

European Cotton Rules

VERSION 2008

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FIRST PART**PART 1 - BASIC CONCEPT****TITLE 1 : Scope of Application**

- Art. 001** The present Rules are intended to govern the purchase and sale transactions of raw cotton.
- Art. 002** The European Cotton Rules as in force at the time of the conclusion of the contract shall apply to all contracts between the parties concerned which have been concluded subject to these rules with the clause *European Cotton Rules* or with any similar clause, unless otherwise specially agreed.
- Art. 003** Unless the buyer and the seller agree otherwise, the conditions of the purchase or sale shall be in accordance with the present Rules and the Incoterms in force at the date of the contract.

TITLE 2 : Disputes

- Art. 004** All disputes relating to the contract will be submitted to Arbitration, according to the Rules of Arbitration provided for in the appendixes hereafter in respect of National Law or public order in force in the country where the arbitration takes place and parties shall strictly renounce to bring any claim before Courts of Justice.

TITLE 3 : Amendments

- Art. 005** Modification of these general rules shall be valid only when accepted at a General Meeting of the European Cotton Confederation by 2/3 majority of these associations who have adopted the ECR.

PART 2 - EUROPEAN TERMS

TITLE 1 : Common rules concerning all contracts

CHAPTER I : Specific clauses

Section I : Terms of period - Time-limits

- Art. 006** The terms “day”, “week”, and “month” are to be considered in the civil or calendar sense, for example “one month” is a calendar month, “one day” is a calendar day.
- Art. 007**
- A.** All declarations, applications, and communications which, according to these rules, are subject to a specified time-limit must, with acknowledgement of receipt, be delivered on any business-day by 17 hours (= 5 p.m.), either by registered letter or by any other fast writing communication method in use, provided that the sender will be able to give evidence of its reception by the addressee.
 - B.** Should the last day of a specified time be a non-business-day, the next business-day shall be substituted for it.
 - C.** When calculating periods and terms, the initial date of such period or term will not be taken into consideration.
- Art. 008**
- A.** The beginning of a month shall be from the first up to the 10th day inclusive, the middle of a month from the 11th to the 20th inclusive, the end of month from the 21st to the last day of the month inclusive.
 - B.** The first half of a month shall be considered the period from the first to the 15th day of that month inclusive; the second half shall be considered the period from the 16th to the last day of that month inclusive.

Section II : Due date - Damages-interests

- Art. 009**
- A.** The due date of the invoice amount shall be the date agreed upon in the contract.
 - B.** These rules determine, in relevant articles, the due date of the awards for weight and quality differences and of the amounts due for invoicing back.
 - C.** In case due-dates are not respected, any delay implies the right to apply interest charges, if not stated in the contract, at a rate not exceeding the interbank official rate discount plus 1 percent of the currency contracted, valid at due date. Such interest will be added without notification.

Section III : Foreign currency

Art. 010 In case of contracts concluded in foreign currency, all payments have to be made in that currency.

Section IV : Contract Unit

- Art. 011**
- A.** Each contract shall be considered as one unit, but may be fulfilled by one shipment or part-shipments of not less than 100 bales or 22 metric tons, or a full container/truck load unless expressly agreed upon otherwise.
 - B.** In so far as part-shipments or part-deliveries are allowed, each one shall be treated as an independent contract unit.

Section V : Control limit, Franchise, Tolerance

Art. 012 Control limit: extreme limit of variation allowed, in all experimental measures, between the indications reached by laboratory testing when a lot is constituted, and those found when the lot is controlled.

Art. 013 Franchise: a conformity margin, which remains definitively acquired.

Art. 014 Tolerance: a conformity margin agreed upon, which disappears when exceeded.

Section VI : Licences

Art. 015 The contracting parties undertake to fulfil all legal, administrative and statutory obligations of their respective countries regarding imports and exports, and must obtain all necessary import and export licenses or permits at their own expense and risk and under their own responsibility.

CHAPTER II : Object of the sale-purchase contract

Quantity - Quality - Price

Section I : Quantity

Art. 016 Unless otherwise stipulated, the quantity of cotton contracted is always understood in bales pressed at the normal export density of the country of origin.

The buyer has the right to obtain reimbursement of any expenses he may incur and redress of any prejudice he may suffer through non-observance of this rule. Bales which have been made good after loading or which have been used for taring on arrival or on delivery cannot be claimed for.

Art. 017 **A.** When the quantity is expressed:

- a) in weight: the weight indicated in the contract is net, i.e. tare deducted.
- b) in number of bales : the seller must ship/deliver the exact number of bales stipulated in the contract, such bales to be of the usual average weight of the exporting country.

B. If a contract stipulates the number of bales and the weight, the stipulated weight shall be decisive, within the weight of one bale.

Art. 018 Unless otherwise stated the present Rules provides for landed or delivered weight, actual tare, no weight franchise, mutual weights.

Art. 019 For the contracts "shipping weight" a distinction must be made between:

- a) shipping weight: weight and tare are ascertained at the port of shipment by an independent weighing/inspection organisation in the presence of the representatives of both buyer and seller; a similar procedure will apply if parties agree on a humidity test.

The seller is responsible to inform the buyer at least 48 hours in advance, of the fulfilment of the operations described above.

Should a duly appointed representative fail to be present at the weighing, the weighing may be carried out by the weighing/inspection organisation appointed by the other party of this contract, such weights being final and to be accepted by the party which is not represented.

- b) certified shipping weight: the seller must supply, at his expense, a statement showing the weight and tare of each bale, such statement to be drawn by an organisation previously accepted by the buyer; he must also supply a humidity test statement if a humidity clause appears in the contract.

Art. 020 Landing weight - weighing and taring take place after unloading, at the request of the buyer or his representative, in the presence of buyer's and seller's representatives, at the latest 30 days after last day of landing.
If either of the parties should desire an extension of the time-limit, the consent of the other party shall have to be invited in good time.
The seller must indicate the name of his representative on the invoice.

Should a duly appointed representative fail to be present at the weighing, the weighing may be carried out by the weighing/inspection organisation appointed by the other party of this contract, such weights being final and to be accepted by the party which is not represented.

Art. 021 Delivered weight: weighing and taring are effected at the place and time of delivery in the presence of buyer's and seller's representatives.

Should a duly appointed representative fail to be present at the weighing, the weighing may be carried out by the weighing/inspection organisation appointed by the other party of this contract, such weights being final and to be accepted by the party which is not represented.

Section II : Quality

Art. 022 The quality shall be determined by origin, variety and the following elements:

- a) the grade which is determined by colour, degree of cleanliness and preparation.
- b) the length of the staple.
- c) other characteristics relating to the grade, the staple, the character etc. under the proviso however that in case of an official arbitration, only are to be taken into consideration the clauses recognised and valued by the Arbitration Board or by the equivalent body existing in the market where the arbitration takes place. However, other clauses are taken into account when their use has been duly valued in the contract.
- d) possibly, by one or several additional characteristics which can be measured mechanically.

The grade shall refer to:

- an official standard or an official type;
- a private selling type;
- one or more samples representing the grade.

Whenever the quality refers to a sample or type, its denomination shall be inserted in the contract and the Seller shall deliver to the Buyer at least one sample, weighing not less than 150 grams, properly made and sealed by the Seller or his Representative. The Buyer shall have the right to have the sample opened and re-sealed in his presence by the Seller's representative.

Art. 023 For cotton sold on description in reference to a Standard, an official type or a private type for grade, classifications and arbitrations are made by comparison with all the biscuits/parts composing the said Standard or type, taken as a whole. These provisions apply:

- to U.S.A. cotton and to all other cottons sold on the basis of the Universal Standards,
- to cotton of other growths having their own Standards or official types,
- to cotton of other origins, sold on basis of official types of the other Exchanges.

As far as grade is concerned, a lot shall be considered equal to the Standard, official or private type, if the average quality of which is not lower than the average quality of the Standard, official or private type, and which does not include any bale of a lower quality than the lowest biscuit/part of the said Standard/type referred to. In order to ascertain the average of the lot, bales higher than the Standard or type referred to, shall be considered as equal to the highest biscuit/part of the Standard or type.

Section III : Price

Art. 024 **A.** The contract price is :

- either a "fixed" price expressed in Euro or in a foreign currency;
- or a premium/discount (basis) on a trading month of a future market universally recognised and duly stipulated in the contract;
- a premium/discount on an index duly agreed by both parties.
- The price must be followed by the unit of weight to which it applies.

B. The seller has to pay all duties and taxes to ensure the shipment or delivery of the merchandise in the country of origin or supply source, including all taxes, export duties and/or charges, also the costs of any formalities incurred in loading or delivering. Any export surcharge is also considered as included in the price, however any import tax will be for buyer's account.

C. If the contract includes a currency exchange clause and/or reservations relating to freight rates, insurance premiums, fees and/or taxes, duties, fares of any kind, incidental expenses, etc..., as well as the exchange rates applicable to all those elements, any alteration of such elements, beyond the contract date, duly and previously justified, involves the establishment of an invoice adjustment.

Art. 025 The price so determined and fixed, can not be altered.

CHAPTER III : Payment

Art. 026 Cash payment

Payment is due against delivery of the goods by the seller. It must be made according to the terms of the contract. The payment clause of a contract may stipulate the place where the payment must be made. In the absence of any precision in this respect, it must always be understood that this payment must be made in the place of residence of the seller.

Whatever may be the method of payment adopted by the buyer, the value date of a payment is the one on which the seller is credited of this payment at the above mentioned place.

Any delay in payment entitles the seller to claim for delayed interests as stated in the contract or, if not, those stated by the Art. 009 of the present Rules, as well as the charges occurred on the goods because of the delay.

Art. 027 Payment by letter of credit

The buyer must open the credit through a first class bank of his choice at the latest 15 days preceding the first day of contracted loading period.

If the credit has not been opened within the prescribed period, the seller may demand that it should be opened by registered letter or by any other fast writing communication method in use within eight days after receipt of such a demand. If, credit is not opened when this delay has expired, the seller has the right to notify to the buyer his decision to invoice back the contract or part of it. Notification and invoicing back will be made as stipulated in Art. 096.

Credits must be opened in a clear and precise manner in accordance with the contract terms.

Unless otherwise stipulated the costs of opening the credit are for buyer's account, who transmits to the seller a copy of the letter relative to the letter of credit.

Art. 028 Payment against documents

1. Cash payment against presentation of documents (CAD)
This clause calls for payment within eight days against presentation of documents by a bank or by the seller or his authorised representative.
2. Cash payment on arrival (COA)
This clause calls for payment on arrival of the vessel carrying the goods at the port of destination and in any case not later than 50 days after the Bill of Lading's date against presentation of the shipping documents or delivery order (or if needed by a letter of guarantee authorising full possession of the cotton involved).

Payment is due at the place and bank stated in the contract. If the contract does not contain this clause, then buyer is bound to inform the seller not later than one week before the shipment or delivery period contracted, of the name and address of the bank that will effect the payment.

Unless otherwise stated, the costs to present the documents are for seller's account.

When it concerns a “shipment” contract, the buyer is bound to effect payment against presentation of documents even if there is a partial or total loss of the merchandise before the presentation of the documents.

The required dox for presentation are stipulated in the contract.

Art. 029 Date of payment

- payment on arrival of vessel : the day of arrival of the vessel at the port where the marine carrier’s obligations cease;
- payment on delivery :
 - * ex quay or ex warehouse : the day the total quantity is placed at the disposal of the buyer or his representative;
 - * free carrier: the day of the loading on wagon or lorry.
- payment on delivery at final place of destination : the due date is the day the goods are at the disposal of the buyer from the carrier at the final point of destination, the date of disposal of the buyer attests.

Any delay in payment entitles the seller to claim for delayed interests as stated in the contract or, if not, those stated by the Art. 009 of the present Rules as well as the charges occurred on the goods because of this delay.

In case of failing of the buyer, the seller has the right to summon him to pay, and after 8 banking days following the receiving of the formal notice, he will be entitled to notify his decision to invoice back and apply Art. 031 concerning the retention of title clause.

Art. 030 Deferred payment

When deferred payment has been mutually agreed, the buyer must immediately accept the draft and return the negotiable instrument, possibly guaranteed by a bank, to the seller.

Art. 031 Retention of title clause and transfer of risk

A. Retention of title:

When a contract includes a retention of title clause with reference to Art. 031, this clause must be understood as follows:

The property title and ownership of the cotton which is the subject of this contract shall remain with the seller and the seller reserves the right to dispose of the said cotton until payment in full of the principals, interests and charges has been received in accordance with the terms of this contract.

If payment in respect of the said cotton is overdue in whole or in part or immediately upon the commencement of any act or proceeding in which the solvency of the buyer is questioned, the seller may (without prejudice to any of his other rights and without being obliged to proceed to arbitration or take any legal action) re-possess and/or re-sell the said cotton and may authorise its collecting agent and/or other legal representative to enter upon the buyer’s premises, or any other place where the said cotton may be, for the purpose of taking it back. The expression “cotton” shall include both physical cotton and the documents of title thereto.

B. Transfer of risk:

Cotton is at the risk of the seller until it has been delivered to the buyer, in accordance with the present Rules and Incoterms in force, unless parties otherwise agree.

Unless the Incoterms state otherwise, the risk of the goods are transferred to the buyer as soon as the delivery is effected. The buyer must insure them at his expense against all risks of damage and/or losses caused or suffered.

The buyer has the responsibility of keeping the goods in their original condition without altering the signs or marks which identify the bales at time of delivery, unless the Incoterms state otherwise.

CHAPTER IV : Inspection

Section I : Definition

Art. 032 After unloading at destination contract the parties shall adopt the following procedure:

- inspection of condition of bales;
- weighing;
- sampling;
- possibly taring;
- possibly drawing of "humidity" samples.

Under no circumstances, during these operations, must any bale marks relating to the country of origin be removed, nor those relating to its identification, ginning factory, etc.

Art. 033 These operations shall be performed jointly between buyer's and seller's representatives. The name of the seller's representative must be mentioned on the invoice or at least be notified to the buyer before the inspection.

Art. 034 Should a duly appointed representative fail to be present, all the supervising can be carried out by the organisation appointed by the other party of this contract, their findings are final and must be accepted by the party which is not represented.

Section II : Examination of the bale-packing and condition of bales

Art. 035 At the time of delivery, the buyer shall inspect each bale for possible defects and shall report accordingly such defects to the seller without delay. This duty particularly concerns "Reginned" - "Blended" - "Repacked" or "Recleaned" - "False-packed" - "Mixed-packed" - "Water-packed" bales. The procedure to be applied is laid down in Art. 051.

Art. 036 No claim shall be considered for any deficiency in bales which have already been passed to a processing machine, or cannot anymore be properly identified.

Section III : Weighing

Art. 037 For all transactions under terms FOB, CFR, CIF, etc. and for SPOT contracts with delivery from pier, shed or any other port area, weighing will be performed through a bridge-scale. In such a case, drawing of samples must not affect the final weight. However, if so agreed between parties, weight may be performed bale by bale, before sampling, unifying in the tare of bales the hoops or wires possibly missing.

Art. 038 For bales weighing 150 kilos or less, two of them are weighed together as the facilities for handling and weighing allow it. In such a case, two bales are also tared together.

- Art. 039** The weight of the bales is expressed in kilos and half kilos, any weight less than 500 grams being ignored.
- Art. 040** For “shipment” contracts on landing or delivered weights, the weighing is to be effected as soon as possible and latest 30 days after the last day of landing. If either of the parties should desire an extension of the time-limit, the consent of the other party shall have to be invited in good time. In the absence of such consent the invoiced weight shall be binding upon both parties.
- Art. 041** Depending on the type of contract, the weighing is to be effected by the party, at its expense, according to Incoterms.

Section IV : Sampling

- Art. 042** The buyer has the right to sample bale by bale for all origins, however if parties agree on 10% sampling at least 5 bales per lot of origin shall be sampled.
- Each sample must weigh about 150 grams.
- Art. 043** After weighing, samples are drawn in duplicate if the buyer requires a set for his own classing purposes, the other set for eventual arbitration purposes; the package of arbitration samples must be duly sealed by the representative of both parties.
- Sampling costs are for buyer’s account and the samples remain his property.
- Art. 044** In case of percentage-sampling and percentage-arbitration, the result of the arbitration holds good for the total lot.
- Art. 045** The seller has the same right of sampling, but before weighing and at his expense; if drawn after weighing the weight of the samples shall be deducted from the gross weight ascertained.

Section V : Taring

- Art. 046** Tare given by seller will be deducted on the invoice. However, buyer may ask for tare verification at the time of weighing either at landing port or at the delivery place.
- In such a case, seller’s supervisor and buyer’s receiver will mutually agree in electing 5% of bales delivered, with a minimum of 3 bales, proportionally to the different types of packing and size of bales contained in the lot. Should lots be composed of bales weighing less than 120 kilos each, tare verification will be effected on a 3% of bales with a maximum of 10 bales per brand and counter brand and a minimum of 3 bales.
- Average weight of canvas from each kind of bagging and size of bale shall be proportionally taken to determine the actual weight of canvas. Also bands, wires or hoops from bales tared shall be weighed bale per bale and the average,

according to size, shall be taken proportionally. Totals thus obtained, shall constitute the actual tare of the lot and shall be deducted from landed/or delivered gross weight.

The tare of each bale is rounded off to the lower 100 grams.

The ascertaining of the total weight of the tares will be rounded off to the nearest half kilo.

Art. 047 Deleted

Art. 048 Tare verification costs are to be borne by buyer unless an overtare exceeding in value the tare verification costs might result, in which case such costs will be for seller's account and must be claimed within 30 days from last day of landing, as per Art. 052. The comparison between overtare's value and tare verification costs will be based on the invoice price of the cotton, and the expenses will be adjusted to the tariff in force.

Art. 049 Seller has same rights for tare verification, but through his own care and at his expense.

Section VI : Humidity control

Art. 050 When a contract includes a humidity control clause, the eventual fulfilment of the clause, unless otherwise specified, will be subject to following provision :

A. Definition

1. The finality of the test known as "Hygrometric conditioning" is to determine, from samples submitted to laboratory, the actual humidity content of a cotton. Such content, stated as a percentage of the absolute dry weight of the sample after duly dried at the ventilated oven, is the hygrometric grade or "regain" of such sample.
2. Unless otherwise stated, the standard "regain" is 8,5% on dry weight. This value is the basis for the calculation of the commercial weight or corrected invoice weight of a lot of cotton.
3. The "regain" of a lot is the average of the values obtained from samples submitted to a test.
4. When the weight of the cotton completely dried out increased by 8,5% shows a weight in excess of the original weight, there is a "humidity loss"; when being below, there is a "humidity gain". The loss or gain is expressed in percentage of the original net weight.
5. On calculating the commercial weight, the "humidity loss" "increases" the net delivered weight. The "humidity gain" "decreases" the net delivered weight.
6. If a tolerance is provided, it is not applicable if it is exceeded. If a franchise is provided, the calculation is based on the percentage exceeding the franchise.

B. Laboratory

The parties must stipulate in the contract the name of the Laboratory to carry out hygrometric conditioning. Lacking such designation, hygrometric

conditioning will be carried out by the Laboratory of the local Cotton Association.

C. Sampling

The following will apply when sampling bales to test for internal humidity:

- Samples of at least 250 grams must be taken from each bale to be sampled. These samples must be taken by the representative of the party who has asked for the test, and in the presence of a representative of the other party (if it appoints one). The samples must be taken at the time of the final weighing or not later than 5 days after the last weighing date.
- Representative samples must be taken from 5% of the bales in each lot (at least 3 bales). These bales must be selected at random. Samples must be taken from at least two different parts of each bale from a depth of about 20 centimetres inside the bale. The samples must be placed at once in dry, hermetically-sealed containers and labelled to show the identity of the bale the samples have come from.
- The samples must be sent as soon as possible to the appointed laboratory.

D. Procedure rights - costs

Each party is entitled to request a humidity control test, well understood that the formalities and costs including sampling, despatch of samples and test fees are to be borne by the demanding party. Notwithstanding, the demanding party has the right to be reimbursed by the other party for all expenses involved, should the allowance in his favour prove to exceed the said expenses.

Section VII : Defective bales

Art. 051 Bales cannot be considered sound, true and merchantable if containing false-packing of quality or any other type of false-packing, foreign matter or damaged cotton not foreseen in the contracted quality description.

1. a) The buyer may choose between deduction of the weight of damaged cotton and reconditioning of the bales he cannot reject.
- b) If the damaged part of the bale can be removed the work must be executed at the costs of the seller, in agreement with buyer's receiver and seller's controller.
- c) In case the parties could not reach an agreement, the condition of the bales in dispute will be examined by an agreed expert.
If the defective part(s) of the bale (s) cannot be removed and the defect is noticed either at time of reception or within six months the buyer will have the right to invoice back these bales for non-execution of contract.
- d) In case the defective or damaged part of the bale is not discernible by due diligence at time of weighing, the buyer reserves the right to claim within 6 months from the last day of landing or delivery, on condition that the damage is ascertained jointly.

The incriminated bale or bales shall be retained in original state up to 10 days and held at the disposal of the appointed representative of the seller. The buyer shall furnish all tags, marks and bale numbers to facilitate identification of these bales.

2. Bales to be rejected

- bales carrying damage in excess of 6% of their gross weight. However, in the event of damage sustained during transportation, the buyer of a loading contract may reject only those bales showing a higher percentage of damage than that covered by the insurance policy.
- all box bales.

When, added, the total of bales is in excess of 6% of the lot :

- repacked bales,
- picked bales,
- mixed packed bales in which the distinct parts are different in quality by more than one full grade or one full color.
- In the case of delivery contract, tared bales in excess of 6% are to be rejected.

The seller is bound to replace the rejected bales within 1 month at the end of which the buyer has the right to invoice back if the defective bales have not been replaced.

CHAPTER V : Weight adjustments

Section I : Definition - Procedure

Art. 052 When landing or delivery weight has been definitively fixed, a weight adjustment note, showing the value difference between invoice and delivered weight, must be sent by the buyer to the seller within 30 days from last weighing day. A weight adjustment note shall be drawn up for each individual invoice.

Statements must be rendered in the same currency of the contract, without taking into consideration any difference resulting from an eventual humidity test. The conversion rate English pounds to kilos and vice versa will be based on following coefficients:

$$\begin{array}{rcl} 1 \text{ lb} & = & 0,4536 \text{ kg} \\ 1 \text{ kg} & = & 2,2046 \text{ lb.} \end{array}$$

Weight differences in kilo will be rounded off to the nearest half kilo, and those in lbs. to the nearest lb.

When a humidity test has been agreed upon, a statement resulting from that test must be made by the demanding party and addressed to the other.

Differences must be settled by the debtor within 30 days from the date on which the statements were sent or received.

Art. 053 Settlement of missing and/or damaged bales:

- a) Missing bales and those refused due to excessive damage and "blind bales" (without marks), shall be calculated at the average gross invoice weight and based on quality stated in the invoice.
- b) "Blind bales" accepted by the buyer shall be calculated at its actual weight and buyer will accept the quality stated in the invoice.

Art. 054 Mutual weights without franchise:

This clause means that seller must reimburse buyer for any loss in weight, or that buyer must reimburse seller for any gain in weight, such loss or gain being the difference between the controlled landed or delivered weights and the provisional invoiced weights.

Mutual weights with franchise:

This clause means that from any difference, gain or loss, between the controlled landed or delivered weight, the franchise agreed upon in the contract and stated in terms of percentage, is to be deducted.

Section II : Excess or short weight

Art. 055 Even without the stipulation "about", a variation of 3% from the contract weight (and not from the invoice weight) is allowed and shall be settled on the basis of the contract price. For contracts with a weight franchise (Art. 053), the franchise shall not be taken into consideration for the calculation of this plus/minus 3% tolerance.

Art. 056 For any excess over the 3% tolerance, the buyer has the right to refuse its delivery or to receive it on the basis of the price of cotton the last day of landing or the day in which the cotton has been placed at buyer's disposal.

From any shortage from the 3% tolerance, the buyer has the right to enforce its delivery at contract price.

Art. 057 For contracts providing several shipment periods or several deliveries, the 3% will apply for each shipment/delivery separately.

CHAPTER VI : Quality differences

Section I : Claims for quality deficiencies

Art. 058 If the cotton, shipped or delivered, differs from the quality contracted (grade - colour - staple - character), the buyer, unless otherwise stated in the contract can claim an allowance, and, in certain cases a penalty to be calculated on the invoice price. If the global amount of differences, to which is added any double allowances (see Art. 064), exceeds 10% of the value of the lot (calculated at the contract price on the weight accepted for quality settlement), the buyer has the right either to accept the lot with double allowances as mentioned, or to reject the lot wholly or partly. In case of total or partial rejection, the seller has the right to replace the rejected bales.

Any claim for allowance must be submitted within 30 days from the last day of unloading or delivery.

Art. 059 The claim for allowance shall be based on the differentials fixed by the Chamber of Arbitration, in force on the last day of landing or delivery. For the origins for which no differentials are fixed by said Committee, the claim for allowance shall be based on the quotations collected by the Chamber of Arbitration, at the request of the buyer.

Art. 060 Unless the contract specifies "mutual allowance", the seller is not entitled to any allowance for bales superior in grade, colour or staple to the quality stipulated in the contract, but within the limit of 10% of the lot, bales in the same colour description of maximum half a grade "off" are compensated by an equivalent number of bales of half a grade "on". There shall be no compensation for staple.

Art. 061 In addition to the quality allowance, the buyer is entitled to claim from the seller for an extra penalty of 3% in the following cases:

1. For each bale deficient in quality by more than 10% of the contract price.
2. In case of sales on description or on type, for each bale deficient by two grades and more.
3. For each bale falling off in staple length by 1/16 inch and more.
4. In case of cotton sold as "Standard Colour" : for each bale falling off to "Spotted" - "Grey" or more color.
5. In case of sales of colored cotton up to and including "Spotted" or "Grey" : for each bale falling off to "Tinged" - "Stained" or more color.

Section II : Accounts for quality differences

Art. 062 a) For each individual bale, the total allowances resulting will be cumulated, based on the weight unit and on the currency established in the contract.

- b) To obtain the amount of the allowance per bale, the total allowances as calculated in previous point a) is to be multiplied by the average landing or delivery net weight.
- c) The average net weight per bale shall be based on the net weight of the lot (determined according to Art. 052 and 053), readjusted following the hygrometric conditioning test results, when such conditioning is contemplated in the contract.

Art. 063 Quality franchise: when the contract includes a quality franchise, it will be calculated on the whole of lots constituting an invoice and deducted from any award which may be granted as a result of an amicable settlement or an official arbitration.

Art. 064 Double allowances: this clause means that the overall amount of allowances for quality differences, excluding penalties mentioned in Art. 061, will be doubled.

Section III : Micronaire

Art. 065 When a Micronaire clause is mentioned in a contract, any dispute relating to it is submitted to the rules governing Arbitration on Micronaire readings.

CHAPTER VII : Rejection clauses

Section I : Inspection

Art. 066 When an agreement has been reached between contracting parties that those bales not matching the contract guaranty, should not be accepted by the buyer, mainly in compliance with the following clauses:

- falling off bales to be rejected, without replacement,
- falling off bales to be rejected, replacement at seller's option,
- falling off bales to be rejected and replaced,
- falling off bales to be rejected and replaced, with a tolerance up to ½ grade and/or 1/32 inch, on 10% of the lot,

his appointed representative shall immediately proceed with the sampling, according to the provisions of Art. 032 - 033 - 034 - 042 to 045.

Buyer must apply a detailed list of the bales refused within 5 days from sampling.

Art. 067 Failing an amicable settlement, the buyer must ask for arbitration within 3 days, indicating "falling off bales to be rejected" possibly followed by the clause : "indicating allowances for falling off bales". Seller is entitled to request that either the whole lot or only those bales found falling off by the buyer be submitted to arbitration.

Should one of the parties decide to appeal, the request will be lodged not later than 8 days after reception of the arbitration award.

As soon as an amicable settlement, or an official final award has been made, the buyer must hold the rejected bales at the disposal of the seller, and return the samples drawn from those bales.

Arbitration and appeal fees are to be paid in proportion by the seller for any rejected bales and by the buyer for the bales which have passed.

Whether or not replacement has been effected, the seller must pay all examination expenses incurred by the buyer on any rejected bales.

Section II : Replacement

Art. 068 When the parties agree to the replacement of discarded bales, seller must comply within the following time-limits, to be calculated from the date on which the amicable settlement has been reached or such being the case on receipt of the arbitration or appeal award:

1) Shipment contracts :

The seller must replace the rejected bales by cotton available or by loading within 30 days.

2) Delivery contracts :

Within 15 days after the amicable settlement, arbitration, or appeal award, the seller must replace the rejected bales.

Art. 069 If replacement of the rejected bales has not taken place within the time specified in Art. 068, the buyer shall be entitled to “closing-out” and invoicing-back of the rejected bales. He shall notify the seller within 8 days maximum from the expiration of the time-limits specified in Art. 068 (see Art. 099).

Art. 069 If no replacement has been agreed upon, the part of the contract for which the quality does not meet the specification in the contract, shall be invoiced back at contract price without any compensation or penalty either way.

TITLE 2 : Specific terms

CHAPTER I : Contracts for shipment

Section I : General provisions

Art. 071 A contract for shipment stipulates:

- the period of shipment;
- the port or ports of shipment;
- the port of destination
- the general clause defining the obligations of the parties, e.g. F.A.S., F.O.B., C.F.R., C.I.F., C.I.F. FOW, C.I.F. delivered... (CIP).

Unless otherwise agreed:

- indirect shipment with transshipment, shall be permitted, provided the bill of lading shall have been made out for the port of destination agreed upon;
- if it has been agreed upon that cotton will be loaded on a vessel sailing directly to the port of destination stated in the contract, without transshipment, the only authorised calls at other ports are the normal ones between the port of shipment and the port of destination;
- the cotton must have a clean on board under deck bill of lading and partial shipments are not authorised; the fact that cotton or part of the lot has been "shut-out" by the captain of the vessel indicated in the bill of lading shall not be deemed a violation of the contract.

Art. 072 Shipping or loading advice:

At the time of the shipment or loading, seller must advise, by letter, or any other fast writing communication method in use, to the buyer: the vessel's name, bill of lading's date and number on the seaway expeditions, the licence plate number of the platform and departure date on the overland T.I.R. trucks, or whatever necessary information for their identification in the case of railway transportation and in all cases, the quantity shipped and invoice amount.

Art. 073 Seller shall deliver documents as early as possible after shipment and the latest before landing at port of destination.

With reference to overland T.I.R. transportation, the seller must provide the truck driver with all identity documents of goods, indispensable for the transit and according custom formalities. In all cases, it is exclusive duty and responsibility of the buyer to obtain the import licences or permits required by the authorities of the destination country.

The seller is responsible for the risk if documents are lost before their presentation, and must refund the buyer with the duly justified amounts of the expenses that such loss may have caused him.

Art. 074 Independently on what is established in Articles from 074 to 086, as well as in any others which might become affected, it is hereby established that for cotton transactions of U.S. cotton shipped from U.S. ports, the “Special Container Rules for U.S. cotton shipped from U.S. ports” attached as Appendix III and “American Cotton Shippers Association Special Rules” (in force at the time of the contract) attached as Appendix II will apply to these Rules agreed with American Cotton Shippers Association.

In any case, both contracting parties could agree to cancel or modify one or various rules to which refers this article.

Section II : Definitions of shipment terms

- Art. 075**
- a) Afloat: when cotton is sold “afloat”, it must be on board of a named vessel and on its way to the port of destination at the time the contract is concluded.
 - b) Shipment by named vessel: the name of the vessel must be stated on the contract, and possibly the expected date of sailing.
 - c) “Prompt” shipment: the bill of lading or transport document must be dated not later than 15 days after the contract date.
 - d) Shipment in specific periods: the bill of lading must be dated with the 1st until the last day of the said period.
 - e) Sailing: the word “sailing” means that the carrying vessel must sail from the port of shipment within the stipulated periods, and not later than on the last day of the period mentioned in the contract.
 - f) For the purpose of the present Rules, the words ‘shipping’ and ‘loading’ and all those related are of equivalent meaning.

Section III : CIF and CFR contracts

- Art. 076** The seller must in particular:
- 1. contract on usual terms at his own expense for the carriage of the cotton to the agreed port of destination;
 - 2. load the cotton on board the vessel within the period fixed;
 - 3. procure at his own costs a transferable clean bill of lading (see also Art. 083 and 084);
 - 4. in case of a CIF contract, procure at his own costs a transferable insurance policy (see also Art. 085 to 087);
 - 5. bear all risks of the cotton until it has effectively passed the vessel’s rail at the port of shipment;
 - 6. render the buyer, at the latter’s request, risk and expense, every assistance in obtaining any documents, other than those mentioned in the previous article, issued in the country of shipment and/or of origin and which the buyer may require for the importation of the cotton into the country of destination (and, where necessary, for their passage in transit through another country).

7. Unless otherwise stipulated by both parties:
 - a) when the transport of the cotton has been agreed in containers the established pattern in these rules will be applied;
 - b) concerning cotton coming from the US the dispositions to be applied are the ones mentioned in Appendix 'II', 'III', 'IV' and 'V'.

Art. 077 The buyer must in particular:

1. Take up the documents in accordance with the terms of the contract;
2. bear all risks from the time the cotton has passed the vessel's rail at the port of shipment (see also Art. 086).

Section IV : FOB contracts

Art. 078 The seller must in particular:

1. Deliver the cotton at the date or within the time limits agreed upon on board the vessel named by the buyer at the port agreed upon according to the specifications of the contract or failing such a clause, according to the custom of the port;
2. subject to the provisions of Art. 082, bear all costs and risks of the cotton until such time as they shall have effectively past the vessel's rail at the named port of shipment;
3. provide a his own expense the customary clean documents in proof of delivery of the cotton on board the named vessel;
4. render to the buyer, if he so requests and at his risk and expense, every assistance in obtaining any documents issued in the country of shipment and/or origin and which the buyer may require for the importation of the cotton into the country of destination (and, where necessary, for its transit through another country).

Art. 079 The buyer must in particular:

1. At his own expense, charter a vessel or reserve the necessary space on board a vessel and give the seller due notice of the name, loading berth of and delivery dates to the vessel;
2. bear all costs and risks from the time the cotton has passed the vessel's rail at the port of shipment;
3. pay any costs and charges for obtaining a bill of lading;
4. pay all costs and charges incurred in obtaining the documents mentioned in Art. 078-4.

Art. 080 If the buyer has contracted the freight, he shall see to it that it complies with shipping terms corresponding to the specification of the sales contract. If nothing has been provided in that respect, then, the buyer must contract the freight

stipulating that the captain will take over the cotton according to the customs of the shipping port.

Art. 081 If the contract specifies payment against presentation of documents (see Art. 026 - 027 - 028), the seller has the right to confide the bill of lading with the Captain. The buyer must see to it that the Captain commits himself by a special responsibility to remit the bill of lading to the seller.

Art. 082 When entering a contract, the buyer may request the seller to undertake the booking of freight on its due time; in such a case the seller assumes identical duties as in a CFR contract, except for the payment of the ocean freight. The seller is not bound to render this service.

Section V : Bill of lading

Art. 083 Unless otherwise stated, when the seller has to furnish a Bill of Lading, covering a conventional shipment (bulk carrier), it must be an "On board Bill of Lading" or a "Shipped Bill of Lading", by which the vessel's Captain or the authorised representative of steamship company acknowledges having loaded the cotton under terms stated per Art. 076. When shipment has been effected by containers not due to Shipping Line convenience, the Bill of Lading shall clearly specify the terms related with the kind of transport contract: House/House, House/Pier, Pier/House or Pier/Pier, to be in agreement with contractual conditions.

The Bill of Lading shall be drawn up in several copies, with minimum of 3; however, in contracts stipulating the clause "payment against documents" the buyer is not entitled to request a simultaneous presentation of all the originals.

Art. 084 When parties agree upon a "received bill of lading", a distinction must be made between:

- a) a "Port Bill of Lading" which is signed by the vessel's Captain or the authorised representative of steamship company, when the cotton has been accepted and the vessel is already in the port; the cotton must be loaded within 15 days following to the date of said bill of lading.
- b) a "Custody Bill of Lading" is signed upon receipt of the cotton at the port of shipment before the vessel is loading but not prior to 21 days before the expected arrival date of the vessel. Before this period has expired the seller must address to the buyer a "Master's Receipt" or "Agent's Receipt" to the effect that the cotton has been shipped.

The substitution of a vessel by another vessel is not allowed unless the vessel named is lost or is prevented by accident or by some other unforeseen event (force majeure) from making the voyage. In such event, the buyer has no claim on the seller provided this change of vessel can be justified.

Section VI : Transport insurance**Art. 085** CIF and CIP contracts:

- a) the seller shall cover the insurance with a first class insurance company at the prevailing terms, for the invoice-amount + 10%. Any value adjustment is at the buyer's initiative and expense. Unless otherwise stipulated, the insurance is payable in the currency of the contract.
- b) the prevailing terms specified in paragraph a) ought to be in accordance with minimum cover of the Institute Cargo Clauses (Institute of London Underwriters) or any similar set of clauses. When required by the buyer, the seller shall provide at the buyer's expense, war, strikes, riots and civil commotion risk insurance, if procurable.

Art. 086 EXW, FCA, FAS, FOB, CFR, CPT, DAF, DES, DEQ, DDU, DDP contracts:

The buyer undertakes same duties as the seller, in CIF contracts. Consequently, previous to the beginning of the shipping period the buyer must produce a certificate from the insurance company stating that the insurance has been duly covered. The seller undertakes to furnish to the buyer all shipping data according to Art. 072 (Shipping advice) to facilitate such covering.

Art. 087 Classification clause

Where the seller is entrusted to book the freight for shipments against Cost-and Freight contracts, FOB contracts and/or other contracts under which the insurance is payable by buyers, the freight booking should be made exclusively on liner vessels fully acceptable to normal insurance requirements; but if, for any reason whatsoever, shipments were made on vessels other than those stipulated above, the consequent insurance surcharges shall be refunded by the sellers to the buyers.

CHAPTER II : “Delivery” or “spot” contracts**Section I : Delivery time-limits**

- Art. 088**
- a) “Spot cotton” means that the cotton is available at a determined place, and can be put at buyer’s disposal.
 - b) “Immediate delivery” or “prompt delivery” means that cotton has to be put at buyer’s disposal within 10 days.
 - c) “Delivery within a determined period” stipulates a specified time within which the cotton must be put at buyer’s disposal, 10 days grace being granted to the seller.

Section II : Delivery and receiving conditions

- Art. 089**
- a) The buyer must take delivery of the cotton when it is placed at his disposal immediately, if the delivery is made from the quay, or within 10 days if it is made from the warehouse.
The buyer is responsible for all expenses incurred if he fails to take delivery on time.
 - b) If delivery is made ex works, it is understood that the seller unloads and weighs the cotton at his expenses, the goods being received at the time of weighing, when the seller’s responsibility ceases.
 - c) If delivery is made FCA, the seller unloads and weighs the bales, then loads on truck or wagon or delivers to vessel’s side (lighter) at the place agreed upon; the cotton being received at the time of loading, when the seller’s responsibility ceases.
 - d) If the seller agrees with the buyer to delay a delivery ex works, the buyer must firstly pay the cotton on the basis of provisional weights against delivery order after which he has the right to have the cotton in store transferred into his name. In which case, the buyer takes all the costs and risks of the goods at his charge as from the date of payment until they are delivered. The goods must be individualised in an appropriate manner, i.e. completely put aside or identifiable in some way with the contract and provisional invoice.

CHAPTER III : Contracts with deferred fixation of price**Section I : “On call” futures market**

- Art. 090**
- a) On contracts with deferred fixation of price (“on call” contracts) the price is initially based on the quotation established by a duly acknowledged futures market for a specific month, such price being subsequently fixed according to the quotation in force at that moment and for that particular month.
 - b) The right of choice for the time of fixing belongs to the buyer (“buyer’s call”) unless otherwise stated (“seller’s call”).
 - c) When entering an “on-call” contract the parties shall stipulate the limit for fixing. In the absence of any specific provision, the utmost limit will be the closing of that particular month on the last trading day prior to the first notice day for that month. Should the party holding the right of choice fail to furnish the proper instructions in time, the other party will be entitled to fix at the closing of the last day foreseen in the contract without any previous confirmation.
 - d) Each fixation will cover a quantity related with that of the futures contract of the respective change, or multiples thereof, unless the contract or its balance should be lower.
 - e) The instructions for fixing must be received by the other party with enough time to enable said party to take necessary steps near the futures market on the time requested. Should the space of time prove to be too short, then the instructions should be executed “at the best after its receipt” unless another alternative should have been chosen by the party furnishing the instructions.
 - f) Each party shall assume its own telegraphic charges for fixing. However, expenses due to alterations or cancellations of price or time limits fixing terms will be assumed by the responsible party.
- Art. 091**
- a) Should the price not yet been fixed at the time of shipment or delivery of the cotton, the cotton shall be provisionally invoiced on the basis of the previous close of the month involved.
 - b) As soon as the payment of the provisional invoice be effected, both buyer and seller shall have the right to mutually request the payment of differences in price arising, according to the provisions for payment of margins in force at the respective futures market. Such payments will not involve any interest rate.
 - c) Should a request for margins, as mentioned in previous paragraph, not be immediately attended, the other party shall be entitled to resort to the fixing of price. The party at fault must be notified of such intentions 24 hours in advance.
- Art. 092**
- Immediately after a fixation of price, the final statement will be produced and settled by eventual difference with the provisional invoice, bearing of course in mind any payment effected in agreement with the previous article.

- Art. 093** Should the buyer enjoy a credit for the provisional invoice, either through a promissory note or an accepted draft, any difference in price as mentioned in Art. 091 which should be in favour of the buyer shall not be immediately paid but merely credited to this account.
- Art. 094** Should the price not yet been fixed at the time of shipment or delivery, the buyer keeps always the right to invoke the provisions of Articles 055-056-057.
- Art. 095** In the event that in lieu of fixation, the switch to another futures month be agreed upon, Articles from 090 to 095 shall apply, mutatis mutandi. Switch expenses, including the exchange brokerage, shall be for account of the party requesting the change.

Section II : On an index generally accepted

- Art. 096** Likewise, will be considered open price contracts, those contracts in which both parties have agreed to adopt as a point of reference an Index of daily publication and accepted by the international cotton market, and/or any form of indexation that can be verified by means of documents.

In such case, the contract must accurately state the mechanisms that will control the proceedings to be followed, and if this is not so, articles 090 to 095 will be put into effect.

TITLE 3 : Invoicing back

CHAPTER I : Common terms

Section I : Principle - Definition - Notification

Art. 097 As a rule, a contract cannot be cancelled without agreement between both parties. Nevertheless, in case of non-fulfilment, either the buyer or the seller, as the case may be, has the right, at his option, either to close out and invoice back or to request the fulfilment of whole or part of a contract, it being understood that the party choosing for the closing out / invoicing back will not be allowed later on to claim for the execution of such contract ; on the contrary, should one party choose the execution and the other one elude such requirement, the former will be entitled to apply for the closing out and invoicing back.
This option may only be exercised for that part of a contract for which the contracted terms have not been complied with.

Art. 098 Invoicing back:

- a) In case of refusal of the whole or part of a lot : the invoicing in return by the buyer to the seller ; any payment already made shall be refunded without delay, and, if the cotton is not or cannot be returned, the purchase price shall take the place of the cotton.
- b) In case of partial or total non-fulfilment of a contract: the rendering of a statement for the difference at market value and for other consequences by way of resale by the buyers to the seller, or repurchase by the seller from the buyer.

Art. 099 The party who exercises his right to invoice back, must give notice to the other party, with acknowledgement of receipt, either by registered letter or by any other fast writing communication methods in use, either directly or through his appointed representative, within 8 days after the reason for the invoicing back has become known.

Section II : Settlement

Art. 100 *Does not apply on ECR/RGE – LE HAVRE ARBITRATION, cf Appendix VI -art 1*

The settlement of the quantity in dispute shall be based, as the case may be, on the invoice weight or the quantity stated in contract and this without taking into account the 3% mentioned in Art. 054, nor the possible weight-franchise of the contract.

The price retained for invoicing back is the contract price.

Art. 101 In addition: the defaulting party is liable to pay the following:

1. a penalty of 3% on the invoice back price for the quantity involved;
2. all incurred expenses, such as opening of credit, banking charges, taxes, loss of interest, receiving costs, warehousing, etc. ;
3. the indemnities foreseen by Art. 113.

Art. 102 *Does not apply on ECR/RGE – LE HAVRE ARBITRATION,
cf Appendix VI – art 1*

Any loss caused by the defaulting party, including the price difference, shall be fixed by amicable settlement. Should the parties fail to reach an agreement, the amount of the prejudice shall be fixed by commercial arbitration, and the price difference by survey-arbitration.

Art. 103 *Does not apply on ECR/RGE – LE HAVRE ARBITRATION,
cf Appendix VI – art 1*

In case of disagreement regarding the invoicing back price, the parties shall nominate an expert-arbitrator who will fix the price. If no agreement can be reached in the nomination of the expert, the expert shall be nominated by the Secretariat of the local Cotton Association or Arbitration Chamber. If the parties contest his conclusion, the complaining party shall bring the case to arbitration under the conditions stipulated in the contract.

Art. 104 The debtor party must pay within 15 days of the despatch of the statement.

CHAPTER II : Principal cases of non-fulfilment

Section I : Scope of application of the principle of direct invoicing back

Art. 105 Principle:
 The seller has two principal obligations: that of delivering and guaranteeing the cotton he sells.
 The principal obligations of the buyers are: paying for and taking delivery of the contracted cotton.
 The non-execution of one of these obligations gives the right to the non-defaulting party to close out and invoice back the whole or part of the said contract, with preliminary notification, unless otherwise agreed upon, in following cases :

- untimely acknowledgement of non-fulfilment (Art. 106) ;
- failure to ship or delay in shipment (Art. 107) ;
- failure of payment (Art. 108) ;
- failure of delivery or of taking delivery (Art.109) ;
- in certain cases of refusal of the delivered cotton (Art. 110) ;
- suspension of payment (Art.111).

Art. 106 Untimely acknowledgement of non-fulfilment:
 If prior to the expiration of the time agreed upon for shipment or delivery, the seller should give notice that he will not ship/deliver the cotton, or the buyer should give notice that he will not take up the cotton and/or pay for it, then the other party shall have the right to close out the contract immediately, with invoicing back, this in accordance with the provisions of Articles 100 to 104

Art. 107 Failure to ship or delay in shipment:

- A. Freight booked by the seller: the buyer has the right to close out the contract with invoicing back as stated in Art. 113:
1. If the periods for shipment have not been adhered to or if already the date of the shipping documents shows a deviation from the contract terms;
 2. If shipping documents, not conforming to the provisions of the contract, have been presented, particularly in respect of the Bill of Lading, or if incorrect information as regards vessels, shipment, marks, number of bales, weights, etc. have been submitted; slight deviations in the marks shall, however, not be considered as a reason for closing out the contract and either party shall be entitled to show proof of his errors, if any.
- B. Freight booked by the buyer: the seller has the right to close out the contract, with invoicing back as stated in Art. 113:
1. if the buyer has not chartered or booked on board of a vessel for shipment at the time specified in the contract and/or not given the necessary information to the seller to enable him to deliver the cotton to the vessel, at the latest on the day before the first day of shipment period;
 2. if the vessel named by the buyer does not arrive on the date agreed upon or within the prescribed period or cannot load the cotton, or

completed its loading before the date agreed upon or before the prescribed period terminates;

3. if the buyer has concluded a freight contract, allowing the Captain to receive the cotton on other terms than those specified in the sales contract, or as fixed by the usage's in the port of shipment, causing the seller to be prejudiced.

Art. 108 Failure of payment:

The seller has the right to close out the contract and after notice given to the other party, to invoice back the whole or part of it, if the buyer does not fulfill the term for payment or fails in opening the letter of credit.

Art. 109 Failure of Delivery or to Take Delivery:

if the seller is unable to fulfil a "spot" or "delivery" contract within the specified period, or the buyer has failed to take delivery of the cotton within the specified period, the other party is entitled to close out the contract with invoicing back..

Art. 110 Cases of Refusal : the buyer has the right to reject any lot wholly or partly, with closing out and invoicing back, in the following cases :

1. the cases provided in Art. 051-1-c;
2. the delivery of factor samples, gin-motes, linters and cotton waste instead of raw cotton;
3. the delivery of "reginned" and "blended" and "repacked" or "re-cleaned" cotton, except specified as such in the contract;
4. the delivery of cotton other than the growth or area of production agreed upon; if the buyer gives evidence of justified doubts, the seller shall submit authentic proof of the growth or area of production.

Art. 111 Suspension of Payment:

Each party has the right to close out the contract in the case of suspension of payment, composition settlement, or bankruptcy of the other party, in accordance with the Local Law of the injured party and Case Law; in the above cases, the penalty clause provided by Art. 101-1 does not apply.

Section II : Scope for the principle of fulfilling the contract with possible invoicing back.

Art. 112 Principle:

The buyer or the seller, as the case may be, has the right, by application of the provisions of Art. 097, to fulfil the contract, wholly or partly, with closing out and invoicing back, if the other party does not respect its obligations, in the cases and as per the provisions stated hereafter.

Summons is to be made by registered letter, with acknowledgement of receipt, or by any other fast writing communication methods in use, either directly or through the by the sellers' appointed representative.

Art. 113 Failure to ship or delay in shipment:

A. Freight booked by the seller:

If, 8 days after the shipment period has expired, the seller is not in a position to supply the buyer with the information as required by Art. 072, the buyer has the right to summon the seller to produce this information.

1. If the seller complies within 8 days by giving a firm undertaking to ship not later than 15 days from the despatch of the summons, the buyer is entitled, on account of this delay, to an indemnity of 0,5% of the contract price on the quantity involved.
2. If the seller does not comply within 8 days from the date of despatch of the summons or, if although replying, he does not give a firm undertaking to ship within 15 days from the date of despatch of the summons, or fails to ship within these 15 days, the buyer has the right, after notification, to invoice back the whole or part of the contract involved.

B. Freight booked by the buyer:

1. Default of the buyer: if, in the 3 cases provided in Art. 107-B, the seller decides to pursue fulfilment of the contract, he must summon the buyer to fulfil his obligations ; this summons must indicate that the cotton is already segregated and clearly set apart and distinguishable as being the cotton specified in the contract.
If the buyer complies within 8 days, making it possible for the cotton to be loaded within 15 days from the date of despatch of the summons, the seller is entitled, as an indemnity for the delay, to 0,5% of the contract price on the quantity involved ; in the meantime, any risks which the cotton may run are for buyers' account.

If the buyer does not comply within 8 days after despatch of the summons, or if, although replying, he does not make it possible for the seller to load the cotton within 15 days after the despatch of the summons, or does not fulfil his engagement, the seller has the right, after notification, to invoice back the whole or part of the contract involved.

2. Default of the seller: when the vessel named by the buyer has arrived on the date agreed upon or within the prescribed period, and the seller has not delivered the cotton to the vessel in time to be loaded:
 - if the cotton is delivered too late to the quay where the vessel berthed, in which case the seller is liable for all risks and expenses incurred by the cotton ;
 - or if the seller does not deliver the cotton at all,

it is up to the seller, in either case, to notify the buyer at once, either direct or through his representative.

Whether such notice is given or not, the buyer must summon the seller to fulfil his obligations, by proposing another date or period and another vessel, the seller having to pay an indemnity amounting to 0,5% of the contract price on the quantity involved, for each period of 15 days after the sailing date of the vessel named in the first instance. Moreover, the seller must refund the amount of the dead freight the buyer may have to pay for the first named vessel.

If the seller does not reply within 8 days after the date of despatch of this summons, or if, although replying, he does not give a firm undertaking to deliver the cotton, or does not fulfil his engagement to deliver, the buyer has the right, after notification, to invoice back the whole or part of the contract involved.

Art. 114 Failure of payment:

A. Payment by letter of credit:

If the buyer fails to open his credit as in Art. 027 or in the period provided in the contract, the seller must summon the buyer to open the credit within 8 days after receipt of such demand. When this opening has not been effected, the seller has the right, after notification, to invoice back the whole or part of the contract involved.

B. Payment against documents:

If the buyer fails to take up the documents within 8 days after the time-limit mentioned in Art. 028 (§ 1 or 2 according to the case), the seller must summon the buyer to effect payment immediately and without delay ; if this payment has not been effected within 8 days after the day of despatch of the summons, the seller has the right, after notification, to invoice back the whole or part of the contract involved.

Art. 115 Delay or Failure of delivery or to take delivery:

A. Default on the part of the seller:

If on the last day of the period mentioned in the contract, the buyer has not been asked to take delivery, he must summon the seller to deliver immediately.

On the first day after receiving this summons, the seller must take arrangements to place the buyer in a position to take delivery within 3 days following the receipt of the summons.

If no possibility to take delivery has been given to the buyer within the prescribed period, he has the right to notify the seller that he decided to immediately invoice back the whole or part of the contract involved.

B. Default on the part of the buyer: If the buyer does not comply with the seller's request to take delivery or informs the seller that he is unable to take delivery, the seller shall, within 2 days of his request, summon the buyer to take delivery within 3 days following receipt of the summons. Failing any action by the buyer at the end of this period, the seller has the right, as from the next day, to notify the buyer that he decided to immediately invoice back the whole or part of the contract involved.

Art. 116 Origin of the cotton:

In case of anomaly related to the origin of the cotton, the buyer must summon the seller to furnish him in due time the cotton from the origin or area of production previously agreed upon. Should the seller not reply within 8 days after the day of despatch of this summons or, even replying, should not commit himself to deliver the cotton, or should not honour his commitment to deliver, the buyer is entitled, after notification, to close out and invoice back the whole or part of the contract involved.

Section III : Cases of Force Majeure

Art. 117 Principle:

The non-fulfilment, total or partial, or the delayed fulfilment of the whole or part of a contract, can only be justified through force majeure as understood and interpreted by the national law and Case Law of the buyers' country.

Art. 118 ***Does not apply on ECR/RGE – LE HAVRE ARBITRATION,
cf Appendix VI – art 2***

In the event of force majeure, strikes, lock-out, preventing the total or partial fulfilment of a contract within the provided period, the party who cannot honour his obligations must immediately advise the other party, and produce proof that the cause of emergency has arisen after the contract date and before expiry of the provided period, it being remembered that force majeure does not discharge the parties if the cause of emergency arose when one or the other party is summoned to fulfil his obligations.

The period during which the contract was to be carried out is then extended:

1. by 5 days after cessation of the emergency, for delivery or taking delivery ("spot" and "delivery" contracts) ;
2. by 15 days after cessation of the emergency for shipment (contracts for shipment),

but only up to a maximum of 2 months from the last date on which the contract was to be fulfilled, any additional delay being considered as a case of continuing force majeure (see Art. 119). In these cases, the carrying charges are applied to the cotton.

Art. 119 ***Does not apply on ECR/RGE – LE HAVRE ARBITRATION,
cf Appendix VI – art 2***

In the event of continuing force majeure, war, embargo, or for any other reason by Act of God preventing the normal fulfilment of the whole or part of a contract, the loyal party has the right, within 8 days from the date of receipt of the notification of this circumstance, to close out the contract, totally or partially, with invoicing back. Should the parties be unable to communicate with each other, then the contracts shall automatically be liquidated on the day following the breakdown of telegraphic/fax/computer communications, on the basis of the last known quotations. In such cases, the penalty clause provided in Art. 101-1 does not apply.

Section IV : Other cases

Art. 120 In cases not provided in the present chapter II and which constitute a serious failure in the execution of the contractual obligations, the closing out of the contract or part of the contract can be asked through commercial arbitration. The Arbitral Court shall decide if the alleged in execution justifies a closing out of the contract or part of it with invoicing back.

CHAPTER III : ***Failure to make use of the right to invoice back
and/or to conduct fulfilment of the contract***

- Art. 121** If the party entitled to invoice back and/or to conduct fulfilment of a contract, totally or partly, such as provided in TITLE III (Art. 097 to 120) fails or delays to make use of this right, the whole or part of the contract is considered as terminated in its full right without price difference or indemnity. The right to invoice back expires after 60 days.
- Art. 122** The contract shall not be considered as terminated:
- a) if the performance offered has been explicitly or tacitly accepted as fulfilment of the contract (f.i. : the buyer who accepts, without protest, a shipping date after the period of shipment mentioned in the contract; the seller who accepts, without protest, a delayed payment)
 - b) or if the parties decide amicably and by mutual agreement as to how the contract shall be fulfilled, on other bases than those provided in the present European Cotton Rules.

Appendix I : Brokers - Agents - Commissions

- Art. 1** When Raw Cotton purchases/sale operations shall be concluded with the mediation of a broker/agent member of an European cotton association, he will be entitled to receive a commission on the invoice amount. Such commission, based on a mutual agreement, will be paid by the seller.
- Art. 2** The right to receive the commission arises at the moment when the business is accepted by the contracting parties and therefore is to be paid by the seller even when, if later on, by mutual agreement between buyer and seller, for other circumstances, the transaction does not materialise. In such cases the amount of the commission is to be included in the corresponding liquidation.
- Art. 3** The broker and/or agent is to survey the correct development of the transaction, so that all matters involved be in agreement with these Rules and therefore, should a dispute arise, will be compelled to furnish to Arbitrators, either in first arbitration or in appeal, all the particulars and other information that may be requested from him in his capacity as attester in the contract submitted to arbitration.

**Appendix II : American Cotton Shippers Association Special Rules
(amended to may 1995)**

Art. 1

The shipment of foreign cotton against any contract specifying U.S. growth is hereby declared to be a fraudulent practice and a violation of the rules of the Federated Associations.

Art. 2

The shipment of reginned, blended or recleaned cotton which reginning, blending or recleaning shall have taken place after its original baling, unless specified and described as such in the contract, is hereby declared to be a fraudulent practice and a violation of the rules of this Association.

Art. 3

The shipment of raingrown cotton against a contract for irrigated cotton or of irrigated cotton against a contract for raingrown, except by mutual consent, is hereby declared to be an unfair trade practice and a violation of the rules of the Federated Members.

Cotton should be described by specific territories of growth, as used herein and where the terms "raingrown" or "irrigated" are used without more detail growth specifications, the first shall be interpreted to mean all cotton of U.S. growth other than that grown in California, Arizona, New -Mexico (excepting cotton grown in Lea Country, New Mexico), and the Pecos and El Paso Valleys of Texas, which shall be regarded as irrigated. Where cotton is sold on type, actuals or description, when no growth is specified in the contract, it shall be understood that USA growth is required. Where USA growth is specified in the contract, any cotton grown in the United States of America, except reginned cotton, may be shipped.

Nothing herein shall be interpreted to preclude more detailed stipulations between the buyer and seller as to territories of growth. Any deviation from such stipulation, except by mutual consent, is an unfair trade practice and a violation of the rules of the Federated Associations.

Art. 4

Where cotton is sold on Government Class or Green Card Class, the adulteration or misrepresentation of the official USDA class in the form of green cards, computer printouts or tag lists is hereby declared to be a fraudulent practice and a violation of the Special Rules of this Association.

Art. 5

The removal of any bale tag indicating origin or growth, the failure to replace any such tag on recovered bales and the failure to report to the Secretary a request to remove tags or otherwise to obscure origin or growth shall constitute unfair trade practices and violate the rules of the Federated Associations. This shall not apply to metal band tags removed in the compressing process nor to mill tags.

Art. 6

A buyer may request of the seller, within 90 days of the last day of unloading, evidence that cotton shipped him in satisfaction of their contract is not in violation of Rules 1, 2, 3, 4, and/or 5 of the Special Rules. This request should be sent to the seller by mail and a copy may be

forwarded to the Administrative Office of this Association in Memphis. If the buyer is not satisfied with the evidence submitted or if the seller does not respond within 30 days, the buyer may then lodge a formal complaint with the Fair Practices Committee of the Association by forwarding, in writing, to the Administrative Office of the ACSA, factual information pertinent to a review of the complaint together with reasonable and prima facie evidence in support of the buyer's claim that a violation has occurred, with copy to the seller.

The Fair Practices Committee, after determining that the complaint is properly before the Committee, shall then request in writing of the seller evidence that the cotton was not shipped in violation of Rules 1, 2, 3, 4, and/or 5. If the seller fails to respond in writing to this request within 30 days or within the time specified in an extension of time, such extension to be approved by majority of the Committee voting, then the Committee will proceed to judge the complaint on the evidence at hand and that which it may choose to secure from other sources.

If the Committee finds for the buyer, he shall be awarded a penalty of four cents (4 cents) per pound for any violation determined by the Committee to be intentional, in addition to any other rights he may give or damages he may recover under arbitration and appeal procedures otherwise provided for in the applicable rules and contract terms. In any case in which the Committee determines that the violation was not wilful and intentional, it may reduce the penalty.

The Secretary of the ACSA shall promptly notify the buyer and the seller of the Committee's decision and awards, if any.

Art. 7

In the Fair Practices Committee finds a member of the Federated Associations guilty of a violation of any of the Special Rules, and the member does not comply within 30 days with the finding and penalty invoked by the Fair Practices Committee, then the Committee shall report the same to the Federated Association or Federated Association(s) whose member is involved, together with a copy of the Committee's complete file on the complaint for handling in accordance with its By-Laws and Rules.

If the Federated Association suspends or expels its member as a result of the violation and/or failure to comply with the findings of the Fair Practices Committee, the American Cotton Shippers Association shall announce this suspension or expulsion to the party or parties filing the complaint as well as to all recognised domestic and foreign cotton associations.

Art. 8

A member shall be fully responsible for any violation of these Special Rules by any subsidiary, affiliated, financed or controlled shipper; or by any broker, agency or intermediary of any kind acting for or at the request of such member or financed by such member.

Art. 9

The seller shall, upon request of the buyer, furnish to the buyer adequate proof that the cotton shipped was of the contract origin or growth specified or was not reginned or foreign cotton, or where applicable, the government class represented was genuine. The seller may present his evidence to the proper Federated Association or recognised Cotton Exchange, at his option, and the certificate of such Association or Exchange that it has examined such proof and regards it as sufficient shall constitute such adequate proof.

Art. 10

Refusal or failure of a seller to pay any final arbitration award rendered by the arbitral body having jurisdiction within 90 days from the date of the award shall constitute a violation of the Rules of this Association.

Complaint by the buyer of a refusal or failure to pay must be made to the Administrative Office of this Association in Memphis in writing with supporting documents attached within five (5) months of the date of the arbitration award. Complaints received after the expiration of this time limit will not be recognised by this Association.

Upon request, the seller shall furnish the Fair Practices Committee in writing evidence that this refusal or failure to pay is not wilful. If the seller fails to respond in writing to this request within 30 days or within the time specified in an extension of time, such extension to be approved by the majority of the Committee voting, then the Committee will proceed to judge the complaint on the evidence at hand and that which it may choose to secure from other sources.

If the Committee, upon examination of such evidence, or in the absence of evidence, submitted by the seller, finds that such refusal or failure to pay is wilful, the buyer shall be awarded an additional penalty of 10% of the amount of the arbitration award plus interest on the original award at the average prime rate of the five major New York Banks.

The following official interpretation of Rule 10 was adopted by the Board of Directors on January 26, 1967:

“The American Cotton Shippers Association and its Federated Associations are firmly committed to the policy of arbitration of commercial disputes, particularly those involving the quality of cotton shipped upon contracts. The Federated Associations have regarded the wilful failure or refusal of an individual member concerned to pay a final arbitration award as grounds for suspension or expulsion from membership. Our Special Rule 10 was adopted in 1963 in order to make costly any delay or failure to pay promptly and to compensate the buyer for unwarranted delay”.

“To qualify for such enforcement the award must be a final award rendered by a recognised arbitral body having jurisdiction and rendered in strict accordance with the rules and the essential terms of an agreement to arbitrate in effect at the time the agreement is made. The Association will not recognise the authority of any arbitral body to change the applicable rules post facto or after the contract has been entered into, without the express assent of all parties thereto”.

“The Association will not countenance refusal to recognise an arbitration award on purely technical grounds, but where there is a bona fide dispute as to compliance with the specified rules regarding application for arbitration, selection of arbitrators, the drawing and care of samples, or as to the observance of jurisdictional time limits for such actions and for the arbitration itself, the validity of the arbitration award must properly be left to the courts”.

Art. 11

It shall be a violation of the Rules of the Federated Associations for any member to sign or cause to be signed, a Letter of Indemnity to ocean carriers in exchange for a clean bill of lading.

Art. 12

The Special Rules will apply to any growth of cotton handled by ACSA members as specified in their sales contract.

The Special Rules will not apply with respect to year of growth.

Art. 13

Where a certificate of micronaire and/or pressley designates an independent laboratory as the source of testing any misrepresentation shall be deemed to be a violation of these Special Rules and the Rules of the Federated Associations.

Art. 14

The shipment of gin notes, cleaned gin notes or recleaned gin notes, unless otherwise described as such in the contract, is hereby declared to be a fraudulent practice and a violation of the rules of this Association. The Fair Practices Committee shall award a penalty of 15% of the stated contract value which shall be payable to the buyer, notwithstanding other damages awarded through arbitration procedures and/or litigation.

Art. 15

Deliberate submission of false samples for approval shall be a fraudulent practice and a violation of the Special Rules of this Association.

Art. 16

The Fair Practices Committee shall consider a formal complaint alleging a violation of ACSA Special Rules, render an opinion on whether such rules have been violated and forward such opinion and recommendations to the appropriate Federated Association as provided in Rule 7, even if a settlement is reached by the parties or the complaint is withdrawn while the matter is properly before the Committee.

Art. 17

Should a complaint be submitted against a Member, and in the Committee's review it is determined that the Special Rules may have been violated, the Member subject to the complaint is required to provide the Committee with any information requested that is related to the transaction and its application to a possible violation of these Rules, and should the Member fail to comply with the Committee's request the Committee is authorized to recommend to the Member's Federated Association that the Member be expelled.

Art. 18

Membership in the American Cotton Shippers Association requires that Members honour their contractual obligations to purchase or sell cotton.

Should the Committee's review of a complaint submitted, by an ACSA or non-ACSA Member, against an ACSA Member find that the contract default is wilful, the Committee may recommend to the Member's Federated Association that the Member be expelled. This Rule shall not apply should the matter proceed to arbitration or litigation or be resolved amicably by the parties.

The following legal procedures shall be employed by the Rules, By-Laws & Fair Practices Committee in determinations in all matters involving the application of these Rules:

1. Timely notice of the alleged rule violation through the receipt of a written complaint fully detailing the charges.
2. Sufficient notice of all procedural steps including a reasonable time to answer the complaint and filing of appropriate written motions preliminary to a formal hearing.

3. The right of access to all evidence to be considered by the Committee.
4. If requested, a hearing be set for date convenient to the member and his counsel.
5. The right to cross-examine all witnesses.
6. The right and opportunity to present a defence to or refute the allegations.
7. The hearing shall be before an unbiased tribunal.
8. A written or recorded transcript of the hearing shall be made.

Appendix III : Special Container Rules For U.S. Cotton Shipped From U.S. Ports

SECTION A : DEFINITIONS

In this agreement, unless there be something in the context inconsistent therewith, the following expressions shall have the following meanings :

1. "Container yard" or "CY" mean a location where containers may be parked, picked-up or delivered full or empty. A container yard may further be a place of loading/stuffing by a shipper or unloading/de-vanning by a receiver of cargo, and/or where water carrier accepts custody and control of cargo at origin.
2. "Container freight station" or "CFS" mean a location where the water carrier and/or its agent is loading or unloading containers under their control.
3. "House to", "container yard to", or "door to" mean shipper-controlled loading at a location determined by the shipper. All costs beyond point of loading, as well as the cost of providing containers, at House/CY/Door are for the account of the party responsible for freight booking.
4. "Pier to" or "container freight station to" mean carrier-controlled loading where the cargo is delivered to the carrier at a pier or container freight station.
5. "To house" or "to container yard" or "to door" mean deliver to consignee's location (warehouse or mill) upon arrival at port of destination.
6. "To pier" or "to container freight station" mean carrier will de-van container at pier at port of destination or at a container freight station.
7. "Mini-bridge" means cargo carried by rail or substitute transportation from U.S. port area to another U.S. port area for onward transportation in containers on water. Intermodal bill of lading is issued by the water carrier at originating port covering transport to the overseas destination.
8. "Micro-bridge" means cargo moving directly from interior point by rail or substitute transportation (either in containers or other equipment) to port for onward transportation in containers on water. Intermodal bill of lading is issued by the water carrier at interior loading point covering transport to the overseas destination.
9. "Land-bridge" means cargo arriving by water carrier, and moving from one coast to another via rail for onward transportation on water.
10. "Free-carrier - named point", "interior point intermodal" or "IPI" mean the seller fulfils his responsibility when he delivers the cargo into the custody of the water carrier at the named point. If no precise point can be mentioned at the time of contract of sale, the parties should refer to the place or range where the water carrier should take the cargo into his charge.
11. "Shippers load and count" means the shipper assumes responsibility for the contents of the container (CY loading).
12. "Inter-modal bill of lading" or "combined transport document" mean a negotiable document issued by a water carrier after receipt of container or cotton on board a rail carrier other transport equipment.
13. "Bunker adjustment factor" or "BAF", "fuel adjustment factor" or "FAF" mean a charge added to the base freight rate to cover extraordinary increases in fuel costs which are beyond the control of the carrier.

“Currency adjustment factor” or “CAF” mean a charge, generally expressed as a percentage of base freight, that attempts to compensate for extraordinary fluctuations in currency relationships to the U.S. Dollar which is the “tariff currency”.

15. “Terminal receiving charge”, “TRC”, “terminal handling charge”, “THC”, “Container yard charge” or “CYC” mean a charge, added to the base freight rate by the carrier, which reflects the costs of handling cotton from place of receipt at the terminal to on board vessel.
16. “Origin receiving charge” or “ORC” mean a charge, added to the base freight rate, which reflects the cost of handling cotton from place of receipt at origin to on board intermodal conveyance.

SECTION B : TRADE RULES

Every contract for shipment of U.S. cotton in containers from U.S. ports shall, unless there be anything inconsistent therewith explicitly or impliedly stated in the contract or subsequently agreed thereto by the parties to the contract, be deemed to provide that should there be a dispute concerning such contract, it shall be settled between the parties or by arbitration in accordance with the following rules:

1. Shipment: Cotton may be shipped by water and/or intermodal transportation at the option of the party responsible for freight booking. All charges imposed by the carrier, whether included in the freight rate, shown as separate item(s) in the bill of lading, or billed separately, are for the account of the party responsible for the freight booking. However if the seller elects to use a CFS facility, then the difference between CFS and CY charges at such location shall be for seller’s account.
2. Providing containers and transport. The party responsible for freight booking is obliged to provide containers in time for transport and loading within contracted shipping month at the port(s) or point of origin stated in the contract.
3. Date of shipment : in case of intermodal transportation, the date of the intermodal bill of lading shall constitute the date of shipment.
4. Insurance: in case of FOB/FAS/C&F or “Free Carrier - (Named Point)” sales, buyer’s insurance to cover all risks from the time the cotton is shipped or on board or is accepted into the custody and control of the water carrier, whether advised or not.
5. Full container load (FCL) :
 - a. full forty-foot container loads. Any extra charges for overflow bales or minimum charges shall be paid by the party responsible for freight booking.
 - b. if quantity is expressed in containers it shall mean :
 - i origin Gulf area : about 78 bales per forty-foot container;
 - ii origin West Coast : about 83 bales per forty-foot container;

containers other than forty-footers may be substituted for “house to pier” or “pier to pier” shipments only.

6. Loading and unloading: it shall be seller's choice to load at "house/CY" or "pier/CFS", and buyer's choice to unload at "house/CY" or "pier/CFS. However, seller shall "ship to pier", unless specifically instructed by buyer to "ship to house".
7. Weighing: unless otherwise agreed, "pier to house" and "house to house" shipment shall be understood to mean "net certified shipping weights final".
8. Sampling:
 - a. buyer may ask seller to by-load samples, subject to seller's agreement. Any extra charges shall be for the buyer's account.
 - b. in case of "pier to house" or "house to house" shipments, normal arbitration rules shall apply, except that sampling may take place on buyer's premises under supervision. Sampling expenses are for the buyer's account.
9. Missing bales: in case of shipper's load and count, seller is liable for the contents of the container. Unless otherwise agreed between buyer and seller, any claim must be supported by certificates issued by seller's controller stating the container serial and seal number and certifying that the seal was intact. However, in shipments involving "pier to house" or "house to house" movements and when seals are broken by customs or other authorities at port of entry container must be re-sealed and both the original seal and new seal numbers provided to shipper's controller.
10. Payment:
 - a. letter of credit payment : letter of credit must allow inter-modal bill of lading.
 - b. cash against documents on first presentation : buyer must pay against inter-modal bill of lading.
 - c. cash on Arrival : buyer shall pay against the bill of lading upon arrival of the vessel at the destination named in the bill of lading.

However, if the containers are non-carried by feeder vessels or other means, payment shall be made upon arrival of the feeder vessels or non-carrying conveyance at the final destination named in the contract.

In case of seller's freight booking, if any containers are not on board the vessel named in the bill of lading, buyer shall have the right to claim against the seller for refund of interest until actual arrival of the container(s). This is not applicable if shipment by container vessel is required by buyer subsequent to entering into the contract.

Appendix IV : Rules On Contracts Providing For Micronaire Guarantees

1. Contracts between shippers and buyers may designate Micronaire readings specifications.
If so, the contract shall specify the term with reference to minimum and/or maximum Micronaire readings possible.
2. The "Control Limits" referred to in Paragraph B shall be plus or minus 0.3 Micronaire readings.
3. shipment that do not meet the specifications, such bales shall be reviewed with the shipper. If no agreement can be reached regarding a settlement of the bales in question, samples shall be submitted to a recognised laboratory for arbitration.
4. The allowances for bales not shipped in conformity with the contract shall be as follows
 - A. For contracts which set out a minimum micronaire value, the allowances for bales which do not reach this minimum will be as follows :

<u>Mircronaire value below the control limit by :</u>	<u>Percentage allowance</u>
0.1	0.5
1.0	
2.0	
3.0	
4.0	
5.0	

and so on by 1% for each 0.1 micronaire.

But if the contract sets out a minimum of 3.5 (3.5 NCL or 3.8 UCL) or higher:

on cotton reading 2.9 to 2.6 inclusive, the percentage allowance will be increased to 3% for each 0.1 micronaire below 3.0 ; and

on cotton reading 2.5 or below, the percentage allowance will be increased to 4% for each 0.1 micronaire below 2.6.

- B. For contracts which set out a maximum micronaire value, the allowances for bales which go over this maximum will be as follows:

<u>Mircronaire value above the control limit by :</u>	<u>Percentage allowance</u>
0.5	
1.0	
2.0	
3.0	
4.0	
5.0	

and so on by 1% for each 0.1 micronaire.

But if the contract specifies a maximum micronaire reading of 4.9 or lower:

on cotton reading 5.6 or higher, the percentage allowance will be increased to 3% for each 0.1 micronaire above 5.6.

Appendix V : Rules On Contracts Providing For Strength Guarantees

Unless the buyer and seller agree otherwise, for contracts which set out a minimum strength value, the allowances for bales which do not reach this minimum will be as follows:

HVI -

grams/tex
below the

<u>control limit by :</u>	<u>between</u>	<u>and</u>	<u>Percentage allowance</u>
	1.1	2.0	1.0
	2.1	3.0	1.5
	3.1	4.0	3.0
	4.1	5.0	5.0
	5.1	6.0	8.0

plus 4% for each gram/tex below 6

Pressley -

psi below the

<u>control limit by :</u>	<u>between</u>	<u>and</u>	<u>Percentage allowance</u>
	1050	3000	1.5
	3050	5000	3.0
	5050	7000	5.0
	7050	9000	8.0

plus 4% for each 2000 psi below 9000

Appendix VI : Rules Specific to AFCOT

Translated from the French

AFCOT, the French Cotton Association, undertakes to have a certified true translation into French of the "European Cotton Rules" as updated by the European Cotton Confederation. This text in French, the translation of which will have been certified as true, referred to as the "RGE" ("*Règlement Général Européen*") or European Cotton Rules "ECR", will then make reference when any arbitration proceedings are brought in connection with the appendices that are specific to AFCOT.

Appendix VI - Art 1 (replaces Articles 100, 102, 103 of the RGE) – INVOICING BACK OF LOADING OR DELIVERY CONTRACTS

When either party exercises the right to invoice back all or part of the goods subject to a contract or part of a contract, notice must be given to the other party by any means of communication that ensures that the sender is able to obtain a receipt confirming that the communication was sent and received in full.

Invoicing back of the quantity in dispute is carried out on the basis of the invoice weight or of the weight stated in the contract.

The price used for invoicing back is decided by the party exercising this right: either the invoice price or the contract price, or a price that takes into account the contractual conditions, calculated in consideration of:

- either the average of the offers on the international market for the cotton in dispute, on the day of the notification of invoicing back,
- or, in the absence of offers for the cotton in dispute, the average quotations on the international market for replacement cotton of quality similar to cotton in dispute, on the day of notification of invoicing back.

It is the responsibility of the party performing the invoicing back to justify its invoicing back price.

In case of disagreement on the invoicing back price, the parties may reach an agreement by referring the matter to an expert arbitrator appointed jointly by the parties. If the parties fail to agree on the nomination, the dispute will be submitted to arbitration rules, as per the clause compromissoire/arbitration clause (Appendix VI – article 3).

The fees asked for by the expert arbitrator would be deposited with the AFCOT, as stipulated in appendix VI article 3§ 2.2.4.).

The expert arbitrator would act as amicable conciliator. In the case he cannot conciliate, he will act as a mediator possessing the most extensive powers. The award of the expert arbitrator is final, and not subject to opposition, appeal or reversal.

The award will be notified by the expert arbitrator to both parties by registered letter.

Appendix VI – Art 2 (replaces articles 118 - 119 of the RGE) – CAS DE FORCE MAJEURE

The non-fulfilment, whether total or partial, or the late fulfilment of a contract can only be justified by "cas de force majeure" as understood and interpreted by French Law and case law.

In case of force majeure that prevents the total or partial fulfilment of a contract within the prescribed period, that party which is unable to fulfil all or part of the contract concerned must immediately advise the other party and prove that the cause preventing the fulfilment of the contract arose after the date of execution of the contract and before the deadline agreed for performance of the contract.

If the case of "cas de force majeure" constitutes a momentary hindrance to the fulfilment of the contract, the deadline for its completion shall be extended until the disappearance of the obstacle, but shall be limited to a maximum of three (3) months from the final date for fulfilment of the contract.

During such three-month period, the parties concerned shall do their utmost to fulfil their contractual obligations.

On expiration of such period, the debtor may be required to perform the contract or, failing this, to resolve it by invoicing back pursuant to Appendix VI – article 1 (see AFCOT Appendix of the RGE/ECR), unless the required party provides proof of the persistency of force majeure, as defined in Article 1148 of the Civil Code.

Annexe VI – Art 3 – RULES OF ARBITRATION – COMPROMISSORY CLAUSE

1 – Arbitration clause

1.1 – Commercial arbitration in Le Havre

Any dispute stemming from a contract governed by the ECR that is not settled in advance on an amiable basis or by quality arbitration (Appendix VI - art. 4 ECR) shall be settled by arbitration in accordance with the version in effect, at the time of filing of the arbitration request, of the Rules of the Association Française Cotonnière (French Cotton Association, AFCOT), 45 r Gustave Nicolle 76600 LE HAVRE (Appendix VI – Art 3 ECR), by three arbitrators in Le Havre. The arbitration shall be subject to French law. The arbitrators shall rule as mediators. The award shall not be subject to appeal.

1.2 – Commercial arbitration pursuant to the I.C.C. rules

As a departure from article 1.1, the parties may both waive the AFCOT arbitration clause and, by joint agreement, assign a court of arbitration to make a definitive settlement of their differences resulting from the present contract in accordance with the Rules of Arbitration of the International Chamber of Commerce, 38 cours Albert 1^{er}, 75008 Paris, France.

To that end, the parties must formalise their agreement in the form of an arbitration agreement, including the following provision: "All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules".

The parties undertake to provide AFCOT with the award made following the I.C.C. procedure. Service of the award on AFCOT has the purpose of developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any award communication by AFCOT for research purposes shall have to be made anonymously.

1.3 – Exclusive nature of the option

Recourse to one of the two procedures mentioned in articles 1.1 and 1.2 automatically excludes any subsequent call on the other.

The choice made by the parties in favour of an I.C.C. procedure under the terms of article 1.2., however, does not exclude application of the last paragraph of article 2.4.5. – Execution of the award – relative to the entry in the "default list".

2 – Rules of Arbitration:

2.0. – Definitions

For purposes of the present rules, the following terms shall have the indicated meanings:

Notification: Any communication made to the parties or to the court of arbitration by registered letter with receipt or by an equivalent procedure in the country of the addressee, or by any means providing written proof of dispatch and of receipt. The fastest procedure must be used whenever possible.

Calculation of the periods: The periods provided for in the present rules are expressed in days. They expire at midnight on the day bearing the same date of the month as the day of the document, the event, the decision or the notification initiating the period. If there is no identical date, the period expires on the following day.

A period that would normally expire on a legal holiday or a non-working day is extended to the first following business day.

A period beginning with execution of a notification begins on the day of dispatch.

Plaintiff: The plaintiff, also called the “plaintiff party”, is the individual or the legal entity taking the initiative in filing arbitration proceedings with a view to obtaining recognition of a right.

Defendant: The defendant, also called “the defendant party”, is the individual or legal entity that has been served with a writ calling for an appearance before the court of arbitration.

Statement: A written document addressed to the court of arbitration as well as to the adverse party to explain a situation and assert legal arguments aimed at obtaining a right or an advantage in connection with the situation explained therein.

Introductory statement: An initial brief filed by the plaintiff that entails application to the court of arbitration. It contains the plaintiff’s principal applications.

Defence statement: A brief filed by the defendant. It contains the defendant’s applications.

Responsive statement: The brief addressed by one of the parties in response to a previous brief.

Cross-application: An application by the defendant in response to the one filed by its adversary. The cross-application is an “incidental claim” that includes the claims asserted during the proceedings.

Exequatur: A judicial procedure on behalf of minimal supervision the purpose of which is to make the arbitration award enforceable so as to allow enforcement thereof.

2.1 – Court of arbitration

2.1.1 – **Principles**

The arbitrators constituting the court of arbitration must be and remain totally independent of each of the parties to the arbitration proceedings.

The arbitration proceedings are confidential. The arbitrators and the parties must not disclose any information stemming from the said proceedings, during the proceedings and after issue of the award. The award is also confidential. The content thereof may be disclosed only with the explicit approval of all parties to the case.

2.1.2 – **Designation of the arbitrators**

The court of arbitration consists of three arbitrators. Each of the parties designates one arbitrator appearing – if the case arises – in a list of arbitrators approved by AFCOT.

The plaintiff designates the first arbitrator in its arbitration application, pursuant to Appendix VI - Art 3 of the ECR. The defendant has 30 days starting with the time of notification of the arbitration request in which to inform the plaintiff of the name and particulars of the second arbitrator.

The first two arbitrators designated in this way have a period of 30 days starting with the time of appointment of the second arbitrator to choose, together, a third arbitrator, who is to act as chairman of the court of arbitration.

The parties are informed by the Chairman, who serves notice on the parties concerning the definitive constitution of the court of arbitration.

2.1.3 – Challenging an arbitrator

Any information that could compromise the independence of an arbitrator must be disclosed, in writing, to the parties within 15 days following the designation, or the time at which the arbitration becomes aware of the said information.

Each party is entitled to challenge an arbitrator, subject to supervision, in case of abuse of that right, by the President of the Commercial Court of Le Havre.

2.1.4 – Replacement of an arbitrator

In case of resignation, death, inability to act or challenge affecting an arbitrator, he shall be replaced in accordance with the procedures governing his designation.

The arbitration proceedings shall be suspended starting with the time of the death, the inability to act or the challenge, and shall resume as of the time of notification of designation of the new arbitrator.

2.1.5 – Difficulties in establishing the court of arbitration

If, once the dispute has arisen, constitution of the court of arbitration encounters a difficulty because of one of the parties or due to implementation of the procedures regarding designation, challenge or replacement of a defaulting arbitrator, the said arbitrator shall be designated by the President of the Commercial Court of Le Havre at the request of the most diligent party.

2.2 – Filing of the arbitration proceedings

2.2.1 – Arbitration application

The party wishing to implement the arbitration proceedings (the plaintiff or the plaintiff party) must send an arbitration request by way of notification to the adverse party (the defendant or the defendant party).

The application must contain the following, in particular:

- complete identification of each of the parties: name, corporate name, status, mailing and email address, telephone particulars
- a brief explanation of the circumstances and nature of the dispute
- a copy of the arbitration convention
- the subject of the arbitration application
- a rough estimate of the amount of the application
- the designation of the first arbitrator: name, status, mailing and email address, telephone particulars
- invitation to the defendant to designate the second arbitrator pursuant to article 2.1.2 of Appendix VI – Art 3 ECR, within a period of 30 days.

2.2.2 – Application to the court of arbitration; service of statements

Once the court of arbitration has been constituted pursuant to article 2.1, the court of arbitration is applied to as of the time of submission by the plaintiff of a copy of the arbitration application and of the introductory brief, which must be served on the defendant party.

The defendant has a period of 30 days starting with the time of service of the *introductory statement* in which to serve, on the court of arbitration as well as on the plaintiff, its *defence statement*, accompanied by a *cross-application*, if desired.

In case of a cross-application, the plaintiff has a period of 30 days starting with the time of its receipt in which to serve its *responsive statement* on the court of arbitration and on the defendant.

In case of the defendant's default, the arbitration proceedings continue regardless.

2.2.3 – Assignment report

Within 30 days following receipt of the defence statement (or of the responsive statement in case of a cross-application), or after the end of the period of 30 days granted to the defendant under article 2.2.2. § 2, the court of arbitration summons the parties with a view to establishment of an assignment report, subject to payment of the deposit mentioned in article 2.2.4.

In the parties' presence, the court of arbitration establishes an assignment report containing the following:

- a delimitation of the subject of its assignment, in accordance with the introductory statement, the defence statement and the responsive statement, if the case arises.
- an indication of the venue for the court of arbitration's meetings
- the schedule of the proceedings
- the language of the proceedings
- the amount of the deposits calculated pursuant to article 2.2.4.
- the arbitration period.

The assignment report is signed by the parties and the arbitrators. If one of the parties defaults, the assignment report is signed by the arbitrators alone.

Signature of the assignment report determines the framework of the arbitration. Any new application then becomes inadmissible, subject to authorisation by the court of arbitration.

The report is sent to the parties.

2.2.4 – Deposit

The advance mentioned in article 2.2.3. is aimed at making it possible to cover the expenses of the arbitration proceedings, particularly payment of the arbitrators' fees and the expenses of the court of arbitration. It is determined by the arbitrators and is calculated in accordance with the scale communicated in response to a simple request filed with AFCOT. It is paid by the parties in equal shares, at the request of the chairman of the court of arbitration, within 30 days following signature of the assignment report mentioned in article 2.2.3.

In case of a failure by one of the parties to pay the advance, the other party must pay all of the defaulting party's participation. Failing that, the arbitration proceedings will be suspended until full payment of the advance.

The amount of the deposit shall be paid into the AFCOT account.

In case, during the proceedings, the court of arbitration considers the advance insufficient, it may require the parties to pay an additional advance.

The advance shall be settled in the arbitration award.

2.3 – Execution of the arbitration proceedings

2.3.1 – Period

The arbitrators' assignment lasts for 6 months starting with the date of acceptance of his assignment by the third arbitrator as defined in article 2.1.2.

It may be extended for a maximum period of 6 months, either by agreement between the parties, or, at the request of one of them or of the court of arbitration, by the Presiding Judge of the Commercial Court of Le Havre.

2.3.2 – Consideration of the briefs

The court of arbitration considers the briefs and exhibits produced by the parties as soon as possible.

2.3.3 – Hearing in the parties' presence

The court of arbitration hears the parties in each other's presence, at the request of one of them or on its own initiative. It summons them to appear by any means providing written proof of dispatch and receipt within a reasonable period of at least two weeks, and at an appropriate place as agreed on the assignment document.

The parties appear personally or through duly mandated representatives, assisted by an advisor if desired.

2.3.4 – Absence of one of the parties

In the absence of an excuse accepted by the court of arbitration at its sole discretion, the absence of one of the parties does not constitute an obstacle to holding the hearing in the parties' presence.

2.3.5 – Evidence

The court of arbitration is empowered to ask the parties to produce any additional evidence.

2.3.6 – Closing arguments

Once the court of arbitration considers itself sufficiently enlightened, the chairman closes the arguments.

2.4 – Award

2.4.1 – Period

The award must be issued within 30 days following the conclusion of the arguments, subject to observance of the period of 6 months provided for in article 2.3.1.

2.4.2 – Procedures regarding adoption of the award

The deliberations are secret.

The award is issued by a majority of the votes.

2.4.3 – Content of the award

The award must identify the parties to the proceedings. It mentions the following:

- the names of the arbitrators issuing it;
- the last names, given names or corporate names of the parties, as well as their domicile or registered office;
- if the case arises, the names of the advisors or of any persons having represented or assisted the parties.

The award must also include the following:

- a brief reminder of the facts

- a summary of the parties' applications and defences
- a reminder of the assignment of the court of arbitration
- a summary of the proceedings
- the solution reached to the dispute
- the grounds for the solution adopted
- the settlement of the arbitration expenses and the designation of the party or parties to pay the said expenses
- an indication of its date.

The arbitration award is issued in six originals. Each one is to be signed by all of the arbitrators.

2.4.4 – Communication of the award

The original award is served by the chairman of the court of arbitration on the parties as well as on AFCOT, within a reasonable time.

Service of the award on AFCOT is aimed at developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any communication of the award by AFCOT for research purposes shall have to be in an anonymous form.

The parties to the arbitration proceedings bear joint and several liability for payment of the arbitration expenses.

2.4.5 – Execution of the award

The arbitration award issued in accordance with the present rules is not subject to appeal. It is binding on the parties.

The parties undertake to spontaneously carry out, without delay, any sentences issued in connection with the award.

Failing this, the most diligent party has the option of applying for exequatur of the award to the Tribunal de Grande Instance (Regional Court) of Le Havre with a view to its enforcement.

In the absence of execution of the award, the diligent party reserves the right to communicate the name of the said party to AFCOT, which will forward the name to the CICC for purposes of entry in the "default list".

Appendix VI – Art 4– DISPUTES REGARDING QUALITY OF COTTON

Any dispute regarding quality, such as can be appraised, exclusive of the use of any mechanical device, shall be settled according to the arbitration procedure determined by this article.

The Arbitrators called upon to settle such disputes shall be appointed as conciliators ("*amiables compositeurs*") possessing the most extensive powers.

1 - General provisions

Disputes shall be submitted in the first instance to an "Arbitration Committee". The decision of said Committee may be appealed to an "Appeal Committee" whose award will be final and not subject to appeal.

Each Arbitration Committee and each Appeal Committee shall be composed of two arbitrators.

Arbitrators in the first instance shall be appointed by the parties to the dispute from the list drawn up and approved by the Board of Directors of the AFCOT; this list is valid for one year and it may be renewed at the end of each period of appointment.

Appeal arbitrators are appointed by the AFCOT from the list of approved arbitrators.

If one of the disputing parties creates obstacles to implement the constitution of the Arbitration Committee, the AFCOT, upon simple request of the most diligent party shall appoint the second arbitrator.

In the case that both parties do not appoint their Arbitrators, the AFCOT will appoint them itself.

Should the arbitrators of the first instance not be able to reach agreement on the award to be made, a third arbitrator will be appointed whose assignment will be to make a final choice of award. The first two arbitrators shall be responsible for appointing the third arbitrator. If the two arbitrators could not come to an agreement to appoint a third arbitrator, the AFCOT will do it.

An arbitrator who has already intervened in first instance shall not be acceptable for appointment in appeal arbitration on the same lot.

Both first-instance and appeal arbitrators shall not be acceptable for appointment if they or the Company for which they work or the Company they represent are not party to the dispute they have to arbitrate.

Cotton shall be examined:

- In the first instance, in any place approved by the parties.
In case an agreement cannot be reached on the place, the arbitration will be effected in the premises of the "Chambre Arbitrale" in Le Havre.
- In appeal arbitration, compulsorily in the premises of the "Chambre Arbitrale" of Le Havre.

Each party will accept as final and without recourse the decisions of the Arbitrators at appeal.

2 – Scale of differences

As often as circumstances require, the "Committee of Differences" ("*Commission des Ecart*s") shall convene in order to set out a scale of differences between the qualities.

This Committee shall be composed of a maximum of 15 regular members appointed by the Board of Directors of the AFCOT.

In the case of a tied vote, the President has a casting vote.

The President may invite personalities who are not Members of the Committee, in an advisory capacity.

Minutes will be made of the Committee's meetings. Members of the Committee are appointed for three years; they are eligible for re-appointment.

3 – Arbitration and Appeal

Arbitration and Appeal shall be performed on the basis of the standards and official types and allowances shall be determined by the scale of differences, set out by the Committee of Differences, in force :

3.1 - on the last day of completion of unloading when "loading contracts" are concerned,

3.2 - on the day of the call for delivery, in all other cases.

As regards the cottons whose origin does not appear in the scale of differences, arbitration and appeal shall be performed on the basis of information collected by the AFCOT.

4 – Arbitration fees and expenses

The scale of Arbitration fees and expenses shall be fixed by the AFCOT Board of Directors.

Arbitration fees and expenses in the first instance shall be borne half by the buyer and half by the seller, regardless of the result of the arbitration.

Appeal fees and expenses shall be borne by the applicant.

Arbitration and Appeal fees and expenses at first instance and at appeal referring to contracts with a rejection clause (falling off bales to be rejected, with or without replacement) shall be divided between the parties in the proportion in which each party shall be wrong in its contentions.

5 – Organisation of arbitration

Samples for the purposes of arbitration must be submitted in rolls. Samples are submitted to the arbitrators. Samples must weigh at least 150 grams.

If necessary, sub-samples required for Micronaire Arbitration shall be drawn from these samples.

Requests for Arbitration must be addressed to the AFCOT. They shall show the names of the delivering party and of the receiver, the number of bales to be arbitrated, the origin and the designation of the quality on which arbitration shall be performed and specify, if necessary, whether a Micronaire clause is included in the contract.

Requests for Appeals shall be submitted to the secretariat of the AFCOT. They shall show, in addition to the information required on the arbitration request, the date mentioned on the notification of the first Instance decision.

Arbitration and Appeal requests shall be signed or stamped by the applicants or their representatives and be:

- either signed by the other party,
- or accompanied by the copy of this request to the other party.

Appeal requests must be submitted to the Secretariat of the AFCOT within eight full business days from the date mentioned on the notification of the arbitration award.

In case of arbitration with a rejection clause (falling off bales to be rejected), the Appeal period shall be reduced to three full business days following the date mentioned on the notification of the Arbitration award.

Notifications of Appeal awards, if they are mailed, are sent at the risk of the recipient.

As regards Arbitration of cotton sold on private type, a type sample weighing at least 200 grams sealed and approved by both parties, must be submitted to the Arbitrators.

The results of the Arbitration, in first Instance as well as in Appeal, are drawn up and signed by the Arbitrators, then handed to the AFCOT. After verification and registration of these results, the AFCOT will set up the awards and will notify them to the parties.

The AFCOT will invoice to the parties the Arbitration fees from which will be deducted the fees of the Arbitrators based upon the price list published by the AFCOT.

As regards any dispute relating to quality where the contract includes a Micronaire clause, such a clause shall be specified in the request for Arbitration and Appeal.

Appendix VI – Art 5 – CONFIDENTIALITY OF ARBITRATION AND LIST OF DEFAULTING PARTIES

(1) Non-performance of an arbitration award: deletion. With reference to Art. 9 a), b) and c) of the statutes, in the event of the non-performance of an award bearing the authority of *res judicata*, the name of the defaulting party shall appear in a list of parties in default, subsequent to exclusion by AFCOT from all of its activities and events.

Removal from the list of parties in default shall occur at the request of the plaintiff.

2) Confidentiality of the Arbitration and the eventual distribution of the list of parties in default. The parties to the arbitration and the arbitrators are bound by the confidentiality of the arbitration.

However, in the event of non-performance of the award bearing the authority of *res judicata*, the party opposed to the defaulting party in respect of the award handed down may request AFCOT to waive the confidentiality of the names of the parties and to distribute them to its members as well as to the member Associations of the CICCA.