

# THE REFINED SUGAR ASSOCIATION

(FOUNDED 8TH JANUARY, 1891)

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## RULES AND REGULATIONS

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THE REFINED  
SUGAR  
ASSOCIATION

# THE REFINED SUGAR ASSOCIATION

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† Denotes Member of The Chartered Institute of Arbitrators

# THE REFINED SUGAR ASSOCIATION

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(as at March 2018)

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*(as at March 2018)*

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*(as at March 2018)*

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**THE REFINED SUGAR ASSOCIATION**  
**LIST OF AFFILIATE MEMBERS**  
**ANALYTICAL CHEMISTS**  
*(as at March 2018)*

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**THE REFINED SUGAR ASSOCIATION  
LIST OF AFFILIATE MEMBERS  
COMMODITY EXCHANGES**

*(as at March 2018)*

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# THE REFINED SUGAR ASSOCIATION

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION GENERAL

1. The Association shall be called The Refined Sugar Association and is hereinafter referred to as “the Association”. Its objectives shall be to provide:-

- (a) For the proper conduct of the White Sugar Trade,
- (b) Rules and contract conditions connected therewith,
- (c) Arbitrators for the settlement of disputes by commercial arbitration,
- (d) For the assessment of contract losses when requested by Members and their Insurers to do so,
- (e) The support and protection of the interests of Members and the White Sugar Trade in general.

### MEMBERSHIP

2. The membership year shall be for the period of 12 months from 1 January to 31 December.

Membership of the Association shall consist of the following categories:

FULL MEMBERSHIP which shall be open to Organisations recognised as having a continuing interest in trading Refined and/or other descriptions of White Sugar.

AFFILIATE MEMBERSHIP which shall be open to Organisations recognised as providing a service to the Refined and/or White Sugar Trade.

In this and in the following Rules “Organisation” means a firm, company or other organisation.

3. Membership shall be for the current membership year only but Members admitted to membership in any one membership year shall be automatically admitted to membership in succeeding membership years without re-election subject to payment of the Annual Subscription as provided in Rule 6 below and unless otherwise directed by the Council of the Association as described in Rule 13 below (“the Council”). All

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

Members who have not given formal written notice of their wish to resign from membership prior to the end of any membership year shall be deemed to have applied for renewal of their membership for the following membership year and shall become automatically liable for the Annual Subscription for that membership year.

4. Applications for Full or Associate Membership of the Association shall be made by completing the relevant Application Form published by the Council from time to time. In addition, an application for Full Membership shall be proposed and seconded by two existing Full Members who are independent of the applicant and who shall complete the Proposer and Secunder forms published by the Council from time to time. An application for Affiliate Membership shall be accompanied by written references from two existing Full Members who are independent of the applicant. All completed and signed Application forms and Proposer and Secunder forms or written references as applicable shall be submitted to the Secretary of the Association at least 10 days prior to the date on which the application for membership is to be considered. The Council shall at its discretion but subject to the right of appeal provided in Rule 11 below decide whether or not to approve the election of a Full Member or Affiliate Member having regard to the nature of the applicant's business, its experience in the refined and/or white sugar trade and its financial soundness.

5. A new Member of the Association shall be elected at a meeting of the Council by a simple majority of the Council members present. Such election may be held by a postal ballot of Council members if any Council member so requests. In the event of an equality of votes, the Chairman of the meeting shall have a second or casting vote. The Membership of the Association shall only become effective upon payment of the initial joining fee as provided in Rule 6 below and the Annual Subscription fee in respect of the membership year in which the new member is elected.

6. Each Member shall be required to pay an Annual Subscription, payable on 1 January in each year, the amount of which shall be fixed by the Council not later than the last Council meeting before the end of each membership year. A newly elected Member shall also be required to pay an initial joining fee, the amount of which shall be fixed by the Council from time to time.

7. Upon payment of their Annual Subscription and in the case of

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

a newly elected member the initial joining fee, each Member shall be given a certificate acknowledging its Membership of the Association for the then current year only. Any Member who shall fail to pay the Annual Subscription within 30 days after receipt of Notice to pay from the Secretary shall cease to be a Member of the Association but may be re-elected by Council members who may in their absolute discretion ask such member to re-apply for Membership and invoke the terms of Rule 5 above.

8. The Secretary shall keep a register of Full and Affiliate Members. Each Organisation registered as a Full Member shall have one vote at any General Meeting. An Authorised Representative of a Full Member may vote at a General meeting, but should personal representation be impossible the Full Member shall be permitted to vote by proxy. Proxies shall be lodged with the Chairman of the Meeting or the Secretary, and shall be available only for the Meeting specifically referred to.

9. Any change in the Authorised Representatives, Title, Status, Ownership or Control of a Member shall be notified by that Member to the Secretary and a fresh election shall be held should Members of the Council consider it necessary. In such case full particulars shall be notified to the Members of the Council at least 10 days before the proposed re-election. In the event of such Member not being re-elected his Membership shall thereupon cease, subject to the right to appeal in Rule 11 below.

10. The Council may, at any time, in its absolute discretion subject to the right of appeal in Rule 11 below suspend or revoke any Membership of the Association by giving not less than 21 days notice of its intention to do so and setting out its reasons for such action. The Member concerned shall have the right to be heard by the Council before any suspension or revocation of membership becomes effective. In the event that a member fails to respond to the Council's 21 day notice, the Council shall have the right to decide whether its membership is suspended or revoked.

11. An applicant for membership of the Association whose application is refused pursuant to Rule 4 or a Member whose membership of the Association is suspended or revoked under Rules 9 and 10 shall have the right to appeal against such decision to an independent person appointed by agreement between the applicant/Member concerned

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

and the Council. In the absence of agreement between the parties the independent person shall be appointed by the President for the time being of the Law Society of England and Wales. The person so appointed shall act as expert and make his or her determination as he or she sees fit and shall be entitled to award costs at his or her discretion. The expert's determination shall be final and binding upon the parties. An applicant/Member seeking to appeal under this Rule shall notify the Secretary of the Association in writing of their wish to do so within 14 days following the Council's decision refusing the application for membership or suspending or revoking membership. Time shall be of the essence.

12. In the event of a Member having its Membership suspended or revoked the Council may, in its absolute discretion, and in such manner as it thinks fit, notify Members of the Association.

### THE COUNCIL

13. The affairs of the Association shall be managed by a Council of not more than twelve Authorised Representatives of Full Members. They shall be elected by the Association, and five Members of the Council shall form a quorum. The Members of the Council shall annually elect a Chairman and a Vice-Chairman, on whom shall devolve the giving of the necessary orders for the conduct of the meetings and other matters connected with the Council and the Association. If neither the Chairman nor the Vice-Chairman is present at a Meeting, a Chairman shall be elected to preside.

14. Each Member of the Council shall have one vote and the Chairman a casting vote in addition to his own. Any decision or act of the majority of any duly constituted meeting of the Council shall, if not otherwise provided in the Rules of the Association, be deemed to be the decision of the Council.

15. The Membership of the Council shall be such as to preserve adequate representation of all interests of the White Sugar Trade and no member company shall have more than one representative serving on the Council at any given time.

16. Two Members of the Council shall retire annually in rotation but shall be eligible for re-election. The election of two Members of the Council to fill the places of those retiring shall be held at the Annual

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

General Meeting. Any vacancy on the Council which may occur from resignation or other cause during the year may be filled by the members of the Council, the new member being elected by a majority of votes. The new member so elected shall retire when the member of the Council in whose place he/she is appointed would have retired by rotation, but the continuing members of the Council may act notwithstanding such vacancy has not been filled.

17. A Member of the Council may with the Council's approval appoint a person to represent him on the Council during any period for which he is unable to act. During such period the alternate representative shall be entitled to attend and vote at a meeting of the Council.

18. The Council may delegate any of its powers to sub-committees and any sub-committee so formed shall conform to any regulations imposed on it by the Council. The Meetings and proceedings of any such sub-committee shall be governed by the Rules for regulating meetings and proceedings of the Council in so far as applicable and so far as they shall not be superseded by any regulations imposed by the Council as aforesaid.

19. The Council shall annually elect a minimum of two of its Members to form a Finance Committee. Cheques up to the value of £750 may be signed by the Secretary alone. Cheques exceeding the value of £750 shall be signed by the Secretary or Assistant Secretary and by a Member of the Council.

20. The Council shall, as soon as possible after the Annual General Meeting of the Association, appoint a Panel of Arbitrators from any of the Authorised Representatives of the Full Members. Their appointment shall be effective until the next appointment of arbitrators is made in accordance with these rules. The Secretary shall publish a list of these arbitrators. The Council may from time to time at its discretion add or remove any names to or from the Panel of Arbitrators as it may so direct. In the event of an Arbitrator leaving the employment of a Member that Member shall notify the Secretary in writing. An Arbitrator who has retired from business may be re-appointed, by the Council, to the Panel of Arbitrators. The Council may, in its absolute discretion, appoint any other person it thinks fit to act as an Arbitrator and such person so appointed shall be deemed to be an Arbitrator authorised to act on behalf of the Council. Any Arbitrator whose appointment has expired may, at the discretion of the Council, continue to act in a

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

dispute referred to him/her prior to the expiry of his/her membership of the Panel of Arbitrators.

21. The Council shall from time to time appoint a sub-committee of not less than 3 Members of the Panel of Arbitrators, to assess the quantum of claims under political risk or similar types of insurance policies.

## MEETINGS

22. An Annual General Meeting of the Full Members of the Association shall be held once in every calendar year to receive and consider the Annual Report and Accounts of the past financial year, to elect Full Members to the Council in the place of those retiring and for other matters of which 10 days notice must have been sent to the Secretary for inclusion in the Agenda.

23. The Chairman shall have the power to convene an Extraordinary General Meeting of Full Members of the Association should occasion arise and shall be bound to call an Extraordinary General Meeting within 10 days after receipt of a written requisition signed by not less than one-fifth of the Full Membership. No other business shall be considered at such Extraordinary General Meeting except that for which the Meeting has been convened.

24. At least 21 days Notice of the Annual General Meeting shall be given to Full Members in the manner hereinafter mentioned. Such Notice shall specify the place, the day, and the hour of the Meeting, and in the case of special business, the general nature of such business. The accidental omission to give notice to, or the non-receipt of such Notice by any Full Member, shall not invalidate any resolution passed or proceeding held at any such Meeting. With the consent in writing of all the Full Members, a General Meeting may be convened on a shorter Notice than 21 days and in any manner they may think fit.

25. Subject to Constitution Rule 22 the Rules of the Association may be altered or added to by the Association at its Annual General Meeting; they may also be altered or added to by the Council, subject to 21 days notice of any proposed alteration or addition being given in writing to every Full Member of the Association. Any such proposed amendment shall become operative on the date nominated, unless the Secretary

## RULES RELATING TO THE CONSTITUTION OF THE ASSOCIATION

shall receive, before the expiry of the 21 days notice, written protests from not less than one-fourth of the Full Members of the Association. In such event the Chairman shall be bound to call an Extraordinary General Meeting which shall have powers by simple majority to confirm, amend or reject the Council's proposals.

26. Notice may be given to any Full Member and/or any Affiliate Member by personal delivery or by sending it through the post in a prepaid letter at its address as appearing on the register of Members.

27. No resolution to dissolve the Association, or to alter this rule, shall be effective, except by the decision of not less than three-fourths of the Full Members attending an Extraordinary General Meeting of the Association. Such decision must be confirmed by a simple majority of the Full Members at a Second Extraordinary General Meeting to be held after an interval of not less than 21 days.

## INDEMNITY

28. The Members of the Council, the Secretary and other officers for the time being of the Association, and the Trustees (if any) for the time being of the Association shall be entitled to be indemnified by the Association against all costs, damages, losses, expenses and liabilities incurred by them in the lawful execution and discharge of their duties undertaken on behalf of the Association save to the extent that same arises from their own wilful neglect or default.



# THE REFINED SUGAR ASSOCIATION

## RULES RELATING TO ARBITRATION RECOMMENDED ARBITRATION CLAUSE

Parties to a White Sugar Contract who wish to have any disputes referred to arbitration under the following Rules are recommended to insert in the Contract an arbitration clause in the following form:

“Any disputes arising out of or in connection with this Contract 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. This contract shall be governed by and construed in accordance with English Law”.

The following Rules 1 to 17 shall apply where:

- a) the amount of the claim or counterclaim (if any) exceeds US\$250,000 or the equivalent amount in the currency of the claim (excluding interest and costs) and/or
- b) the tribunal is requested by either party to rule on its own substantive jurisdiction as to
  - i) whether there is a valid arbitration agreement,
  - ii) whether the tribunal is properly constituted and
  - iii) what matters have been submitted to arbitration in accordance with the arbitration agreement.

Where the amount of the claim or counterclaim (if any) does not exceed US\$250,000 or the equivalent amount in the currency of the claim (excluding interest and costs) then all disputes shall, unless the Council orders otherwise, be determined in accordance with the short form arbitration procedure detailed at Rules 18 to 32 below (the “Short Form Arbitration Procedure”). With the written agreement of the parties, the Short Form Arbitration Procedure may be used where the amount of the claim or the counterclaim (if any) exceeds US\$250,000.

## RULES RELATING TO ARBITRATION

### RULES

1. Any dispute arising out of or in connection with a Contract which the Parties have agreed (either in the Contract or otherwise) to refer to arbitration by The Refined Sugar Association shall be determined in accordance with the following Rules.

2. Any party wishing to commence an arbitration concerning a dispute falling within Rule 1 shall give to the other party seven clear days notice of his intention to claim arbitration.

After the expiry of the seven clear days notice period a written request for arbitration shall be sent to the Secretary. The Arbitration Rules of the Association in force at the time such request is received and any subsequent amendments to them will apply to the reference.

The Claimant shall, together with the request for arbitration or within 30 days thereafter, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, forward to the Secretary the following:-

- (a) a clear and concise statement of his case, in duplicate;
- (b) copies of the contractual documents, in duplicate, in which the arbitration clause is contained or under which the arbitration arises;
- (c) all supporting documentary evidence, in duplicate, he thinks proper;
- (d) the names, postal addresses, telex, facsimile numbers and electronic mail addresses (if appropriate) of the parties to the arbitration;
- (e) a non-returnable registration fee (see Rule 3);
- (f) if required (and without prejudice to the provisions of the Arbitration Act 1996, relating to security for costs) an advance payment on account of the Association's fees, costs and expenses (see Rule 3).

The Council shall thereupon have power to determine, as hereinafter provided, any such matter in dispute. The Secretary shall have power to make decisions on behalf of the Council on procedural and administrative matters which may arise in the course of a reference, in accordance with the provisions of these Rules. Without prejudice to the

## RULES RELATING TO ARBITRATION

provisions of the Arbitration Act 1996 relating to jurisdiction, where both parties to a dispute are members, the Council shall have the jurisdiction to determine whether a contract has been made, whether there is a valid arbitration agreement and what matters have been submitted to arbitration in accordance with such agreement.

The Respondent shall, not later than thirty days after dispatch to his last known address by the Secretary of a copy of the Claimant's statement of case and supporting documents, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, submit in duplicate to the Secretary a clear and concise statement of his defence together with a copy of such other documentary evidence in duplicate as he thinks proper. A copy of this statement of defence and supporting documents shall be forwarded by the Secretary to the Claimant.

The Claimant and the Respondent will in turn be permitted a period of twenty-one days, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, within which to submit further written comments and/or documents in reply to the other party's last submission, until the Council or Secretary shall in its or his absolute discretion decide that the Council should proceed to make its award.

All statements, contracts and documentary evidence must be submitted in the English language. Whenever documentary evidence is submitted in a foreign language this must be accompanied by an officially certified English translation.

3. A non-returnable registration fee of such amount as shall be decided by the Council from time to time shall be paid to the Secretary upon any reference to arbitration. The Council or Secretary may if it or he thinks fit at any time order either party to the arbitration to make one or more advance payments on account of the Association's fees, costs and expenses in connection with or arising out of the arbitration. Such power shall be without prejudice to the power of the Council to order security for costs in accordance with the Arbitration Act 1996.

4. Any notice, document or other correspondence to be served on any party in connection with an arbitration under these Rules may be effected either by (a) courier, (b) first class post, (c) post in a registered letter, (d) telex, (e) facsimile or (f) electronic mail in each case to the usual or last known address or place of business of any party. In the case of a facsimile or electronic mail message such notice, document or correspondence shall also be served in accordance with one of the provisions under (a) to (d) above.

## RULES RELATING TO ARBITRATION

5. Should a party in dispute with another party refuse to concur in the reference to arbitration as herein provided, the party referring the matter to arbitration may forthwith obtain an award of the Council on the question in dispute. The Council may at its discretion refuse to arbitrate on any reference made by a Member who has been suspended from the Association or whose Membership has been revoked.

6. (a) Subject to (b) below, unless the Council shall as hereinbefore provided have refused to arbitrate, neither the Buyer, Seller, Trustee in Bankruptcy, liquidator nor any other person claiming under any of them, shall bring any action against any party to the contract in respect of any dispute arising out of such contract, until such dispute shall have been adjudicated upon in arbitration under these Rules; and the obtaining of an award under these Rules shall be a condition precedent to the right of either contracting party to sue the other in respect of any claim arising out of the contract.

(b) Nothing in this Rule 6 shall prevent a party from seeking interim relief at any time by way of legal proceedings before any competent judicial authority in any jurisdiction (including, but not limited to, an application to the English court under the Arbitration Act 1996 in support of arbitration proceedings), provided however that any such legal proceedings shall be limited to applying for (or ancillary to) and/or obtaining security for any claim or counterclaim, on the basis that the parties have agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with these Rules.

7. When the subject matter and terms of contract are identical, except as to date and price, arbitration may in the Council's absolute discretion and subject to the written agreement of all parties be held as between first Seller and last Buyer as though they were contracting parties and the award made in pursuance thereof shall be binding on all intermediate parties, provided that this Rule shall not apply where a question or dispute shall arise between intermediate parties, not affecting both first Seller and last Buyer, and in such case the arbitration may be held as between the two parties affected by the dispute or, subject as aforesaid in the event of there being more than two such parties, as between the first and last of such parties as though they were contracting parties, and the award made in pursuance thereof shall be binding on all parties affected by the dispute.

8. For the purpose of all proceedings in arbitration, the contract shall be deemed to have been made in England, any correspondence in

## RULES RELATING TO ARBITRATION

reference to the offer, the acceptance, the place of payment or otherwise, not-with-standing, and England shall be regarded as the place of performance. Disputes shall be settled according to the law of England wherever the domicile, residence or place of business of the parties to the contract may be or become. The seat of the Arbitration shall be England and all proceedings shall take place in England. It shall not be necessary for the award to state expressly the seat of the arbitration. 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.

9. For determination of a dispute the Council or Secretary shall appoint not less than three and no more than five persons from the Panel of Arbitrators to act on behalf of the Council. The number of persons appointed to determine a dispute shall be in the absolute discretion of the Council or Secretary. No such person shall act in an arbitration where he is, or becomes, directly or indirectly interested in the subject matter in dispute. In the event of a person becoming so interested, dying or becoming in any other way in the view of the Council or Secretary incapacitated from acting prior to the first meeting, the Council or Secretary may appoint another person from the Panel of Arbitrators to take his place, and the arbitration shall thereupon proceed as if that other person had been originally appointed in lieu of the first person. If subsequently an Arbitrator discovers that he is directly involved in the subject matter in dispute, dies or becomes in any other way in the view of the Council or Secretary incapacitated from acting, then the hearing shall, unless the Council or Secretary in its or his absolute discretion decides otherwise, proceed without the necessity of appointing another person from the Panel of Arbitrators. The decision of the persons so appointed to act on behalf of the Council shall be by a majority and, in the event of an equality of votes, the Chairman, who shall have been previously elected by such persons, shall have a second or casting vote. The award of such persons shall be signed by the said Chairman (and it shall not be necessary for any of the other persons appointed from the Panel of Arbitrators to sign it) and when so signed shall be deemed to be the award of the Council and shall be final and binding in all cases.

## RULES RELATING TO ARBITRATION

10. The Council may in its discretion decide the case on the written statements and documents submitted to it without an oral hearing (without the attendance of the parties or their representatives and witnesses). The Council may however, call the parties before it, and request the attendance of witnesses, or the provision of further documents, or information in written form.

The Council may order the production of any documents which it considers to be relevant to the case in question.

Should either or both parties require an oral hearing they shall make their request, in writing, to the Secretary. The Council may grant or refuse such request in its absolute discretion and without assigning any reason.

Without prejudice to the provisions of the Arbitration Act 1996 relating to legal representation, in the event of an oral hearing, with or without witnesses, each party shall appear either personally or by any agent duly appointed in writing and may be represented at the oral hearing by counsel or solicitor. One party shall not, however, make an oral statement in the absence of the other, excepting in the case of his opponent failing to appear after notice has been given to him by the Secretary.

The Council or Secretary may also, on its or his own behalf, whether in relation to a case decided on documents or an oral hearing, consult the legal advisers of the Association and unless otherwise agreed by the Council any information, opinion or advice offered by such person/s whether or not in writing shall be for the sole use of the Council and shall not be made available to the parties.

Without prejudice to the provisions of section 34 of the Arbitration Act 1996, the Council shall not be bound by the strict rules of evidence and shall be at liberty to admit and consider any material whatsoever notwithstanding that it may not be admissible under the law of evidence.

Unless both parties notify the Secretary in writing, to the contrary, the Council shall issue a Reasoned Award.

The Council shall have the power to make more than one award at different times on different issues in accordance with section 47 of the Arbitration Act 1996, but shall not have the power to make provisional awards pursuant to section 39 of the Arbitration Act 1996.

11. If a party wishes to withdraw a claim or counterclaim, he shall give notice to that effect to the Secretary. On receipt of such a notice, the

## RULES RELATING TO ARBITRATION

Secretary shall inform the other party and shall cancel any arrangements for the hearing of that claim or counterclaim (unless any other claim or counterclaim remains to be dealt with at the same hearing). The other party shall be entitled to an award dismissing the withdrawn claim or counterclaim with costs, provided that a written request for such an award is received by the Secretary within 28 days after such other party has been informed by the Secretary of the withdrawal. If no such request is received by the Secretary within the said period of 28 days the arbitration shall be deemed to have been terminated by consent so far as it relates to such claim or counterclaim. Such award or termination shall not affect any other claim or counterclaim which is the subject of the same arbitration proceedings, or the Council's or Secretary's right to recover the Council's and the Association's fees, costs and expenses.

12. Subject to any agreement to the contrary, the Council shall, in addition to the powers under section 49 of the Arbitration Act 1996, have the power if it thinks fit:

- (a) to award interest on any sum which becomes due in respect of a contract whether by way of debt or damages and which is paid before the commencement of arbitration proceedings at such rate as it thinks fit and for such period as it thinks fit ending not later than the date of payment;
- (b) where a sum is due in respect of a contract whether by way of debt or damages, to award general damages in respect of the late payment of such sum.

13. The Arbitration fees shall be in the discretion of the Council or Secretary in every case, and shall be paid by whom the Council or Secretary shall determine.

Any expenses incurred by the Association or by the Council, including the expenses incurred in obtaining legal assistance, copies of documents or evidence, shorthand notes, etc., may be added to such fees.

The Council may also make an award or order as to payment of the costs of the parties to the arbitration. In accordance with section 63 of the Arbitration Act 1996, the Council may also determine by award the recoverable costs of the parties on such basis as it thinks fit.

14. A book shall be kept in which all cases shall be noted, together with the award and fees and expenses charged. The Secretary shall notify the parties as soon as the award is signed and it shall be held

## RULES RELATING TO ARBITRATION

by the Secretary at the disposal of either party against payment of the fees, costs and expenses incurred by the Association or by the Council. A copy of the Award shall be given to the party who does not take up the original. If the award is not taken up within ten days, the Council or Secretary may order either of the parties to take up the award, and in such case the party so ordered shall take up the award and pay the fees, costs and expenses as directed. The Secretary, on behalf of the Council, shall have the right to invoke arbitration Rule 16, if any party neglects or refuses to abide by any such order.

15. The Award must be honoured within twenty-eight days from the date on which it is taken up.

16. In the event of a party to an arbitration neglecting or refusing to carry out or abide by any award or order made under Arbitration Rule 14, the Secretary on behalf of the Council may circularise to Members of the Association in any way thought fit a notification to that effect. The parties to any such arbitration shall be deemed to have consented to the Council taking such action as aforesaid. The information contained in any such notice shall be issued to a member only on the understanding that neither the member nor any of its employees or any authorised representative of it shall use such information for anything other than the members own commercial knowledge and purposes and that it shall remain privy to that member, its employees or any authorised representative of it at all times. Any member failing to adhere to this Rule shall immediately cease to receive future notices and Constitution Rules 7 and 8 may be invoked by the Council.

17. In the event of both parties consenting in writing to the publication to Members of the Association of an Award or any part thereof or summary of its contents, the Council or Secretary may make available the same to Members of the Association in a form approved by the parties. The Council or Secretary shall be entitled to charge a fee to Members for the provision of such information.



RULES RELATING TO ARBITRATION  
SHORT FORM ARBITRATION PROCEDURE

18. Any dispute arising out of or in connection with a Contract which the parties have agreed (either in the Contract or otherwise) to refer to arbitration by The Refined Sugar Association and where the amount of the claim or counterclaim (if any) does not exceed US\$250,000 or the equivalent amount in the currency of the claim (excluding interest and costs) shall be determined in accordance with the above and following Rules, unless the Council orders otherwise. In the event that a Counterclaim exceeds US\$250,000 the Council or Secretary shall have the discretion to decide whether or not the dispute shall be conducted under the Short Form Arbitration Procedure. With the written agreement of both parties, the Short Form Arbitration Procedure may be used for claims exceeding US\$250,000.

19. Where a Rule contained within the Short Form Arbitration Procedure Rule is at variance with Rules 1 to 17 above such Short Form Arbitration Rule shall prevail.

20. All arbitrations decided under the Short Form Arbitration Procedure shall be decided on documents alone. All Awards shall be made without reasons and shall be published within five working days of the tribunal's final meeting. By adopting this procedure the parties are deemed to have agreed to waive all rights of appeal.

21. Any party wishing to commence an arbitration concerning a dispute falling within Rule 18 above must give to the other party written notice of his intention to claim arbitration.

22. After written notice has been given to the other party a written request for arbitration must be sent to the Secretary within seven days of the date of such notice. Should a party fail to make a written request for arbitration within this time limit a further notice in accordance with Rule 21 above must be given. The Arbitration Rules of the Association in force at the time such request is received and any subsequent amendments to them will apply to the reference.

23. The Claimant must, together with the request for arbitration or within 14 days thereafter, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, forward to the Secretary the following:-

## RULES RELATING TO ARBITRATION

- (a) a copy of the written notice of intention to claim arbitration;
- (b) a clear and concise statement of his case, in duplicate;
- (c) copies of the contractual documents, in duplicate, in which the arbitration clause is contained or under which the arbitration arises;
- (d) all supporting documentary evidence, in duplicate, as he thinks proper;
- (e) the names, postal addresses, telexes, facsimile numbers and electronic mail addresses (if appropriate) of the parties to the arbitration;
- (f) a non-returnable registration fee (see Rule 3);
- (g) if required (and without prejudice to the provisions of the Arbitration Act 1996, relating to security for costs) an advance payment on account of the Association's fees, costs and expenses (see Rule 3).

24. The Secretary shall have power to make decisions on behalf of the Council on procedural and administrative matters and any other matters which may arise in the course of a reference under the Short Form Arbitration Procedure, in accordance with the provisions of these Rules.

25. The Respondent must, not later than fourteen days after dispatch to his last known address by the Secretary of a copy of the Claimant's statement of case and all supporting documents, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, submit in duplicate to the Secretary a clear and concise statement of his defence and counterclaim, if applicable, together with a copy of all documentary evidence, in duplicate, as he thinks proper. A copy of this statement of defence and counterclaim (if applicable) and all supporting documents shall be forwarded by the Secretary to the Claimant

26. In the event of a counterclaim, the Claimant will be permitted a period of fourteen days, or such extended time as the Council or Secretary shall in its or his absolute discretion allow, within which to submit a defence to such counterclaim, whereafter the Council will proceed to make its award.

## RULES RELATING TO ARBITRATION

27. If a party requires an extension to any time limit set by the Council or Secretary such extension will not exceed fourteen days.
28. The Council may order the production of any documents which it considers to be relevant to the case in question.
29. Submissions and/or documents received by the Secretary outside of the designated/extended time limit shall not be admissible.
30. For determination of the dispute the Council or Secretary shall appoint no more than three persons from the Panel of Arbitrators to act on behalf of the Council. The number of persons appointed shall be in the absolute discretion of the Council or Secretary.
31. A party may engage legal representatives to advise it and/or to represent it in the written proceedings, but any costs incurred in doing so shall not be recoverable under any circumstances.
32. Without prejudice to the provisions of section 34 of the Arbitration Act 1996, the Council shall not be bound by the strict rules of evidence and shall be at liberty to admit and consider any material whatsoever notwithstanding that such material or documentation may not be admissible under the law of evidence.

# 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. Unless otherwise stated in the contract, the Sugar shall be packed in new sound bags suitable for domestic or international transport by inland waterway and/or sea and/or road and/or rail, as applicable. Bag marks, if any, shall not be contrary to the terms of the contract.

### WEIGHT

3. (i) 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.
- (ii) The weight of sugar delivered in bulk shall be the filling weight confirmed by an authorised weighbridge weight note stating gross and tare weights.

### 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.

## RULES RELATING TO CONTRACTS

### 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 of vessel, loading into rail wagons or road trucks (provided rail/road is the primary mode of transport), or stuffing of containers and in any event the following shall apply:

- (i) Prior to loading of the vessel, loading into rail wagons or road trucks, or stuffing of containers, the supervisor/s shall inspect the holds of the vessel, the empty rail wagons and/or road trucks and/or the containers and ensure that they are clean, dry, odourless, suitable 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 Rule 2 or as otherwise stated in the 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 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 contract sampling 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. 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 or

## RULES RELATING TO CONTRACTS

loaded into rail wagons and/or road trucks. In the case of container loading, any objection to the number of bags being stuffed into the container must be notified to the Seller or Seller's representative prior to the sealing of the container.

- (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 contract. Where the contract contains a term as to the colour of the sugar then, unless stated otherwise in the contract, the method for the determination of the solution colour of the sugar shall be ICUMSA Method GS9/1/2/3-8 (2011).
  - (vii) 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.
6. In order for claims to be made in respect of packing, weight, shortfall in the number of bags and quality the following shall apply.
- (i) The Buyer shall give notice (see Rule 26) 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 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

## **RULES RELATING TO CONTRACTS**

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 (i) In all cases of FAS and FOB contracts, whether for shipment in bulk or bags or for shipment in containers, and in all cases of FOB and Stowed contracts, the following shall apply:

The Seller shall have the sugar ready to be delivered to the Buyer at any time within the contract delivery period.

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 shall give notice (see Rule 26) to the Seller of the name/s of the vessel/s on which the sugar is to be shipped, the vessel/s expected time of arrival at the loadport and the tonnage to be loaded.

The Buyer has the option of taking delivery of the contract quantity in one or more lots during the contract delivery period.

Unless otherwise agreed, in the case of international transport, the Seller shall be responsible for clearing the sugar for export and the Buyer shall provide any information reasonably required for such clearance.

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

## **RULES RELATING TO CONTRACTS**

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 reason of such delay exceeding the 5 calendar days commencing on the day following the 5th calendar day.

7 (ii) In addition, the following shall apply as appropriate to FAS, FOB and FOB and Stowed contracts for shipment in bulk or bags and to FAS and FOB contracts for shipment by container:

### **FAS, FOB AND FOB AND STOWED CONTRACTS FOR CONVENTIONAL SHIPMENT IN BULK OR BAGS**

In the case of FAS contracts, risk in the sugar shall pass from the Seller to the Buyer when the Seller delivers the sugar alongside the vessel/s, free of charge, risk and expense to the Buyer, to within reach of the vessel's tackle.

In the case of FOB contracts, risk in the sugar shall pass from the Seller to the Buyer when the sugar passes the ship's rail.

In the case of FOB and Stowed contracts, risk in the sugar shall pass from the Seller to the Buyer when the sugar has been stowed.

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.

### **FAS AND FOB CONTRACTS FOR SHIPMENT BY CONTAINERS**

In the case of FAS and FOB contracts for shipment by containers, the following shall apply:

At the time of giving notice as set out in Rule 7(i), the Buyer shall also provide to the Seller:

(a) the freight booking reference relating to the vessel/s, clearly indicating the closing date of the vessel/s, the location(s) of the depots of the shipping line from which empty containers are to be collected by the Seller (which must be customary for the port of loading) and the



## **RULES RELATING TO CONTRACTS**

opening and closing container stack dates of the loading terminal in respect of the nominated vessel/s; and

(b) relevant contact details of the shipping line and the loading terminal.

The Buyer shall release to the Seller the required number of suitable empty containers at (a) clearly identified container depot(s) and in sufficient time to enable loading to take place.

The Seller shall be deemed to have delivered the sugar to the Buyer, and risk in the sugar shall pass, when the loaded containers have been placed at the disposal of the carrier.

### **C&F/CFR AND CIF CONTRACTS**

7 (iii) In the case of all C&F/CFR and CIF contracts, whether for shipment in bulk or bags and whether or not for shipment in containers, the following shall apply:

The Seller must provide freight and shall not plead that no freight is available except when Rules 12 and 13, 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 without undue delay declare 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.

For shipments in bags or bulk, risk in the sugar shall pass from the Seller to the Buyer when the sugar passes the ship's rail at the port of loading.

For shipments by containers, risk in the sugar shall pass when the loaded containers have been placed at the disposal of the carrier.

## **RULES RELATING TO CONTRACTS**

### **CONTRACTS FOR TRANSPORT BY ROAD AND/OR RAIL**

8 (i) In the case of contracts for transport by road and/or rail where the Buyer has an obligation at its own expense to contract or procure a contract for the carriage of the sugar, 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.

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 Rule 26) to the Seller of the relevant details of the road trucks and/or rail wagons in which the sugar is to be transported, the expected time of presentation of the empty trucks/wagons at the agreed points of delivery and the tonnage to be loaded.

The Buyer shall at the same time provide to the Seller the freight booking reference, or equivalent information, and relevant contact details of the transport company. The Buyer shall present to the Seller the required number of empty trucks/wagons suitable for transportation of the contractual sugar at the agreed point of delivery. Sellers shall facilitate the use of their loading installations and, as the case may be, railroad sidings. Buyers and Sellers shall liaise to avoid any unnecessary delay or obstruction of delivery. The Seller shall be deemed to have delivered the sugar to the Buyer, and risk in the sugar shall pass from the Seller to the Buyer, when each truck/wagon has been loaded.

If sufficient suitable empty trucks/wagons have been presented 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.

8 (ii) In the case of contracts for transport by road and/or rail where the Seller has an obligation at its own expense to contract or procure a contract for the carriage of the sugar, the Seller must contract or procure such a contract for carriage to the place of destination and shall not plead that no, or insufficient, suitable trucks/wagons are available, except where Rules 12 and 13, or 14, apply. The Seller has the option of delivering the contract quantity in one or more lots during the contract delivery period.

## RULES RELATING TO CONTRACTS

Where the contract delivery period is a period for delivery at the agreed point of delivery, the contract quantity must be loaded within the contract delivery period.

Where the contract delivery period is a period for arrival, the contract quantity must be loaded to ensure that, in the ordinary course of events, the sugar will arrive at the destination within the contract delivery period.

Risk in the sugar shall pass when each truck/wagon has been loaded.

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:

11. FAS, FOB, FOB AND STOWED CONTRACTS AND CONTRACTS FOR TRANSPORT BY ROAD AND/OR RAIL WHERE THE BUYER HAS AN OBLIGATION AT ITS OWN EXPENSE TO CONTRACT OR PROCURE A CONTRACT FOR THE CARRIAGE OF THE SUGAR

(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, or in the case of contracts for transport by road and/or rail where the Buyer has an obligation at its own expense to contract or procure a contract for the carriage of the sugar, the

## RULES RELATING TO CONTRACTS

supply to or delivery at the agreed place of delivery, 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 Rule 26). 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 for the affected quantity 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.

(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 and/or trucks and/or wagons 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 and the quantity so affected (see Rule 26). 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.

## RULES RELATING TO CONTRACTS

### 12. C&F/CFR,CIF CONTRACTS AND CONTRACTS FOR TRANSPORT BY ROAD AND/OR RAIL WHERE THE SELLER HAS AN OBLIGATION AT ITS OWN EXPENSE TO CONTRACT OR PROCURE A CONTRACT FOR THE CARRIAGE OF THE SUGAR

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 Rules 7, 8 and 10

- (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
- (c) or, in the case of a contract for delivery by road and/or rail where the Seller has an obligation at its own expense to contract or procure a contract for the carriage of the sugar, the supply to or delivery at the point of loading in whole or in part of the sugar allocated by the Seller against the contract and/or the road truck(s) and/or rail wagon(s) declared from loading all or part of the sugar allocated by the Seller against the contract and should the Seller or his agent be unable to supply other means of transport of similar character to enable him to effect delivery to ensure arrival at the agreed place of delivery within the contract delivery period

the Seller shall immediately notify the Buyer of such fact and the quantity so affected (see Rule 26 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 for the affected quantity 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.

## RULES RELATING TO CONTRACTS

- (ii) where such event(s) prevents performance for more than 3 days, the contract delivery period shall be extended by 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.

The party claiming force majeure shall notify the other party 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.

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.

The provisions of Rules 11 or 12 and 13 shall apply notwithstanding the occurrence of events which would otherwise frustrate the contract.

14. Where sugar is due to be shipped, or made available for shipment, and would normally be transported to the shipping port or place of delivery by inland waterway, the following provisions shall apply (instead of those in Rules 11 or 12 and 13) 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

## RULES RELATING TO CONTRACTS

- (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 the inland waterway.
- (b) If the sugar is at the factory or storage place, the Seller shall promptly notify the Buyer of his inability to deliver owing to ice and the Buyer shall thereupon declare his option.
- (1) to call for the sugar to be despatched promptly and in no case later than 30 days after the inland waterway 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. In the case of international transport, 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 (i) 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 or in any other place agreed between the Seller and the Buyer in the currency of the contract. 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

## **RULES RELATING TO CONTRACTS**

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)(2009) – (1 page)

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

16 (ii) In a contract on FAS, FOB or FOB and Stowed terms, risk in the sugar shall pass from the Seller to the Buyer in accordance with Rule 7. Upon giving shipping instructions, the Buyer shall cover insurance in accordance with Rule 16(iii).

In a contract on C&F/CFR terms risk in the sugar shall pass from the Seller to the Buyer in accordance with Rule 7. The Buyer shall cover insurance in accordance with Rule 16(iii).

In a contract for transport by road and/or rail, risk in the sugar shall pass from Seller to Buyer in accordance with Rule 8. Unless otherwise expressly agreed, the Buyer shall cover insurance in accordance with Rule 16(iii).

16 (iii) In all cases covered by Rule 16(ii), the Buyer shall effect insurance on the conditions set out at Rule 16(i), unless the contract provides otherwise. Insurance 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.

16 (iv) In a contract on CIF or CIP terms, the Seller shall effect insurance on the conditions set out at Rule 16(i), unless the contract provides otherwise.



## **RULES RELATING TO CONTRACTS**

### **DOCUMENTS TO BE PROVIDED BY THE SELLER AND PAYMENT**

17. Payment for the sugar shall be made by cash, barge, sea-going vessel, container, road truck and/or rail wagon 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 Forwarder's 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 Rule 16. The Letter of Insurance to be accompanied by a Banker's Guarantee if required by the Buyer.
- (e) pursuant to a contract for delivery by road and/or rail, against a Delivery Note, Certificate of Origin, Certificate of Weight, Quality and Packing and a signed commercial invoice.

In the case of international transport

- (i) in addition to the documents stipulated in (a), (b), (c), (d) or (e) above, as applicable, the Seller shall, if requested by the Buyer not later than seven days prior to the commencement of loading, 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.
- (ii) 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.

## **RULES RELATING TO CONTRACTS**

(iii) 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 by the Seller to the Buyer not later than 15.00 hours local time on a business day at the place of presentation of such notice (see Rule 26). 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 or agreed point of delivery at destination 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.

### **DOCUMENTS TO BE PROVIDED BY THE BUYER**

21. In the case of international transport, the Buyer shall, if requested by the Seller not later than seven days prior to the commencement of loading, supply to the Seller promptly after arrival of the sugar at the destination any documents customarily required by and acceptable to the authorities in the country of origin, and any costs incurred in obtaining such documents shall be for the Seller's account. The Buyer shall not be responsible if, for reasons beyond his control, such documents are unobtainable.

### **TAXES AND LEVIES**

22. In the case of international transport,  
(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; and

## **RULES RELATING TO CONTRACTS**

- (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;

Save that in any case involving an element of transport by road and/or rail, all existing or future transport taxes or levies imposed by any country shall be for the account of whichever party has the obligation to contract or procure the contract of carriage.

### **GOVERNING LAW**

23. The contract and these Rules shall be governed by and construed in accordance with English Law.

### **EXCLUSIONS**

24. 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, nor the Common European Sales Law, 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**

25. Where any clause in the contract is at variance with a Rule of the Association, such clause shall prevail.

Except where inconsistent with these Rules, the current version of Incoterms shall apply. Where the parties have not specified a particular Incoterm as applicable, the most suitable Incoterm will apply to the contract, provided always that no Incoterm shall apply which would be inconsistent with the express terms agreed by the parties.

The term “vessel” or “ship” when used in these Rules shall include a barge, provided the barge is the primary mode of transport.

The term “primary mode of transport” when used in these Rules shall be used to distinguish such mode of transport from a mode of transporting the sugar to the sea-going vessel.

### **NOTICES**

26. Any notice to be served by the Seller or the Buyer under these Rules shall be delivered by courier or transmitted by, facsimile or electronic mail.

## **RULES RELATING TO CONTRACTS**

### **ARBITRATION**

27. 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 Rules of the Association in force at the time the contract was made shall apply to any reference to arbitration.

## **APPENDIX 1**

### **INSTITUTE COMMODITY TRADES CLAUSES (A)**

Agreed with the Federation of Commodity Associations for the insurance of shipments of Cocoa, Coffee, Cotton, Fats and Oils not in bulk, Hides and Skins, Metals, Oil Seeds, Sugar (Raw and Refined) and Tea.

#### **Risks Covered**

- 1** This insurance covers all risks of loss of or damage to the subject-matter insured except as provided in Clauses 4,5,6 and 7 below
- 2** This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4,5,6 and 7 or elsewhere in this insurance
- 3** This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

#### **Exclusions**

- 4** In no case shall this insurance cover
  - 4.1** loss damage or expense attributable to wilful misconduct of the Assured
  - 4.2** ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
  - 4.3** loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3. "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)
  - 4.4** loss damage or expense caused by inherent vice or nature of the subject-matter insured
  - 4.5** loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage

This exclusion shall not apply where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5 5.1 In no case shall this insurance cover loss damage or expense arising from

Unseaworthiness and Unfitness Exclusion clause

5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein

5.1.2 unfitness of container liftvan or land conveyance for the safe carriage of the subject-matter insured, where loading therein is carried out prior to the attachment of this insurance or by the Assured or their servants.

5.2 Where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract, exclusion 5.1.1 above shall not apply.

5.3 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination

6 In no case shall this insurance cover loss damage or expense caused by

War Exclusion Clause

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2. capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat

6.3. derelict mines torpedoes bombs or other derelict weapons of war.

- |      |  |                          |
|------|--|--------------------------|
| 7    | In no case shall this insurance cover loss damage or expense   | Strikes Exclusion Clause |
| 7.1  | caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions |                          |
| 7.2. | resulting from strikes, lock-outs, labour disturbances, riots or civil commotions                                |                          |
| 7.3  | caused by any terrorist or any person acting from a political motive,  |                          |

**Duration**

- |         |   |                |
|---------|---|----------------|
| 8       | 8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either  | Transit Clause |
| 8.1.1   | On delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,  |                |
| 8.1.2   | on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either  |                |
| 8.1.2.1 | for storage other than in the ordinary course of transit or   |                |
| 8.1.2.2 | for allocation or distribution,   |                |
|         | or  |                |
| 8.1.3   | on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge,  |                |
|         | whichever shall first occur.  |                |
| 8.2     | If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination. |                |

8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

9 If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters either*

Termination of Contract of Carriage Clause.

9.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,

or

9.2. if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

10 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.*

Change of Voyage Clause

### Claims

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

Insurable Interest Clause

11.2 subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.



- 12** Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder.
- This Clause 12 which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4,5,6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.
- Forwarding Charges Clause
- 13** No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.
- Constructive Total Loss Clause
- 14 14.1** If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.
- Increased Value Clause
- 14.2** **Where this insurance is on Increased Value the following clause shall apply:**
- The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

### **Benefit of Insurance**

- 15 This insurance shall not inure to the benefit of the carrier or other bailee. Not to Inure Clause

### **Minimising Losses**

- 16 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder Duty of Assured Clause

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

- 17 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party. Waiver Clause

### **Avoidance of Delay**

- 18 It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control. Reasonable Despatch Clause

### **Law and Practice**

- 19 This insurance is subject to English Law and practice. English Law and Practice Clause

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*NOTE:- It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.*

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CL 275 - Sold by Witherby & Co. Ltd., London.

# INSTITUTE STRIKES CLAUSES (COMMODITY TRADES)

Agreed with The Federation of Commodity Associations

## Risks Covered

- |   |   |
|---|---|
| <p><b>1</b> This insurance covers, except as provided in Clauses 3 and 4 below, loss of or damage to the subject-matter insured clause by</p> <p>1.1 strikers, locked-out workmen, or person taking part in labour disturbances, riots or civil commotions</p> <p>1.2 any terrorists or any person acting from a political motive.</p> <p><b>2</b> This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these clauses.</p> | <p>Risks Clause</p> <p>General Average Clause</p> |
|---|---|

## Exclusions

- |   |                                  |
|---|----------------------------------|
| <p><b>3</b> In no case shall this insurance cover</p> <p>3.1 loss damage or expense attributable to wilful misconduct of the Assured</p> <p>3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 3.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)</p> <p>3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured</p> <p>3.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)</p> | <p>General Exclusions Clause</p> |
|---|----------------------------------|

- 3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage.
- this exclusion shall not apply where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
- 3.7 loss damage or expense arising from the absence shortage or withholding of labour of any description whatsoever resulting from any strike, lockout, labour disturbances, riot or civil commotion
- 3.8 any claim based upon loss of or frustration of the voyage or adventure
- 3.9 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 3.10 loss damage or expense caused by war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.
- 4 4.1 In no case shall this insurance cover loss damage or expense arising from
- 4.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
- 4.1.2 unfitness of container liftvan or land conveyance for the safe carriage of the subject-matter insured, where loading therein is carried out prior to attachment of this insurance or by the Assured or their servants.
- 4.2 Where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under the binding contract, exclusion 4.1.1 above shall not apply.
- 4.3 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.
- Unseaworthiness and Unfitness Exclusion Clause

## Duration

- 5 5.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either Transit Clause
- 5.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
- 5.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the assured elect to use either,
- 5.1.2.1 for storage other than in the ordinary course of transit or
- 5.1.2.2 for allocation or distribution,
- or
- 5.1.3 on the expiry of 60 days after the completion of discharge overseaside of the goods hereby insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 5.2 If, after discharge overseaside from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.
- 6 If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 5 above, then this insurance shall also terminate *unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either* Termination of Contract of Carriage Clause
- 6.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,
- or

6.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 5 above.

7 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on condition to be arranged subject to prompt notice being given to the Underwriters.* Change of Voyage Clause

### Claims

8. 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of loss. Insurable Interest Clause

8.2. Subject to 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.

9. 9.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured Increased Value Clause

In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

9.2 **Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and the Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.

In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances

### **Benefit of Insurance**

- 10 This insurance shall not inure to the benefit of the carrier or other bailee. Not to Inure Clause

### **Minimising Losses**

- 11 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder Duty of Assured Clause

11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

- 12 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party. Waiver Clause

### **Avoidance of Delay**

- 13 It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control. Reasonable Despatch Clause

### **Law and Practice**

- 14 This insurance is subject to English Law and practice. English Law and Practice Clause

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*NOTE:- It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.*

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*CL 279 - Sold by Witherby & Co. Ltd., London.*

# INSTITUTE WAR CLAUSES (COMMODITY TRADES)

Agreed with The Federation of Commodity Associations

## Risks Covered

- |   |  |                               |
|---|--|-------------------------------|
| <p>1</p> <p>1.1</p> <p>1.2</p> <p>1.3</p> | <p>This insurance covers, except as provided in Clauses 3 and 4 below, loss of or damage to the subject-matter insured clause by</p> <p>war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power</p> <p>capture seizure arrest restraint or detention, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereat</p> <p>derelict mines torpedoes bombs or other derelict weapons of war.</p> | <p>Risks Clause</p>           |
| <p>2</p>                                  | <p>This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these clauses.</p>  | <p>General Average Clause</p> |

## Exclusions

- |   |  |                                  |
|---|--|----------------------------------|
| <p>3</p> <p>3.1</p> <p>3.2</p> <p>3.3</p> <p>3.4</p> <p>3.5</p> | <p>In no case shall this insurance cover</p> <p>loss damage or expense attributable to wilful misconduct of the Assured</p> <p>ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured</p> <p>loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 3.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)</p> <p>loss damage or expense caused by inherent vice or nature of the subject-matter insured</p> <p>loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)</p> | <p>General Exclusions Clause</p> |
|---|--|----------------------------------|



3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage.

This exclusion shall not apply where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

3.7 any claim based upon loss or frustration of the voyage or adventure

3.8 loss damage or expense arising from any hostile use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction of radioactive force or matter.

4 4.1 In no case shall this insurance cover loss damage or expense arising from Unseaworthiness and Unfitness Exclusion Clause

4.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein

4.1.2 unfitness of container liftvan or land conveyance for the safe carriage of the subject-matter insured, where loading therein is carried out prior to attachment of this attachment of this insurance or by the Assured or their servants.

4.2 Where this insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under the binding contract, exclusion 4.1.1 above shall not apply.

4.3 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

### Duration

5 5.1 This insurance Transit Clause

5.1.1 attaches only as the subject-matter insured and as to any part as that part is loaded on an oversea vessel

and

5.1.2 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is discharged from an oversea vessel at the final port or place of discharge,

or

on expiry of 15 days counting from midnight of the day of arrival of the vessel at the final port or place of discharge,

whichever shall first occur;

nevertheless,

*subject to prompt notice to the Underwriters and to an additional premium, such insurance*

5.1.3 reattaches when, without having discharged the subject-matter insured at the final port or place of discharge, the vessel sails therefrom,

and

5.1.4 terminates, subject to 5.2 and 5.3. below, either as the subject-matter insured and as to any part as that part is thereafter discharged from the vessel at the final (or substituted) port or place of discharge,

or

on expiry of 15 days counting from midnight of the day of re-arrival of the vessel at the final port or place of discharge or arrival of the vessel at a substituted port or place of discharge,

whichever shall first occur.

5.2 If during the insured voyage the oversea vessel arrives at an intermediate port or place to discharge the subject-matter insured for on-carriage by oversea vessel or by aircraft, or the goods are discharged from the vessel at a port or place of refuge, then, subject to 5.3 below and to an additional premium if required, this insurance continues until the expiry of 15 days counting from midnight of the day of arrival of the vessel at such port or place, but thereafter reattaches as the subject-matter insured and as to any part as that part is loaded on an on-carrying oversea vessel or aircraft. During the period of 15 days the insurance remains in force after discharge only whilst the subject-matter insured and as to any part as that part is at such port or place. If the goods are on-carried within the said period of 15 days or if the insurance reattaches as provided in this Clause 5.2

- 5.2.1 where the on-carriage is by oversea vessel this insurance continues subject to the terms of these clauses,
- or
- 5.2.2 where the on-carriage is by aircraft, the current Institute War Clauses (Air Cargo) (excluding sendings by Post) shall be deemed to form part of this insurance and shall apply to the on-carriage by air.
- 5.3 If the voyage in the contract of carriage is terminated at a port or place other than the destination agreed therein, such port or place shall be deemed the final port of discharge and such insurance terminates in accordance with 5.1.2. If the subject-matter insured is subsequently reshipped to the original or any other destination, then *provided notice is given to the Underwriters before the commencement of such further transit and subject to an additional premium*, such insurance reattaches
- 5.3.1 in the case of the subject-matter insured having been discharged, as the subject-matter insured and as to any part as that part is loaded on the on-carrying vessel for the voyage;
- 5.3.2 in the case of the subject-matter not having been discharged, when the vessel sails from such deemed final port of discharge;
- thereafter such insurance terminates in accordance with 5.1.4.
- 5.4 The insurance against the risks of mines and derelict torpedoes, floating or submerged, is extended whilst the subject-matter insured or any part thereof is on craft whilst in transit to or from the oversea vessel, but in no case beyond the expiry of 60 days after discharge from the oversea vessel unless otherwise specially agreed by the Underwriters.
- 5.5 *Subject to prompt notice to Underwriters, and to an additional premium if required*, this insurance shall remain in force within the provisions of these Clauses during any deviation, or any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

(For the purpose of Clause 5

“arrival” shall be deemed to mean that the vessel is anchored, moored or otherwise secured at a berth or place within the Harbour Authority area. If such a berth or place is not available, arrival is deemed to have occurred when the vessel first anchors, moors or otherwise secures either at or off the intended port or place of discharge

“Oversea vessel” shall be deemed to mean a vessel carrying the subject-matter from one port or place to another where such voyage includes a sea passage by that vessel).

- 6 Where, after attachment of this insurance, the destination is changed by the Assured, *held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.* Change of Voyage Clause
- 7 **Anything contained in this contract which is inconsistent with Clauses 3.7, 3.8 or 5 shall, to the extent of such inconsistency, be null and void.**

### Claims

- 8 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss Insurable Interest Clause
- 8.2 Subject to 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.
- 9 9.1. If any increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. Increased Value Clause
- In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.
- 9.2 **Where this insurance is on Increased Value the following clause shall apply:**
- The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.

In the event of Claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

### **Benefit of Insurance**

- |           |  |                     |
|-----------|--|---------------------|
| <b>10</b> | This insurance shall not inure to the benefit of the carrier or other bailee | Not to Inure Clause |
|-----------|--|---------------------|

### **Minimising Losses**

- |           |   |                        |
|-----------|---|------------------------|
| <b>11</b> | It is the duty the Assured and their servants and agents in respect of loss recoverable hereunder   | Duty of Assured Clause |
| 11.1      | to take such measures as may be reasonable for the purpose of averting or minimising such loss,<br>and  |                        |
| 11.2      | to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised<br><br>and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties. |                        |
| <b>12</b> | Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party   | Waiver Clause          |

### **Avoidance of Delay**

- |           |   |                            |
|-----------|---|----------------------------|
| <b>13</b> | It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control | Reasonable Despatch Clause |
|-----------|---|----------------------------|

### **Law and Practice**

- |           |   |                                 |
|-----------|---|---------------------------------|
| <b>14</b> | This insurance is subject to English law and practice | English Law and Practice Clause |
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*NOTE:- It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.*

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*CL 278 - Sold by Witherby & Co. Ltd., London.*

**INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL,  
BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC  
WEAPONS  
EXCLUSION CLAUSE**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
  - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

## INSTITUTE CYBER ATTACK EXCLUSION CLAUSE

1. Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
  - 1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system, or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

## TERMINATION OF TRANSIT CLAUSE (TERRORISM) (2009)

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

1. Notwithstanding any provision to the contrary contained in the contract of insurance or the Clauses referred to therein, it is agreed that in so far as the contract of insurance covers loss of or damage to the subject-matter insured caused by

any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted or

any person acting from a political, ideological or religious motive,

such cover is conditional upon the subject-matter insured being in the ordinary course of transit and, in any event, **SHALL TERMINATE:**

**either**

- 1.1 as per the transit clauses contained within the contract of insurance,

or

- 1.2 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

- 1.3 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

- 1.4 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit,

or

- 1.5 in respect of marine transits, on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,

- 1.6 in respect of air transits, on the expiry of 30 days after unloading the subject matter insured from the aircraft at the final place of discharge,

**whichever shall first occur.**

- 2 If the contract of insurance or the Clauses referred to therein specifically provide cover for inland or other further transits following on from storage, or termination as provided for above, cover will re-attach, and continues during the ordinary course of that transit terminating again in accordance with clause 1.