



**European Coffee Federation**

## **European Standard Contract for Coffee(ESCC) 2018 Edition**

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Lodged with the various arbitral bodies in Europe

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## **European Standard Contract for Coffee (ESCC)**

It was in September 1956 that the Committee of the European Green Coffee Merchants Associations (CEGCMA) published the first European Contract for Coffee (ECC).

It was primarily intended for use between producer exporters and the trade in Europe. Individual trade associations had been using, and continued to use, their own standard contracts. Gradually though, with an increasing amount of trading within Europe, the ECC became the recognised default contract.

There was a call within the trade for a spot contract and in January 1983 the Committee of the European Coffee Associations (CECA), the successor to the CEGCMA, brought into effect the European Contract for Spot Coffee.

Up until this time, members of CECA had been meeting on an informal basis to discuss contractual matters but at its 1983 Annual General Meeting in Lille it agreed to establish a formal Contracts Commission.

There followed, effective January 1995, the European Contract for Coffee in Bulk but in 2002 this contract was incorporated into the ECC.

Whilst it was generally the green trade that historically had overseen contractual conditions, with changing purchasing methods and the establishment of their own specific conditions, manufacturers took an increasing interest in the standard contracts. For a period, representatives of EUCA (the European Association of Coffee Roaster Associations) attended meetings of the Contracts Commission.

Formed in 1981, the ECF was the voice of CECA and EUCA when the two associations agreed to speak as one. However, in 2005 they both agreed to disband and the ECF adopted statutes establishing itself as the European body for the whole trade and industry.

A consequence of this was that the two CECA standard contracts came under the authority of the ECF with a formal Contracts Committee being established.

Thereafter, in 2012 the ECF published the European Delivery Contract for Coffee (EDCC) and the Free Carrier Contract (FCA).

Clearly, it was not an ideal situation whereby the ECF published four separate standard contracts and subsequently the Contracts Committee was given the task of amalgamating the contracts into one. This resulted in the ECF European Standard Contract for Coffee (ESCC).

The ECF publishes a Code of Practice to which reference may be made as a guide to the interpretation of the contract.

Only the English version of the ESCC shall be official.

There are basically three types of contract covered by the ESCC:

### **1. Shipment**

Such contracts will usually be under FCA, FOB, C&F or CIF terms. Although under an FCA contract the sellers' responsibility ends upon delivery at the named place, the buyers must ship the goods within a stipulated period to benefit from the sellers' obligations under weights and quality.

Generally, FCA contracts will be made basis "loaded weight" and FOB, C&F and CIF contracts will be made on a "shipped weight" basis (or alternatively "landed weight" for CIF sales).

As mentioned, the first standard European contract which was adopted was the ECC.

At the time, it was noted that in the coffee trade, even if the price is expressed "Free on Board port of shipment", the contract is in fact to be considered as an ill-defined Cost & Freight contract, the freight being for account of the buyers.

Consequently, Free on Board sellers will not only have to reserve space but are equally responsible for the actual shipment of the coffee. They must also establish all necessary shipping documents. Therefore, their responsibility ends only at the moment the coffee crosses the ship's rail, precisely as in a Cost & Freight contract. However, in view of the fact that this constitutes a deviation from general trade practice, this obligation had to be clearly stipulated in the contract.

If buyers wish to buy on effective Free on Board conditions they will have to state this prior to conclusion of the contract and give the necessary instructions to the sellers in due time.

Shipment contracts basically cover movement of coffee from the port of shipment to the port of destination. However, it has to be recognised that it is common for buyers to arrange for on-carriage of coffee without stripping the container and reloading. Therefore, buyers have the right to arrange for on-carriage of containers on the stipulated conditions.

## **2. Delivery**

These contracts are generally envisaged to be made for coffee for delivery at an agreed place in Europe basis in/ex store or FCA. The coffee eventually tendered under a delivery contract will not necessarily be already lying in Europe at the time of sale and, importantly, any failure by the sellers to obtain coffee does not release the sellers from the obligation to tender.

## **3. Spot**

Spot coffee is coffee lying in a warehouse in Europe at the time of sale. Usually, the conditions will be in/ex store, FOB, FCA, DAT, DAP or DDP.

## SHIPMENT

### **Article 1 - Quantity**

The quantity shipped or loaded shall be that stated in the contract.

A tolerance of 3% in weight, more or less, shall be permitted only if the difference is due to circumstances beyond the control of the sellers.

### **Article 2 - Weights (where coffee is sold “shipped weight” or “loaded weight”)**

- (a) The invoice shall be made out on the basis of the shipped or loaded weight established:
  - (i) at the time and place of shipment or delivery, or
  - (ii) at the time and place of stuffing whenever the coffee is stuffed into the shipment containers at an inland location.

In either case, sellers shall provide independent evidence of weight.

- (b) The parties can agree that weights be final together with the procedure and conditions that shall apply.
- (c) The actual shipped or loaded weight shall be stated in the bill of lading or carrier’s receipt.
- (d) Any loss in weight, as ascertained in accordance with Article 3(c) or 3(d), in excess of 0.5% of the invoice weight shall be refunded by the sellers.

Claims shall be made, supported by a detailed weight note certified by an independent recognised weigher, as quickly as possible but not later than 28 calendar days from the date of weighing.

For coffee in bags or big bags (FBICs - flexible intermediate bulk containers) claims shall be calculated on the net weight of the sound full bags landed but applied to the whole parcel.

Provided intermediaries and buyers/sellers of the same parcel forward a claim not later than 2 working days after receipt such claim shall be considered to have been made in time.

### **Article 3 - Weights (where coffee is sold “landed weight”)**

- (a) The provisional invoice shall be made out on the basis of the shipped weight established:
  - (i) at the time and place of shipment, or

- (ii) at the time and place of stuffing whenever the coffee is stuffed into the shipment containers at an inland location.

In either case, sellers shall provide independent evidence of weight.

- (b) The actual shipped weight shall be stated in the bill of lading.

- (c) Coffee in Bags or Big Bags (FIBCs):

The coffee shall be weighed at the buyers' expense not later than 21 calendar days from the final date of discharge at the port of destination, in conformity with local custom.

Slack bags shall be weighed separately and individually.

In the event that coffee is discharged into a silo without prior weighing, a silo weight note must be issued stating specifically whether the coffee was weighed before or after cleaning. If the coffee is weighed after cleaning, the weight of the admixture and of the coffee extracted must be shown on the weight note.

Failure to abide by these stipulations shall permit the sellers to regard the shipped weight as final.

- (d) Coffee in Bulk:

The coffee shall be weighed either upon discharge into silo or on a weighbridge at the buyers' expense not later than 21 calendar days from the final date of discharge at the port of destination.

A silo weight note must specifically state whether the coffee was weighed before or after cleaning. If the coffee is weighed after cleaning, the weight of the admixture and of the coffee extracted must be shown on the weight note.

In respect of weighbridge weighing, the container must be weighed both full and empty on the same weighbridge within two working days. The weight note shall state:

- (i) that the trailer unit was the same on each occasion;
- (ii) that the tractor unit was disconnected and was not weighed;
- (iii) whether the weight of the liner and any packing support is included following discharge of the coffee.

Failure to abide by these stipulations shall permit the sellers to regard the shipped weight as final.



(e) Where the goods are unavailable for weighing for any reason beyond the control of the buyers, the above time provision shall be extended and counted from the date the goods are available.

(f) The buyers shall forward to the sellers a detailed weight note certified by an independent recognised weigher, as quickly as possible but not later than 28 calendar days from the date of weighing, failing which the shipped weight may be regarded as final.

Provided intermediaries and buyers/sellers of the same parcel forward a weight note not later than 2 working days after receipt, such weight note shall be considered to have been forwarded in time.

(g) Coffee in Bags or Big Bags (FIBCs):

Sellers are not obliged to accept a weighbridge weight note.

#### **Article 4 – Supervision (Weights)**

(a) The buyers can require the weight of shipment or loading to be supervised, provided they give notice to the sellers in due time and bear the costs thereof. The supervisors' certificate of weight should be included with the shipping documents; however, sellers' failure to do so shall not entitle buyers to reject documents.

(b) The sellers can require the weighing to be supervised at the port of destination, provided they give notice to the buyers in due time and bear the costs thereof.

(c) Where supervisors have been appointed, weighing and taring may be carried out if the supervisors, though informed in good time of the place and time of weighing and taring, are not present. Such weight and tare must then be accepted.

#### **Article 5 - Packing**

(a) Coffee in Bags:

The coffee shall be packed in sound uniform natural fibre bags suitable for the transport of coffee, i.e. sound bags which are in external good order, woven from natural fibres, of sufficient strength to withstand transit and storage, previously unused, clean, suitable for food contact use and suitable to be packed in a 20' general purpose container.

(b) Coffee in Bulk:

The coffee shall be stuffed in a 20' general purpose container suitable for the transport of coffee with a suitable liner, i.e. constructed using material such that it prevents damage from condensation, of sufficient strength to withstand transit, previously unused and clean

(c) Coffee in Big Bags (FIBCs)

The coffee shall be packed in big bags, having a gross weight of more than 500kg, suitable for the transport of coffee, i.e. constructed using material such that it prevents damage from condensation, of sufficient strength to withstand transit and storage, previously unused, clean, sealed and suitable to be packed in a 20' general purpose container.

(d) Any packing material shall be in conformity with the legal requirements for food packaging materials and waste management within the European Union valid at the time of conclusion of the contract.

(e) Any additional costs incurred owing to any difference or change in requirements are for buyers' account.

**Article 6 - Tare**

(a) Coffee in Bags and Big Bags (FIBCs):

Actual or customary tare shall be deducted in the invoice. The tare shall be ascertained where necessary by taking the average of 5 empty bags chosen at random.

(b) Coffee in Bulk:

The actual liner tare as well as the weight of any packing support, e.g. wood, shall be shown in the invoice.

**Article 7 - Quality**

(a) Quality shall be in accordance with the contract description.

(b) All goods contracted for shall be of sound merchantable quality unless otherwise stated in the contract or shown to the contrary by the sale sample or samples.

(c) Any difference in quality established by arbitration shall entitle buyers to an allowance which may include compensation for costs and expenses.

(d) Where there is specific evidence that the coffee is unsound and/or there is a radical difference in quality, the buyers may seek an allowance or that the contract be discharged by invoicing back the coffee. One criterion as to whether coffee is unsound is an excessive moisture level.

Where arbitrators establish that the coffee is unsound and/or there is a radical difference in quality, in awarding invoicing back, they shall establish the price having in mind all the circumstances concerned.

Where arbitrators establish that the coffee is not unsound and/or there is not a radical difference in quality, they may award an allowance which may include compensation for costs and expenses.

### **Article 8 - Samples**

- (a) Samples for arbitration purposes shall be drawn and sealed by an independent qualified body, not later than 28 calendar days from the final date of discharge at the port of destination.
- (b) Coffee in Bags and in Big Bags (FIBCs):  
Samples shall be drawn and sealed in conformity with local custom.
- (c) Coffee in Bulk:  
A 2 kilo average sample shall be drawn and sealed:
  - (i) by hand whilst the container is being discharged, or
  - (ii) by a mechanical automatic system prior to cleaning of the coffee.
- (d) Where the goods are unavailable for sampling for any reason beyond the control of the buyers, the above time provision shall be extended and counted from the date the goods are available.
- (e) The sellers can require the drawing and sealing of samples by an independent qualified body to be supervised, provided they give notice to the buyers in due time and bear the costs thereof.
- (f) Where supervisors have been appointed, sampling may be carried out if the supervisors, though informed in good time of the place and time of sampling, are not present. In such an event, the samples drawn and sealed by an independent qualified body shall be accepted by the sellers. Should the buyers fail to inform the sellers' supervisors, they forfeit the right to any claim based on quality.
- (g) Each container shall be represented by a separate sample.
- (h) Where a container contains more than one quality, each quality shall be represented by a separate sample.

### **Article 9 - Freight**

Where the price is fixed Cost & Freight or Cost, Insurance & Freight, the sellers shall pay the costs and freight necessary to bring the coffee to the named port of destination. Any additional charges due to events occurring after the time of shipment shall be for buyers' account.

Freight includes any charges additional to the actual freight rate however levied, covering such as exchange adjustments, bunkering or congestion surcharges or any other additional charges incurred under the contract of carriage, whether or not expressed in the bill of lading.

### **Article 10 - Declaration of Port of Destination or Point of Delivery**

- (a) In the case of a contract for immediate or prompt shipment or delivery, the port of destination or the point of delivery and the name of the carrier shall be declared by noon at the buyers' place of business on the first calendar day following the date of sale.
- (b) In the case of a contract for forward shipment or delivery, the port of destination or the point of delivery and the name of the carrier shall be declared in sufficient time to enable the sellers to effect shipment or delivery and shall in any case be declared not later than 14 calendar days prior to the first day of the contractual shipping or delivery period.
- (c) Any delay on the part of the buyers to comply with Article 10(a) or (b) shall authorise the sellers to ship by the first available vessel or deliver as soon as possible after receipt of buyers' declaration, even if shipment or delivery be made after expiry of the contractual shipment or delivery period. Should the delay cause any loss to the sellers they shall be entitled to claim damages.
- (d) Where a declaration of destination or point of delivery and name of carrier is not received within the time limit as stipulated under Article 10(a) or (b), the following procedure shall be adopted.
  - (i) Not later than 7 days after the time limit as stipulated under Article 10(a) or (b) the sellers shall advise the buyers accordingly and give 3 clear working days' notice that in the event of a declaration of destination or point of delivery and name of carrier not being received they will have the right to declare the buyers to be in default with damages.
  - (ii) Should a declaration of destination or point of delivery and name of carrier still not be received, the declaration of default shall be

given not later than 2 working days following expiry of the notice period, as stipulated in Article 10(d)(i).

- (iii) Should the sellers fail to act strictly in accordance with Articles 10(d)(i) and (ii), the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (e) Working days refers to working days at the buyers' place of business.

**Article 11 - Shipment / Delivery**

- (a) Prompt shipment or delivery means within 30 calendar days counted from the date of contract.
- (b) Immediate shipment or delivery means within 15 calendar days counted from the date of contract.
- (c) Coffee in Bags:  
Shipment or delivery shall be made in containers, suitable for the transport of coffee, under LCL/FCL conditions, whereby the carrier is responsible for the number of bags and the condition and suitability of the containers.  
All other shipments in containers shall require agreement of the parties.
- (d) Coffee in Big Bags (FIBC) or Bulk:  
Shipment shall be made in containers, suitable for the transport of coffee, under FCL/FCL conditions.
- (e) Shippers will pass on to the carrier all relevant instructions received from buyers.
- (f) Each bill of lading or carrier's receipt shall be treated as covering a shipment or delivery under a separate contract.
- (g) The sellers shall not be held responsible for a delay in shipment or delivery if they are able to prove all the following conditions were complied with:
  - (i) that they had booked shipping space in due time on board a vessel advertised to load at the port of shipment within the time limit laid down, or  
that they had booked delivery of the goods at the point of delivery to the carrier in due time;
  - (ii) that the coffee was available in due time;

- (iii) that the vessel in which space was originally booked was subsequently advanced, delayed, withdrawn or prevented from loading through circumstances beyond the control of the sellers, or the sellers were prevented from making delivery of the goods through circumstances beyond their control;
- (iv) that arrangements were made without delay to ship or deliver by the next appropriate opportunity;
- (v) that the buyers were kept informed at all times without any undue delay; this duty being paramount in order that the buyers may take measures to protect themselves against the result of delay.

If the impediment still exists 45 calendar days after the expiry of the last day of the contractual shipment or delivery period, the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.

- (h) The "on board" or "shipped" date of the bill of lading or carrier's receipt to be proof of time of shipment or delivery. In the absence of evidence to the contrary this date must be accepted, whether or not such a date was a normal working day.
- (i) The sellers shall undertake the risks inherent in the inland carriage necessary to bring the coffee to the port of shipment or point of delivery stipulated in the contract and, where appropriate, bear any risks up to time when the coffee is placed on board the vessel.

#### ***Article 12 - Shipment FOB, C&F and CIF Contracts***

- (a) It is an express condition of the contract that the sellers are under obligation:
  - (i) to book the shipping space;
  - (ii) to conclude with due diligence, on the customary terms, a contract for the carriage of the coffee by a usual route to the port of destination;
  - (iii) to deal with all matters concerning the shipment, whether the price is stipulated Free on Board, Cost & Freight or Cost, Insurance & Freight.
- (b) The loading of the coffee must take place at the last scheduled call of the vessel at the respective port of shipment during the voyage in question. If after shipment a further call at the port of loading occurs, sellers shall not

be responsible, provided such further call was unscheduled and it was unknown at the time of the original loading that such a call would take place.

- (c) Should the sellers be unable to secure the necessary freight space for shipment within the contractual shipping period it is their responsibility to warn buyers without undue delay and they shall be authorised to ship by first available vessel.
- (d) Shipment may be made by one or more vessel(s) by direct or recognised indirect route with or without transshipment on a through bill of lading.
- (e) Shipment shall be made by vessel qualified in conformity with Institute Classification Clause 01/01/2001.

If a vessel of any other classification is used the sellers shall indemnify the buyers against any damages incurred.

#### ***Article 13 - Onward Shipment of FCA Contracts***

Coffee delivered at an inland place shall be shipped from a customary port of shipment as soon as possible but not later than 56 calendar days following the date of receipt by the carrier.

Coffee delivered at the port of shipment shall be shipped as soon as possible but not later than 28 calendar days following the date of receipt by the carrier.

Shipment shall be made by vessel qualified in conformity with Institute Classification Clause 01/01/2001.

In order to protect their rights under any claims for weight losses and/or quality, the buyers shall not be responsible for a delay in shipment if they are able to prove all of the following conditions were complied with:

- (i) that, for coffee delivered at an inland place, they were prevented from delivering the coffee to the ocean carrier through circumstances beyond their control;
- (ii) that, they had booked shipping space in due time on board a vessel advertised to load at the port of shipment within the time limit laid down;
- (iii) that, the vessel in which space was originally booked was subsequently advanced, delayed, withdrawn or prevented from loading through circumstances beyond the control of the buyers;

- (iv) that, arrangements were made without delay to ship by the next appropriate opportunity;
- (v) that, the sellers were kept informed at all times without any undue delay.

If the impediment still exists 45 calendar days after the time periods as stated in Articles 13(a) or (b) above, the loaded weight and quality shall be deemed to be final, unless the parties agree otherwise.

The “on board” or “shipped” date of the bill of lading to be proof of time of shipment. In the absence of evidence to the contrary this date must be accepted, whether or not such a date was a normal working day.

The buyers shall undertake the risks inherent in the inland carriage necessary to bring the coffee to the port of shipment.

#### **Article 14 - On-carriage**

The buyers may arrange for on-carriage of the containers to an interior destination other than the port of destination. In such an event, all additional risks and expenses are for account of the buyers. The weights established and the samples drawn and sealed at the interior destination shall be accepted on the following conditions:

- (a) the coffee has been paid for;
- (b) the containers are on-carried by a recognised route not later than 14 calendar days from the final date of discharge at the port of destination;
- (c) the buyers bear the costs of the on-carriage to the interior destination;
- (d) the coffee is at buyers' risk after expiry of the marine insurance cover required under Article 17;
- (e) Article 2 (where coffee is sold "shipped weight" or "loaded weight") applies, with the following amendment:
  - (i) Article 2(d): the coffee shall be weighed not later than 7 calendar days from the date of arrival at the interior destination;
- (f) Article 3 (where coffee is sold "landed weight") applies, with the following amendments:
  - (i) Articles 3(c) and (d): the coffee shall be weighed not later than 7 calendar days from the date of arrival at the interior destination;
  - (ii) Article 3(e): not applicable;



- (g) the weighing shall be supervised at the interior destination by independent supervisors appointed by the buyers who shall bear the costs thereof. Should the sellers have appointed supervisors at the port of destination, the buyers shall always appoint such supervisors' representatives, if any, at the interior destination;
- (h) Article 8 (Samples) applies, with the following amendments:
  - (i) Article 8(a): samples shall be drawn and sealed not later than 15 calendar days from the date of arrival at the interior destination;
  - (ii) Articles 8(e) and (f): not applicable;
- (i) the drawing and sealing of samples shall be supervised at the interior destination by independent supervisors appointed by the buyers who shall bear the costs thereof. Should the sellers have appointed supervisors at the port of destination, the buyers shall always appoint such supervisors' representatives, if any, at the interior destination;
- (j) claims must be clearly formulated within the following time limits:
  - (i) quality claims: not later than 15 calendar days from the date of arrival at the interior destination;
  - (ii) other claims: not later than 45 calendar days from the date of arrival at the interior destination;
- (k) the obtaining of any additional certificates required shall be for account and risk of the buyers;
- (l) where the goods are unavailable to the buyers at the time of arrival the above time provisions shall be extended and counted from the date the goods are available to the buyers.

***Article 15 - Advice of Shipment or Delivery***

- (a) Advice of shipment or delivery must be transmitted as soon as known and shall stipulate:
  - (i) the name of the carrier and vessel or point of delivery;
  - (ii) the name of the shippers, where relevant;
  - (iii) the bill of lading number and "on board" or "shipped" date or carrier's receipt reference and date;
  - (iv) the ports of shipment and of destination, where relevant;
  - (v) the quantity and description;

- (vi) the main marks;
- (vii) the container number and seal number as well as, in the event of an FCL shipment, the shippers' seal number.

Failure to comply with these stipulations shall not entitle buyers to reject documents, but all additional expenses arising from such failure shall be borne by sellers.

- (b) The sellers shall not be permitted to change or substitute an advice of shipment or delivery once given.
- (c) Errors, omissions and/or delay caused by the technical transmission of an advice of shipment or delivery and/or details shall not involve sellers and/or intermediaries in responsibility.
- (d) Where an advice of shipment or delivery is not received by noon on the 7th calendar day after the last day of the contractual shipping or delivery period, nor any advice in conformity with Article 11(g) or 23(a), the following procedure shall be adopted.
  - (i) Not later than 14 calendar days after the last day of the contractual shipping or delivery period the buyers shall advise the sellers accordingly and give 3 clear working days' notice that in the event of an advice of shipment or delivery not being received they will have the right to declare the sellers to be in default with damages.
  - (ii) Should an advice of shipment or delivery still not be received, the declaration of default shall be given not later than 2 working days following expiry of the notice period, as stipulated in Article 15(d)(i).
  - (iii) Should the buyers fail to act strictly in accordance with Articles 15(d)(i) and (ii), the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (e) Working days refers to working days at the sellers' place of business.

#### **Article 16 - Late Documents. Missing Documents**

Where a proper advice of shipment or delivery has been received and documents necessary for taking delivery of the coffee and/or necessary for the import of the coffee into the declared country of destination are not made available to the buyers by the date of arrival of the vessel at the port of destination or within 14 days from the date of the carrier's receipt:

- (a) all expenses incurred as a result of sellers' failure to supply the above documents shall be for sellers' account;
- (b) if the necessary documents are still unavailable on the 14th calendar day after arrival of the vessel at the port of destination or after the date of the carrier's receipt, the following procedure shall be adopted.
  - (i) Not later than 21 calendar days after the arrival of the vessel at the port of destination or after the date of the carrier's receipt, the buyers shall give 3 clear working days' notice that in the event of documents necessary for taking delivery of the coffee and/or necessary for the import of the coffee into the declared country of destination not being received they will have the right to declare the sellers to be in default with damages.
  - (ii) Should documents necessary for taking delivery of the coffee and/or necessary for the import of the coffee into the declared country of destination still not be received, the declaration of default shall be given not later than 2 working days following expiry of the notice period, as stipulated in Article 16(b)(i).
  - (iii) Should the buyers fail to act strictly in accordance with Articles 16(b)(i) and (ii), the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (c) Working days refers to working days at the sellers' place of business.

### **Article 17 - Insurance**

- (a) The insurance shall extend from the time the coffee is delivered to the carrier or placed on board the vessel, for an amount 5% above the contract price, freight included.
- (b) The insurance, to be taken out in freely convertible currency with first class underwriters or insurance companies, must be concluded against "All Risks" (e.g. Institute Cargo Clause A 01/01/2009) and must also cover "War Risks" (e.g. Institute War Clauses (Cargo) 01/01/2009) and "Strikes and Riots" (e.g. Institute Strikes Clauses "Cargo" 01/01/2009). The relative radioactive exclusion clause shall apply (Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusions Clause 10/11/03).
- (c) The sellers have the right to the benefit of the policy until the documents are paid for.

- (d) In the case of a sale on Free Carrier, Free on Board or Cost & Freight terms, the buyers undertake to cover insurance prior to the contractual shipping period.
- (e) In the case of a Cost, Insurance & Freight sale, the documents shall include a policy or certificate of insurance giving the cover stipulated and expressed in the currency of the contract, but buyers shall not be entitled to reject the documents which include a policy or certificate in another freely convertible currency provided it is accompanied by a guarantee to reimburse any exchange loss which may occur.
- (f) Any premium for war risks, strikes and riots in excess of 0.5% shall be chargeable to buyers.

***Article 18 - Duties, Fees or Taxes***

Any duties, taxes, dues, imposts, levies, fees, present or future, on the coffee under contract shall be at the risk and for account of:

- (a) the sellers, if imposed and collected in the country of origin or shipment;
- (b) the buyers, if imposed and collected in the country of destination or discharge.

***Article 19 - Authorisation to Export/Import***

Where an export licence or other authorisation to export is necessary, sellers undertake to be responsible for obtaining such licence or authorisation. Sellers further undertake to accept the consequences resulting under the contract from their inability to obtain the necessary licence or authorisation and from the revocation or annulment of such licence or authorisation granted.

The foregoing stipulations shall be construed to apply equally to the buyers regarding an import licence or authorisation if such is necessary.

***Article 20 - Shipping Documents***

- (a) The sellers shall provide the following documents free of charge:
  - (i) invoice;
  - (ii) a carrier's receiptor  
a complete set of "on board" or "shipped" bills of lading or alternatively a delivery order issued by the shipping company or its

- agent together with, if required by buyers, a copy of the bill of lading;
- (iii) certificate of weight;
  - (iv) certificate of insurance (for CIF sales) together with, if requested by buyers in good time prior to shipment:
  - (v) certificate of origin (e.g. ICO Certificate);
  - (vi) preferential entry certificate (e.g. GSP Certificate);
  - (vii) phytosanitary certificate;
  - (viii) fumigation certificate.
- (b) The sellers shall also provide any other certificate as may be required for importation into the country of destination for which they shall be entitled to charge the buyers at cost.
  - (c) The cost of consular visas, if any, are for buyers' account.
  - (d) Where a certificate entitling the coffee to preferential entry into the country of destination is required, such document shall accompany the shipping documents, failing which the buyers shall effect payment at the contract price less the preferential advantage. Provided the certificate is presented by the sellers in sufficient time to enable the buyers to lodge it with the importing authorities within any statutory time limit, the preferential advantage deducted less proven expenses shall be paid to the sellers.
  - (e) The buyers may stipulate a country of importation other than that of the port of destination.
  - (f) Buyers shall always accept a bill of lading or carrier's receipt clausured "said to contain .... bags" or "shippers load and count" or similar disclaimer, but sellers shall be responsible for any difference in the number of bags invoiced and the number of bags which arrive at the port or place of destination.
  - (g) Buyers shall always accept a bill of lading which stipulates the place of delivery as "CFS" (container freight station) at, or associated with the port of destination, regardless of the stipulated port of discharge.
  - (h) A European bank guarantee shall be accepted for missing documents, provided that the missing documents are not such as to prevent import of the coffee into the country of destination.

### **Article 21 - Payment**

- (a) Payment shall be made at the time stipulated and buyers shall always take up documents which conform with the conditions of the contract. Obvious clerical errors shall not entitle buyers to reject documents, provided such errors are corrected in due time, explained or justified in reasonable terms.
- (b) For coffee sold on shipped weight or loaded weight, payment shall be effected for the invoice value.
- (c) For coffee sold on landed weight, payment shall be effected for the provisional invoice value and final settlement shall be made on the basis of the landed weight established in accordance with Article 3(c) or 3(d).
- (d) If required by sellers, the buyers shall nominate a bank through which documents shall be presented. Collection charges made by the nominated presenting bank shall be for account of sellers and shall be reasonable as compared to charges made locally. Any proven difference shall be for account of buyers. Payment charges made by the buyers' bank shall be for account of the buyers.
- (e) The coffee remains the property of the sellers until it has been paid for in full, even if the sellers have already parted with the coffee or with the documents which represent it.

### **Article 22 - Letters of Credit**

- (a) Where payment is to be made by means of a letter of credit, the credit shall be opened in strict conformity with the terms of the contract and by such means that the beneficiary shall be able to utilise it from the earliest possible day of the period stipulated for shipment or delivery.
- (b) In all cases the validity of letters of credit must exceed by a minimum of 21 calendar days the ultimate date stipulated for shipment or delivery.

### **Article 23 - Force Majeure**

- (a) Total or partial non-performance, or delay in performance, of the contract can only be justified as a result of unforeseeable and insurmountable occurrences, in which case force majeure must be pleaded at the time the impediment to performance arises by the party prevented from performing the contract. The other party must be advised without delay and furnished within a reasonable time with supporting documents, to

prove that the cause of impediment or delay arose after the date of the contract and before the expiry of the time allowed by the contract.

- (b) In the event of force majeure, the period of performance shall be extended until the impediment has ended but not beyond 45 calendar days. If performance is still impossible on expiry of this period, the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (c) In case of dispute the validity of the force majeure plea will have to be determined by arbitration.

#### **Article 24 - Claims**

- (a) Claims must be clearly formulated within the following limits, unless otherwise stipulated:
  - (i) quality claims: not later than 28 calendar days from the final date of discharge at the port of destination;
  - (ii) other claims: not later than 45 calendar days from:
    - the final date of discharge at the port of destination;
    - the last day of the contractual shipping period if the coffee has not been shipped.
- (b) Where the goods are unavailable for any reason beyond the control of buyers, the above time provisions shall be extended from the date the goods are available.
- (c) Notwithstanding contractual time provisions, the arbitral body at the place of arbitration, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks fit.

#### **Article 25 - Default**

- (a) Where a party declares the other party to be in default it shall, after having given notice when and as stipulated, have the right to claim discharge of the contract with or without damages.
- (b) The defaulting party shall pay on demand any damages. Consequential damages are excluded. If the other party fails to pay or should be dissatisfied with the amount of damages, the matter shall be determined by arbitration.

- (c) The date of the default shall, failing amicable settlement, be decided by arbitration.
- (d) Damages are to be computed on the mean contract quantity.

***Article 26 - Definition***

Where the goods are discharged from the vessel at other than the port of destination and are forwarded to a place of delivery at, or associated with the port of destination by transport other than vessel (e.g. per road and/or rail), contractual time provisions counted from the final date of discharge at the port of destination shall be counted from the date of arrival at such place of delivery.



## SPOT / DELIVERY

- A. General conditions for trade in spot coffee or coffee for delivery basis in/ex store, Free on Board (F.O.B.) Free Carrier (F.C.A.), Delivered At Terminal (D.A.T.), Delivered At Place (D.A.P.) or Delivered Duty Paid (D.D.P.).
- B. Spot coffee is coffee stored in warehouse in Europe at the date of contract.
- C. Coffee for delivery is coffee to be delivered during an agreed period of time at an agreed location in Europe.

### **Article 1 - Contract**

The contract shall state whether a tender shall be made for coffee in original bags and/or big bags (FIBCs) and/or in bulk. Should the contract fail to specify either a tender shall be made for coffee in original bags.

### **Article 2 - Quantity**

The quantity to be tendered shall be that stated in the contract.

For coffee sold on a spot basis a tolerance of 1% in weight, more or less, on the basis of the previous weights shall be permitted.

For coffee sold on a delivery basis a tolerance of 3% in weight, more or less, shall be permitted only if the difference is due to circumstances beyond the control of the sellers.

### **Article 3 - Tenders**

- (a) Spot coffee must be tendered not later than two working days following the date of sale.
- (b)
  - (i) For coffee for delivery, the duty of the sellers to tender coffee at the agreed time and place is paramount. The failure of any plans or attempts to obtain the coffee shall not release the sellers from their obligation to make the tender.
  - (ii) Coffee must be tendered within the delivery period but not later than noon on the last working day at the sellers' place of business.
- (c) A tender must state the place of storage, quantity, marks (if any for coffee in bags) and any further information needed to identify the goods. In

addition, a tender must also state whether or not the coffee has been customs cleared.

- (d) The sellers shall not be permitted to change or substitute a tender once given.
- (e) Where a tender is not received within the time limit as stipulated under Article 3(a) or (b), the following procedure shall be adopted.
  - (i) Not later than 1 day after the time limit as stipulated under Article 3(a) or (b) the buyers shall advise the sellers accordingly and give 2 clear working days' notice that in the event of a tender not being received they will have the right to declare the sellers to be in default with damages.
  - (ii) Should a tender still not be received, the declaration of default shall be given not later than 1 working day following expiry of the notice period, as stipulated in Article 3(e)(i).
  - (iii) Should the buyer fail to act strictly in accordance with Articles 3(e)(i) and (ii), the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (f) Working days refers to working days at the sellers' place of business.

#### ***Article 4 - Reweighing and Taring Expenses***

- (a) For coffee sold in store, reweights, the reweighing expenses are for buyers' account.
- (b) For coffee sold ex store, F.O.B., F.C.A., D.A.T., D.A.P. or D.D.P., reweights, the reweighing expenses are for sellers' account.
- (c) If taring expenses are not included in the weighing expenses they are for account of the requesting party.

#### ***Article 5 - Weights***

- (a) For coffee sold on landed/warrant weights weighing and taring (if appropriate) shall have taken place in conformity with local custom and the goods shall be invoiced accordingly. In the absence of taring at the place of storage the original tare shall apply. However, should the coffee have been last weighed more than 6 calendar months prior to the date of the tender the coffee shall be reweighed and repiled at sellers' expense during the contractual delivery period and invoiced accordingly.

- (b) For coffee sold on reweights the goods shall be provisionally invoiced on the basis of the previous weights, in which event the sellers shall provide a copy of the relevant weight note.
- (c) For coffee delivered from the store during the contractual delivery period the reweighing and taring (if appropriate) shall take place in conformity with local custom upon delivery.
- (d) For coffee not delivered from the store during the contractual delivery period the reweighing and taring (if appropriate) shall take place in conformity with local custom not later than 28 calendar days following such period.
- (e) The reweighing shall be effected either whilst in or upon delivery from the place of storage.
- (f) It shall be the obligation of the buyers to ensure that reweighing takes place within such time limit.
- (g) For coffee reweighed whilst in store, the additional costs compared to reweighing upon delivery shall be for account of the buyers.
- (h) Should the reweighing take place later than 28 calendar days following the contractual delivery period the sellers shall be permitted to regard the provisional invoice weights as final.

#### ***Article 6 - Supervision of Reweighing***

- (a) Each of the parties can require the reweighing and taring (if appropriate) to be supervised provided they give notice to the other party in due time and bear the costs thereof.
- (b) Where supervisors have been appointed, reweighing and taring (if appropriate) may be carried out if the supervisors, though informed in good time of the place and time of reweighing and taring, are not present. Such reweight and tare must then be accepted.

#### ***Article 7 - Reweight Note***

- (a) Either party shall forward to the other party a detailed reweight note as quickly as possible but not later than 28 calendar days from the date of reweighing, failing which the sellers shall be permitted to regard the provisional invoice weights as final.

- (b) Provided intermediaries and buyers/sellers of the same parcel forward a reweight note not later than 2 working days after receipt, such reweight note shall be considered to have been forwarded in time.

#### ***Article 8 - Quality***

- (a) Quality shall be in accordance with the contract description.
- (b) All goods contracted for shall be of sound merchantable quality unless otherwise stated in the contract or shown to the contrary by the sale sample or samples.

#### ***Article 9 - Sale as per Sample***

- (a) Not later than the date of the tender, the buyers can require that, for their account, the sellers give instructions for a representative sample of minimum 250 grams to be drawn by a qualified body and sent to them per courier within 2 working days at the place of storage.
- (b) Where the buyers believe there is an appreciable difference in quality, not later than 4 working days after receipt of the sample at their place of business they may inform the sellers of same and advise them at the same time whether (i) they wish to accept the goods with or without an allowance or (ii) discharge the contract with or without an allowance.

#### ***Article 10 - Sale on Description***

- (a) Not later than the date of the tender, the sellers shall give instructions, for their account, for a representative sample of minimum 250 grams to be drawn by a qualified body and sent to the buyers per courier within 2 working days at the place of storage.
- (b) Where the buyers believe there is an appreciable difference in quality, not later than 4 working days after receipt of the sample at their place of business they may inform the sellers of same and advise them at the same time whether (i) they wish to accept the goods with or without an allowance or (ii) discharge the contract with or without an allowance.

#### ***Article 11 - Samples***

- (a) As long as the goods have not been delivered, the sellers are obliged to co-operate fully if the buyers wish further samples to be drawn for their account.

- (b) Samples for arbitration purposes shall be drawn and sealed by a qualified body not later than 21 days from the date of tender in conformity with local custom.
- (c) Each of the parties can appoint supervisors in whose presence the samples shall be drawn and jointly sealed provided they give notice to the other party in due time and bear the costs thereof.
- (d) Where supervisors have been appointed by one or both parties, sampling may be carried out if any of the supervisors, though informed in good time of the place and time of sampling, are not present. In such an event, the samples drawn and sealed by a qualified body (and if appropriate, jointly sealed by one of the supervisors) shall be accepted. Should the buyers fail to inform the sellers' supervisors, they forfeit the right to any claim based on quality.

**Article 12 - Delivery Period**

- (a)
  - (i) For spot coffee, unless otherwise stipulated the delivery period shall be immediate, i.e. within 14 calendar days counted from the date of tender.
  - (ii) For coffee for delivery, the delivery period shall be that stated in the contract.
- (b) Prompt delivery means within 28 calendar days counted from the date of tender.
- (c) It is permitted to take partial delivery, any extra expenses resulting thereof are for account of the buyers.
- (d)
  - (i) For spot coffee, during the contractual delivery period the warehouse/shed rent is for account of the sellers.
  - (ii) For coffee for delivery, the warehouse/shed rent is for account of the sellers up to 14 calendar days following the date of tender

**Article 13 - Delivery Instructions**

If the contract has been concluded on the condition F.O.B. or F.C.A. or D.A.T., D.A.P. or D.D.P., delivery instructions shall be given by the buyers in sufficient time to enable the sellers to comply within the contractual delivery period.

Failing this, the sellers shall be entitled:

- (i) to complete delivery on an in store basis, and

- (ii) to deduct the costs for bringing the goods to F.O.B. or F.C.A. or D.A.T., D.A.P. or D.D.P.

#### **Article 14 - Delivery**

- (a) Delivery of the goods takes place by presentation of:
  - (i) such a document which gives the buyers unencumbered title to the goods purchased;
  - (ii) invoice or provisional invoice; for coffee sold on landed weights a copy of the weight note;
  - (iii) for coffee sold on reweights a copy of the relevant weight note, basis the previous weights;
  - (iv) any other document as prescribed in the contract.
- (b) The buyers shall always take up documents which conform with the conditions of the contract. Obvious clerical errors shall not permit buyers to refuse payment, provided such errors are corrected in due time, explained or justified in reasonable terms.
- (c) If the above mentioned documents are not presented within:
  - the contractual delivery period for spot coffee
  - or
  - within 14 calendar days from the date of tender for coffee for deliverythe following procedure shall be adopted:
  - (i) not later than 1 working day after the last day of the period stipulated under Article 14(c) the buyers shall give 2 clear working days' notice that in the event of the necessary documents listed in Article 14(a) not being presented they will have the right to declare the sellers to be in default with damages.
  - (ii) Should the necessary documents listed in Article 14(a) still have not been received, the declaration of default shall be given not later than 2 working days following expiry of the notice period as stipulated in Article 14(c)(i).
  - (iii) Should the buyers fail to act strictly in accordance with Articles 14(c)(i) and (ii), the contract shall be deemed to be discharged without allowance, unless the parties agree otherwise.
- (d) Working days refers to working days at the sellers' place of business.

### **Article 15 - Duty**

- (a) In respect of coffee which at the time of tender qualifies for a preferential rate of import duty into the country of the agreed place of delivery, such documents which are necessary to take delivery at the preferential rate shall either have been lodged with and accepted by the relevant authorities or shall be presented to the buyers, failing which the buyers shall effect payment at the contract price less the preferential advantage.
- (b) If at the time of making the contract it was agreed that the coffee is destined for importation into a country other than that of the agreed place of delivery, the sellers shall provide such proper documents as to enable the buyers to import the coffee at any preferential advantage, failing which the buyers shall effect payment at the contract price less the preferential advantage.

### **Article 16 - Payment**

- (a) Payment shall be made:
  - (i) at the time stipulated, or
  - (ii) for spot coffee, within the contractual delivery period prior to release of the goods by the sellers to the buyers, or
  - (iii) for coffee for delivery, within 14 calendar days from the date of tender prior to release of the goods by the sellers to the buyers.
- (b) For coffee sold on landed/warrant weights payment shall be effected for the invoice value.
- (c) For coffee sold on reweights payment shall be effected for the provisional invoice value and final settlement shall be made on the basis of the reweights.
- (d) If required by sellers, the buyers shall nominate a bank through which documents shall be presented. Collection charges made by the nominated presenting bank shall be for account of sellers and shall be reasonable as compared to charges made locally. Any proven difference shall be for account of buyers. Payment charges made by the buyers' bank shall be for account of the buyers.
- (e) The coffee remains the property of the sellers until it has been paid for in full, even if the sellers have already parted with the coffee or with the documents which represent it.

**Article 17 - Default**

- (a) The defaulting party shall pay on demand any damages. Consequential damages are excluded. If it fails to pay or should be dissatisfied with the amount of damages, the matter shall be determined by arbitration.
- (b) The date of default shall, failing amicable settlement, be decided by arbitration.
- (c) Damages are to be computed on the mean contract quantity.

**Article 18 - Loss and/or Damage**

- (a) The coffee shall be at sellers' risk up to the time as stipulated below:
  - (i) for contracts made on an in/ex store basis: up to the time the goods are placed at the disposal of the buyers and/or all documents required by the buyers are at their disposal or in their possession.
  - (ii) for contracts made on an F.C.A. basis: up to the time the goods are loaded on/in the conveyance arranged by or upon instructions from the buyers or their representatives;
  - (iii) for contracts made on an F.O.B. basis: up to the time the goods pass the ship's rail at the port of shipment;
  - (iv) for contracts made on a D.A.T., D.A.P. or D.D.P. basis: up to the time the goods are delivered to the agreed point of delivery.
- (b) Should the whole or part of the goods become damaged whilst at sellers' risk, the buyers shall have the option of accepting such whole or part with a fair allowance to be mutually agreed or decided by arbitration, or of rejecting such whole or part without replacement by the sellers.
- (c) Should the whole or part of the goods become destroyed or lost whilst at sellers' risk, the contract for such whole or part shall be void.



## GENERAL

### **Article 1 - Contract**

Unless otherwise stipulated, any contract based on ESCC terms and conditions is not contingent upon any other and is to be settled between buyers and sellers without reference to other contracts covering the same parcel.

### **Article 2 - Arbitration**

- (a) Any dispute which the parties are unable to resolve amicably shall be determined by arbitration at the place stated in the contract and under the rules and customs of the arbitral body for the coffee trade there established or recognized by the local coffee trade organisation.
- (b) The formal decision to initiate arbitration proceedings shall be notified by one party to the other within the following time limits:
  - (i) quality disputes: not later than 28 calendar days from the date the claim was formulated;
  - (ii) other disputes: not later than 90 calendar days from the date one party formally notifies the other that the dispute apparently cannot be resolved amicably and arbitration proceedings shall be initiated.
- (c) Where the rules of the arbitral body require that a step be taken to initiate the arbitration, including a formal application for arbitration to such arbitral body or the appointment of an arbitrator, such step must be taken within the above time limits.
- (d) Where one of the parties fails to comply with an arbitration award which has become final, the other party may request the coffee trade organisation under whose rules the arbitration was held to post the name of the defaulting party and/or bring it to the notice of its members and through the ECF to any person or organisation with or having an interest in coffee.

Each of the recipients of such notification may in turn bring it to the notice of its own members or otherwise publish the same.

In no circumstances shall any person or organisation be liable to any party to an arbitration in respect of the posting or notification of the name of a defaulting party under an arbitration award whether or not such award shall have been subsequently complied with.

By acceptance of the contract and its arbitration clauses the parties are deemed to have agreed to this condition.

### **Article 3 - Jurisdiction**

- (a) Whatever the residence of the parties concerned, they agree that in the event of arbitration or Court proceedings or any other dispute resolution procedure the contract shall be interpreted according to the law in force in the country in which the parties have stated in the contract the arbitration is to be held.
- (b) In order to enforce an arbitration award duly given, direct recourse may be had to the courts of the place where the defaulting party is established.
- (c) The following shall not apply to this contract:
  - (i) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;
  - (ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980;
  - (iii) the United Nations Convention on Prescription (Limitation) in the International Sale of Goods Act 1974 and the amending protocol of 1980.

### **Article 4 - Definitions**

- (a) Where the question of time limits is raised in the ESCC, the first day is the day following the date of contract, tender, weighing, sampling, claims etc.
- (b) Where an act has to be done by either of the parties on or before a specified calendar day and such day falls on a non-working day, such act must then be done on or before the following working day.

### **Article 5 - Notices**

- (a) Notices required to be given under the contract shall be given only by one or more of the following methods:
  - (i) facsimile,
  - (ii) e-mail,
  - (iii) any other method of written electronic communication provided that a record of the notice is capable of being preserved by both

parties and printed by both parties and that such method of communication has been expressly agreed in writing.

- (b) If there is a dispute as to whether or not a notice was given in accordance with this Article such dispute shall be determined in all the circumstances of the case and on the balance of probabilities.

#### ***Article 6 - Insolvency***

Where, prior to fulfilment of the contract, a party becomes insolvent or bankrupt or resolves to become the subject of liquidation or winding up proceedings or receivership or a moratorium or proceedings which are equivalent or corresponding thereto or a party fails to effect payment in accordance with the contract conditions, the contract shall be deemed to be discharged at the market price and any damages shall be paid immediately.

Where the parties have concluded additional contracts between themselves, such contracts shall also be deemed to be discharged at the market price and any damages shall be paid immediately.

All such amounts due between the parties shall be set off against each other prior to settlement.

#### ***Article 7 - Brokerage/Commission***

Brokerage/intermediary's commission becomes due on the making of the contract without regard to its performance and is payable on whichever of the following events first happens, viz. on fulfilment of the contract, on default by either party or on cancellation.