped, or made available for shipment, during the period December to March and would normally be transported to the shipping port by river, canal or waterway, the following provisions shall apply (instead of those in Contract Rules 11 or 12) if ice prevents the sugar allocated by the Seller against the contract from reaching the shipping port by that mode of transport within the contract shipment/delivery period:

(a) If the sugar is in transit, the Seller shall declare the name or number of the barge/s and its/their present whereabouts. At the same time the Seller shall declare his option to fulfil the contract without extra charge to the Buyer by

(1) delivering a separate lot by rail or road, such delivery to be effected within 30 days of the end of the contract shipment/delivery period.

or

- (2) delivering the original lots within 30 days of the reopening of navigation.

(b) If the sugar is at the factory, the Seller shall promptly notify the Buyer of his inability to deliver owing to ice and the Buyer shall thereupon declare his option (see contract Rule 25).

- (1) to call for the sugar to be despatched promptly and in no case later than 30 days after navigation reopens.

or

- (2) to order the sugar to be despatched by rail or road, the extra cost of this to be paid by the Buyer and the shipment or delivery as the case may be then to be effected within the contract shipment/delivery period or within 30 days of receipt of the Buyer's instructions whichever is the longer.

#### LICENCES

15. The Buyer shall be responsible for obtaining and maintaining in force any necessary import licence and the Seller shall be responsible for obtaining and maintaining in force any necessary export licence. The failure to obtain and or to maintain in force such licence/s shall not be sufficient grounds for a claim of force majeure if the regulations in force at the time when the contract was made, called for such licence/s to be obtained.

#### INSURANCE

16. Insurance shall be covered for the invoice value plus 10 per cent. by a Lloyd's policy or by a policy with a first class insurance company/ companies under which a claim can be submitted, admitted and settled in London. Marine Insurance shall be effected on:-

- Institute Commodity Trades Clauses (A) – CL 275 (6 pages).
- Institute Strikes Clauses (Commodity Trades) – CL 279 (5 pages).
- Institute War Clauses (Commodity Trades) – CL 278 (6 pages).

as set out in appendix 1 to these Rules and

- Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause – CL 370 (1 page).
- Institute Cyber Attack Exclusion Clause – CL 380 (1 page).

## Termination of Transit Clause (Terrorism) – (1 page).

as set out as specimen clauses in appendix 1 to these Rules.

In a contract on FAS, FOB and FOB and Stowed terms, the sugar shall be at the Seller's risk up to FAS, FOB or FOB and Stowed, respectively. The Buyer shall cover Marine and War Risk insurance on the foregoing conditions upon giving shipping instructions, and policies shall be for the Seller's protection until payment is made. The Buyer shall furnish documentary evidence of compliance with the above if requested by the Seller. Should the Buyer fail to comply with such request the Buyer shall be responsible for the Seller's proven costs if the Seller arranges for equivalent insurance protection.

In a contract on C&F/CFR terms the Buyer's risk shall commence immediately the sugar is alongside the export vessel. The Buyer shall cover Marine and War Risk insurance on the foregoing conditions and policies shall be for the Seller's protection until payment is made. The Buyer shall furnish evidence of compliance if requested by the Seller. Should the Buyer fail to comply with such request the Buyer shall be responsible for the Seller's proven costs if the Seller arranges for equivalent insurance protection.

In a contract on CIF terms the Seller shall effect marine insurance on the foregoing conditions. The Seller shall also be responsible for covering war risks, current and available at time of shipment, at the premium ruling in the London insurance market at the time of concluding the contract. Any difference in war risk premium at the time of shipment shall be for the Buyer's account.

## PAYMENT

17. Payment for the sugar shall be made by cash, ship lost or not lost, if sold

- (a) FOB and FOB Stowed against a complete set of signed clean "On Board" Bills of Lading, Certificate of Origin, Certificate of Weight, Quality and Packing and a signed commercial invoice.
- (b) FAS against a Certificate of Origin, Certificate of Weight, Quality and Packing, a Forwarders Certificate of Receipt and a signed commercial invoice.

- (c) C&F/CFR, against a complete set of signed clean "On Board" Bills of Lading evidencing freight having been paid, Certificate of Origin, Certificate of Weight, Quality and Packing and a signed commercial invoice.
- (d) CIF, against a complete set of signed clean "On Board" Bills of Lading evidencing freight having been paid, Certificate of Origin, Certificate of Weight, Quality and Packing, a signed commercial invoice and a Policy, Certificate or Letter of Insurance in compliance with Contract Rule 16. The Letter of Insurance to be accompanied by a Banker's Guarantee if required by the Buyer.
- (e) In addition to the documents stipulated in (a) or in (b) or in (c) or in (d) above, the Seller shall, if requested not later than seven days prior to the commencement of loading of the vessel, include in the presentation for payment other documents customarily required by and acceptable to the Authorities in the country of destination. Any such additional documents requested with less than the above notice, shall be supplied by the Seller as soon as possible.

The Seller shall have any documents visaed in accordance with the requirements of the country of destination and any costs incurred in obtaining such documents and any visa charges thereby incurred shall be for Buyer's account. The Seller shall not be responsible if, for reasons beyond his control, such documents or visas are unobtainable.

18. Notice of intention to present documents for payment must be given to the Buyer not later than 15.00 hours local time on a business day at the place of presentation of such notice (see contract Rule 25).

Documents shall be presented to the Buyer not later than 11.00 hours local time at the place of presentation of documents on the next following business day. The Seller shall not be liable for charges incurred as a result of the goods arriving at the port of discharge prior to the receipt of documents provided the documents have been passed on by the Seller without delay.

19. Documents evidencing proper fulfilment of the terms of a contract and tendered for payment in accordance with Rules 17 and 18 shall be paid for on presentation without any deduction and/or set-off whatsoever and such payment shall not prejudice any claim or dispute to be referred to

arbitration. Should the Buyer fail to pay on presentation of documents the Seller may resell the sugar for account of whom it may concern.

#### TITLE

20. Title to goods shall not pass until Seller has received payment for goods in accordance with Seller's instructions.

#### TAXES AND LEVIES

21. (a) Any existing or future taxes, or levies in the nature of taxes, whether on sugar, freight or shipping imposed by the country of origin shall be for the account of the Seller.

(b) Any existing or future taxes, or levies in the nature of taxes, whether on sugar, freight or shipping imposed by the country of destination shall be for the account of the Buyer.

#### GOVERNING LAW

22. The Contract and these Contract Rules shall be governed by and construed in accordance with English Law.

#### EXCLUSIONS

23. Unless the contract contains any statement expressly to the contrary, the provisions of neither the Convention relating to a Uniform Law on the International Sale of Goods, of 1964, nor the United Nations Convention on Contracts for the International Sale of Goods, of 1980, shall apply thereto. Unless the contract contains any statement expressly to the contrary, a person who is not a party to the contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

#### GENERAL

24. Where any Clause in the contract is at variance with a Rule of the Association such Clause shall prevail.

#### NOTICES

25. Any notice to be served by the Seller or the Buyer under these contract Rules shall be delivered by courier or transmitted by cable, telex or facsimile.

## ARBITRATION

26. Any dispute arising out of or in connection with a contract which is subject to these Rules shall be referred to arbitration before The Refined Sugar Association for settlement in accordance with the Rules Relating to Arbitration. Such arbitration shall be conducted in accordance with English Law. The Contract Rules of the Association in force at the time the Contract was made shall apply to any reference to arbitration.