

# **Bylaws and Rules of The International Cotton Association Limited**

This Rule Book was amended by our Members on 14<sup>th</sup> September 2017 the amendments came into force on 1<sup>st</sup> October 2017.

The Bylaws and Rules in this book supersede all previous Bylaws and Rules, with the following exceptions:

- any Rule in Section 2 which conflicts with any contract term agreed before the Book came into force; and
- those Bylaws in Section 3 covering arbitration timescales, notices, fees and other procedures.

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# **Section 1: Introduction**

## **Section 1: Introduction**

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## INTRODUCTION

Bylaws are the mandatory provisions of the Association which cannot be changed or varied by the parties.

### Definitions

#### Bylaw 100

In our Bylaws and Rules, and in any contract made under our Bylaws and Rules, the following expressions will have the meanings given unless their context clearly shows them to have a different use:

#### Administrative terms

- 1            **Arbitration Strategy Committee'** means the committee of which an arbitrator must be a member in order to be appointed as a Chairman of a first tier tribunal or technical appeal committee. In order to be eligible to become a Chairman member of the Arbitration Strategy Committee, that arbitrator must be / have been an ICA arbitrator for at least 5 years.
- 2            'Articles' means our Articles of Association and any changes to them which are in force.
- 3            'Bylaws' and 'Rules' mean all our bylaws and rules which are in force.
- 4            'Committee' means any committee elected by the Individual Members. Committee members will include anyone eligible, appointed or nominated to serve under our Articles.
- 5            'Director' means any of our Directors, whether Ordinary or Associate, and includes the President, First Vice-President, Second Vice-President, Treasurer and immediate past President.  
  
              'Associate Director' means a Director invited each year by the Directors and approved by the Members to serve the common interests of the industry.  
  
              'Ordinary Director' means a Director elected by the Individual Members. It does not include the President, First Vice-President, Second Vice-President, Treasurer or immediate Past President.  
  
              'Immediate Past President' does not include a President who is removed pursuant to Article 69 or ceases to be a Director pursuant to Article 80.
- 6            'General Meeting' means a meeting of our Individual Members called under our Articles.
- 7            'Month' means a calendar month.
- 8            'Observer' means a probationary arbitrator who, for training purposes, may be

appointed by the Association to act as an unpaid observer on technical arbitration tribunals and technical appeal committees. The observer will not participate in, nor influence, the tribunal's decision making process.

- 9 'Our' means whatever is owned by us or issued by us.
- 10 'President' includes the First Vice-President or Second Vice-President or anyone appointed by the Directors under our Articles to carry out the duties of an absent President.
- 11 'Place of business' of any Individual Member or Registered Firm means an office where the Directors consider an Individual Member or Registered Firm carries out business.
- 12 The 'Rule Book' means the book in which we publish our Bylaws and Rules.
- 13 The 'Secretary' means the person the Directors have appointed to act as Secretary. An Alternate Secretary appointed by the Directors may act in place of the Secretary.
- 14 'We', 'us' and 'ICA' mean The International Cotton Association Limited.
- 15 'In writing' and 'written' include printing and other ways of reproducing words on paper or on a screen or website. Written correspondence can be delivered by post, hand, fax, e-mail and so on.
- 16 'ICA List of Unfulfilled Awards' consists of two parts.
- 'ICA List of Unfulfilled Awards: Part 1' means the list of companies who have failed to fulfil an arbitration award.
- 'ICA List of Unfulfilled Awards: Part 2' means the list of companies evidenced to be related to companies appearing on the ICA List of Unfulfilled Awards: Part 1.

### **Membership and registration terms**

- 17 'Affiliate Industry Firm' means a firm or organisation registered as such under our Bylaws.
- 18 'Agent Firm' means a firm or organisation registered as such under our Bylaws.
- 19 'Firm' means any partnership, un-incorporated body or company carrying out business.
- 20 'Individual Member' means a person elected to be an Individual Member of a member firm under our Articles.
- 21 'Member Firm' means a Principal Firm, an Association Member Firm, an Affiliate Industry Firm, an Agent Firm or a Related Company.
- 22 'Non-member' means any person who is not an Individual Member of the Association.

- 23 'Non-registered firm' means any firm that is not a Registered Firm of the Association.
- 24 'Principal Firm' is a Merchant, Producer or Mill and means a firm or company registered as such under our Articles and Bylaws.
- 25 'Registered Firm' means all Principal Firms, Affiliate Industry Firms, Related Companies, Affiliated Associations, Association Member Firms and Agent Firms, details of which are entered in the Register of Registered Firms.
- 26 'Registered' means registered or re-registered and 'Registration' means registering or re-registering.
- 27 For the purposes of these Bylaws and Rules, 'Register of Registered Firms' means our list of Principal Firms, Affiliate Industry Firms, Related Companies, Affiliated Associations, Association Member Firms and Agent Firms.
- 28 'Registered Firm', means any firm listed in our register of Registered Firms as defined in our Articles.
- 29 'Related Company' means a company related to a Principal Firm or an Affiliate Industry Firm.

### **General trading terms**

- 30 'American cotton' means all cotton grown anywhere within the contiguous states of the United States of America, including cotton known as Upland, Gulf or Texas cotton, but not including the Sea Island or Pima varieties.
- 31 'Certified laboratory' means a laboratory that is on an approved list issued by us.
- 32 'Combined transport', 'intermodal transport' and 'multimodal transport' mean delivering cotton from one place to another using at least two different means of transport.
- 33 'Combined transport document' means a bill of lading or other document of title produced by a shipping company, combined transport operator or agent covering cotton being moved by combined transport, intermodal transport or multimodal transport.
- 34 'Combined transport operator' means a person or firm which produces a combined transport document.
- 35 'Container freight station', 'CFS' and 'container base' mean a place where the carrier or his agent loads or unloads containers under their control.
- 36 'Container yard' and 'CY' mean a place where containers can be parked, picked up or delivered, full or empty. A container yard or CY may also be a place where containers are loaded (or stuffed) or unloaded (or de-vanned).

- 37 'Control limit' means the variation in readings taken on different instruments, using the same cotton.
- 38 'Cotton waste' will be treated as cotton if it had been included in contracts which are subject to our Bylaws and Rules.
- 39 'Country damage' is the damage or deterioration of the fibre caused by the absorption of excessive moisture, dust or sand from the exterior because it has been:
- exposed to the weather; or
  - stored on wet or contaminated surfaces,
- prior to loading to trucks/containers or the vessel.
- Country damage does not include:
- any internal damage; or
  - any other contamination; or
  - any damage which takes place after loading to trucks/containers or the vessel.
- 40 'Date of arrival' will, depending on the context, have one of the following meanings:
- For break bulk shipments, it will mean the date the vessel arrives in the port of destination named in the bill of lading. But, if the vessel is diverted or the cotton is moved to another ship, it will be the date the cotton arrives in the port stated in the bill of lading or in another port acceptable to the buyer.
  - For cotton shipped in containers, it will be the date the cotton arrives in the port of destination named in the bill of lading or the combined transport document. But, if the carrying vessel is diverted or the containers are moved to another ship, it will be the date the containers arrive in the port stated in the bill of lading or in another port acceptable to the buyer.
  - For other means of transport it will be the date each delivery is made to the place stated in the contract.
- 41 'Dispute' or 'difference' relating to a contract will include any argument, disagreement or question about how to interpret the contract, or the rights or responsibilities of anyone bound by the contract.
- 42 'False packed bale' is a bale containing:
- substances which are not cotton;



- damaged cotton;
  - good cotton on the outside and inferior cotton on the inside; or
  - pickings or linters instead of cotton.
- 43 'Far East cotton' means cotton grown in Bangladesh, Burma, China, India or Pakistan.
- 44 'Fixed Price' is the value per unit the Buyer pays the Seller for cotton. The Fixed Price is arrived at in two ways:
- The value per unit quoted at the time of the sale and stated as price per unit on the contract.
  - The combination of the fixation(s) of an on-call contract and the basis quoted on the contract, expressed in the currency unit per weight unit as stated in the contract.
- 45 'Foreign matter' means anything that is not part of the cotton plant.
- 46 'Full container load' and 'FCL' mean an arrangement which uses all the space in a container.
- 47 'Less than container load' and 'LCL' mean a parcel of cotton which is too small to fill a container and which is grouped by the carrier at the container freight station with similar cargo going to the same destination.
- 48 'House to', 'container yard to' and 'door to' mean loading controlled by the shipper at the place (house, CY or door) of his choice. Whoever books the freight must pay all costs beyond the point of loading and the cost of providing the containers at the house, CY or door.
- 49 'ICA Bremen Certified Laboratory' means a laboratory certified by ICA Bremen.
- 50 'Immediately' means within three days.
- 51 'Institute Cargo Clauses' and 'Institute Commodity Trades Clauses' mean the clauses of the Institute of London Underwriters.
- 52 'Internal moisture' or 'Moisture regain' mean the weight of moisture in the cotton expressed as a percentage of the weight of the fibre when totally dry.
- 53 'Lot' is a number of bales placed under one mark.
- 54 'Mixed packed bale' is a bale containing many different grades, colour or staple.
- 55 'Marine cargo insurance' and 'transit insurance' mean insurance against the risks covered by the Marine Policy Form (MAR form) used in conjunction with the Institute Cargo Clauses, or covered by similar first-class policies in other insurance markets.

- 56 'Micronaire' means a measurement of the combination of fineness and maturity of raw cotton fibre.
- 57 'No control limit' and 'NCL' mean that no control limit is allowed.
- 58 'On-board bill of lading' means a bill which is signed by the captain or his agent when the cotton has been loaded on the ship.
- 59 'Percentage allowance' means a percentage of the invoice price.
- 60 'Pier to', 'container freight station to' and 'container base to' mean that the carrier controls the loading. The cotton must be delivered to the carrier at the pier, container freight station or container base.
- 61 'Plated bale' is a bale in which a layer of very different quality cotton appears on the outside of at least one side.
- 62 'Point of destination' means the exact place where the cotton is delivered to the person who has ordered it, or is delivered to his agent, and where the carrier's responsibility ends.
- 63 'Point of origin' means the exact place where the carrier or his agent receives the cotton and where the carrier's responsibility begins.
- 64 'Prompt' means within 14 days (two weeks).
- 65 'Shipment' means the loading of cotton onto any means of transport for delivery from the seller or his agent to the buyer, or to a carrier who can provide a bill of lading or a combined transport document.
- 66 'Shipper's load and count' means the shipper is responsible for the contents of the container.
- 67 'Shipping' or 'shipped' means loading or loaded for shipment.
- 68 'Shipping documents' means the document of title showing how the cotton is to be shipped under the contract.
- 69 'Spread Trade'. A cotton futures spread trade is the simultaneous trading of two opposite positions in two different months. Each month traded is referred to as a leg. Example of a spread, purchase 5 March futures contracts and sell 5 May futures Contracts
- 70 'Strikes, riots and civil commotions insurance' means insurance against the risks set out in the Institute Strikes Clauses (Cargo) or Institute Strikes Clauses (Commodity Trades), or similar clauses of other first-class insurance markets.
- 71 'Synthetic Price Future' is when Ice Cotton Futures are "locked" at the daily limit, a synthetic futures price is created by the simultaneous but opposite trading of a call and put option at the same expiry and strike price. A long call option and short put option yields a synthetic long future while a short call option and a long put option yields a synthetic short future.

- 72 'Tare' means the weight of wrapping, bands, ropes or wires used to cover cotton bales.
- 73 'To house', 'to container yard' and 'to door' mean delivery to the warehouse or mill selected by the person who booked the freight.
- 74 'To pier', 'to container freight station' and 'to container base' mean that the carrier will unload (de-van) at his warehouse in the port of destination, in a container freight station or container base.
- 75 'Usual control limit' and 'UCL' mean the variation allowed in readings to account for the normal variation expected from different instruments, even if the same cotton is used.
- 76 'War risks insurance' means insurance against the risks set out in the Institute War Clauses (Cargo) or Institute War Clauses (Commodity Trades), or similar clauses of other first-class insurance markets.

## General Bylaws

### Bylaw 101

These Bylaws and Rules apply to all parties contracting under our Bylaws and Rules.

### Bylaw 102

- 1 If a contract is made under our Bylaws and Rules:
  - all of the Bylaws in this book will apply to the contract and no amendment by the buyer and seller is allowed; but
  - the buyer and seller can agree terms in their contract which are different to any of the Rules.
- 2 If we change any of the Bylaws or Rules after the date of the contract, the change will not apply to the contract unless the buyer and seller agree otherwise. This is with the exception of those Bylaws in Section 3 covering arbitration timescales, notices, fees and other procedures. In such cases, the procedures to be used for arbitration or appeal will be those in force at the time of making the application.
- 3 All other changes will apply when we say so.

### Bylaw 103

- 1 These Bylaws and Rules must not be translated into any other language unless the Directors have agreed.
- 2 If there is a doubt or difference in the meaning between any translation and the English, the Bylaws and Rules in English will apply.
- 3 We are not responsible for any mistakes in any version of the Rule Book.

### Bylaw 104

The powers which the Bylaws and Rules give to the President are also given to the First Vice-President, Second Vice-President and any acting President.

### Bylaw 105

In these Bylaws and Rules:

- If something must be done within a fixed number of days of an event, the number of days will not include the day of the event itself. Days allowed will run continuously.
- Unless the buyer and seller agree otherwise, a kilogram will equal 2.2046 pound weight (lb).
- 'He', 'him' and 'his' mean 'she', 'her' and 'hers' if necessary.
- Words referring to people can also refer to firms if necessary.
- Words in the singular also cover the plural. Words in the plural also cover the singular.

- Time is expressed in terms of the 24 hour clock. All times are given in Universal Time (Greenwich Mean Time).

**Bylaw 106**

All questions of fact and law arising during an arbitration conducted according to these Bylaws and Rules including, without limitation, the interpretation of all terms and conditions of a contract under these Bylaws and Rules, will be for the members of the Tribunal to decide and their decision shall prevail and will be final. The parties waive their right to appeal to the English High Court under section 69 of the Arbitration Act 1996 on a question of law arising out of an ICA arbitration award.

## The Contract

### The application of Bylaws and Rules

#### Bylaw 200

Every contract made under our Bylaws and Rules will be deemed to be a contract made in England and governed by English law.

#### Bylaw 201

1 Subject to Bylaws 302 and 330 the following clauses will apply to every contract made under our Bylaws and Rules, or containing words to similar effect:

- The contract will incorporate the Bylaws and Rules of the International Cotton Association Limited as they were when the contract was agreed. This is with the exception of those Bylaws in Section 3 covering arbitration timescales, notices, fees and other procedures. In such cases, the procedures to be used for arbitration or appeal will be those in force at the time of making the application.
- If any contract has not been, or will not be performed, it will not be treated as cancelled. It will be closed by being invoiced back to the seller under our Rules in force at the date of the contract.
- All disputes relating to the contract will be resolved through arbitration in accordance with the Bylaws of the International Cotton Association Limited. This agreement incorporates the Bylaws which set out the Association's arbitration procedure.
- Neither party will take legal action over a dispute suitable for arbitration, other than to obtain security for any claim, unless they have first obtained an arbitration award from the International Cotton Association Limited and exhausted all means of appeal allowed by the Association's Bylaws.

The words 'all disputes' can be changed to read 'quality disputes' or 'technical disputes'. But if nothing else is agreed, the words 'all disputes' will apply.

2 Attention is drawn to Bylaws 302 and 330 which allow the Directors to deny arbitration, if, on the day before the date of the contract giving rise to the dispute, either party has its name circulated on the ICA List of Unfulfilled Awards in accordance with Bylaw 366.

3 This Bylaw will apply even if the contract is held to be invalid or ineffective, or was not concluded.

#### Bylaw 202

Unless the buyer and seller agree otherwise, the provisions of the following will not apply to contracts made under our Bylaws and Rules:

- the Uniform Law on International Sales Act (1967); and
- the 1980 Vienna Convention on Contracts for the International Sale of Goods.

## **Bylaw 203**

For sales on call based any Intercontinental Exchange ('ICE') Cotton futures contract:

- On a Buyer's Call Contract, The Seller should communicate any filled fixation level and the resultant price to the Buyer as soon as possible after the fill. On a Seller's Call Contract, the roles are reversed.
- The fixation level and final price stated in the fixation confirmation for that fixed portion of cotton shall be binding upon both parties.
- Price fixations may be achieved by either trading futures, or via calendar spread trades, option strategies or synthetically through options.

## **Closing contracts in special cases**

### **Bylaw 204**

- 1 If a buyer or seller (in circumstances not covered by other Bylaws and Rules):
  - enters into an arrangement with his creditors or;
  - has a receiver or administrator appointed to run his business; or
  - is asked to wind up the company through a petition; or
  - is judged by the President to be imminently subject to one of the above;

either party may request a Declaration of Findings and must give the President full written details, including a copy of the written notice of closure already sent to the other party, that support their request.

- 2 The President will then appoint a qualified ICA arbitrator to determine the date of closure and the price at which the contract(s) are to be invoiced back to the Seller, along with any other outstanding amounts. The qualified ICA arbitrator will produce a Declaration of Findings that may be ratified and signed by the President. The President has absolute discretion over whether he agrees to ratify and sign the Declaration of Findings.
- 3 The party that requests the President to ratify and sign such a Declaration will enter into an agreement with the President, holding the ICA, the qualified ICA arbitrator and the President harmless in the event a claim (from whatever source) being made against the ICA, the qualified ICA arbitrator or the President arising out of the Declaration of Findings.

## **Section 2: Rules**



## **Section 2: Rules**

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## **RULES**

**Rules are the non-mandatory provisions of the Association and can be varied by the mutual agreement of the parties.**

### **Shipment and the Bill of Lading**

#### **Rule 200**

A signed bill of lading will be evidence of the date of shipment.

#### **Rule 201**

- 1 The seller must provide an invoice or full and correct details of marks, ships' names and other facts contained in the bill of lading within the time set out in the contract. If the seller does not do so, the buyer can close all or part of the contract covered in the bill of lading and invoice it back to the seller as laid down in our Rules. The buyer must do this within 14 days (two weeks) of the deadline set out in the contract. If the seller provides the invoice or details after the deadline, and the buyer intends to close the contract or any part of it, he must let the seller know within three days.
- 2 If there is no time limit set in the contract and the seller does not provide the invoice or details within 21 days (three weeks) of the date of the bill of lading, the above will apply.
- 3 Shipping Instructions and Letters of Credit must be issued for the full value of the quantity of the shipment, notwithstanding the allowed variation in weight of the shipment. (Please see Rule 220).
- 4 In the event that Letters of Credit are opened late, or Shipments have not been made as stipulated in the contract, then both parties may agree to extend the shipment period. If the parties cannot agree to extend the shipment period, then Rule 237 and Rule 238 apply.
- 5 Slight differences in marks will not be relevant.

#### **Rule 202**

If the buyer can prove that the details set out in the bill of lading are incorrect or do not meet the terms of the contract, he can take the matter to arbitration. The arbitrators will decide whether the buyer should accept the cotton with an allowance or have a chance to close out the contract. For shipments over land, the buyer must apply for arbitration within 42 days (six weeks) of receiving the details. For shipments by sea, he must apply within 28 days (four weeks) of receiving the details.

#### **Rule 203**

The contract will not be closed if the cotton, or part of it, is shut out from the named ship, as long as the bill of lading is correct and fits the definition given in Bylaw 100. This only applies to contracts for shipment, not to contracts for sailing or clearance.

#### **Rule 204**

If there is a dispute over a contract for the shipment of American cotton in containers from US ports it will be settled under the 'Container Trade Rules' set out in Appendix B of our Rule Book.

### **Insurance**

#### **Rule 205**

When a buyer or seller takes out insurance on a shipment of cotton under a contract made under our Bylaws and Rules, the insurance must include:

- 'Marine cargo insurance' and 'transit insurance' in line with the Institute Cargo Clauses (A) or Institute Commodity Trades Clauses (A);
- 'War Risks Insurance' in line with the Institute War Clauses (Cargo) or the Institute War Clauses (Commodity Trades);
- 'Strikes, riots and civil commotions insurance' in line with the Institute Strikes, Clauses (Cargo) or Institute Strikes Clauses (Commodity Trades),

and cover the invoice value of the shipment plus 10%.

#### **Rule 206**

Unless otherwise agreed between the parties, the seller shall be responsible for country damage, subject to the limitations detailed in Rule 208 (b).

#### **Rule 207**

The following conditions apply to contracts where the seller is responsible for providing marine cargo insurance, transit insurance and country damage insurance:

- a There must be a policy document or certificate of insurance. This document or certificate must be produced as one of the shipping documents.
- b If the cotton is country-damaged when it arrives, the buyer must separate the damaged bales and must make a claim against the seller within seven days (one week) of weighing or devanning, whichever is later, notwithstanding that the claim must be made within 42 days (six weeks) of arrival of the conveyance at the location or point of delivery stated on the bill of lading.

The parties must try to agree on an allowance. If they cannot do so, a Lloyd's Agent, or a qualified surveyor recognised by the insurance company shall be appointed to inspect the damaged cotton. The cost of the survey shall be for buyer's account in the first instance. If the survey confirms country damage, the seller's insurance shall be called upon to pay:

- the buyer, for the market value of country damaged cotton removed from the bales as set out in the surveyor's report, plus any

reasonable charges incurred in the separation of the country damaged cotton; and

- the cost of the survey.

If the loss is not covered by seller's insurance the seller must pay.

- c If a charge is made for collecting the insurance claim and the buyer pays it, the seller must refund the buyer.

### **Rule 208**

The following conditions apply to contracts where the buyer is responsible for providing marine cargo insurance or transit insurance, and the seller is responsible for providing country damage insurance:

- a So that the buyer can arrange insurance, the seller must give the buyer the necessary details of each shipment.
- b If the cotton is country-damaged, the buyer must separate the damaged bales and must make a claim against the seller within seven days (one week) of weighing or devanning, whichever is later notwithstanding that the claim must be made within 42 days (six weeks) of arrival of the conveyance at the location or point of delivery stated on the bill of lading.

The parties must try to agree on an allowance. If they cannot do so, a Lloyd's Agent, or a qualified surveyor recognised by the insurance company shall be appointed to inspect the damaged cotton. The cost of the survey shall be for buyer's account in the first instance. If the survey confirms country damage and that the damage is greater than 1.0% (one per cent) of the total weight of the shipment, subject to a minimum claim of US\$ 500.00, the seller's insurance shall be called upon to pay:

- the buyer, for the market value of any country damaged cotton removed from the bales as set out in the surveyor's report, plus any reasonable charges incurred in the separation of the country damaged cotton; and
- the cost of the survey.

If the loss is not covered by seller's insurance the seller must pay.

- c If a charge is made for collecting the insurance claim and the buyer pays it, the seller must refund the buyer.

### **Rule 209**

- 1 The seller must refund the buyer any extra charge or premium which the buyer has to pay if:

- the buyer is responsible for marine insurance;
- the seller is responsible for booking the freight;

- the seller books the freight on a different ship from the one the buyer has asked for; and
  - the ship is subject to an additional premium under the terms of the Institute Classification clause of the Institute of London Underwriters or another similar clause in force when the buyer learns the name of the ship.
- 2 The buyer must pay the seller any extra charge or premium if:
- the seller is responsible for marine insurance;
  - the buyer is responsible for booking the freight;
  - the buyer books the freight on a different ship from the one the seller has asked for; and
  - the ship is subject to an additional premium under the terms of the Institute Classification clause of the Institute of London Underwriters or another similar clause in force when the seller learns the name of the ship.

## **Invoicing and payment**

### **Rule 210**

When the shipment arrives, the payment must be made on arrival or within 49 days (seven weeks) of the date on the bill of lading or shipping documents, whichever is earlier.

Upon first presentation of the contracted shipping documents, the payment must be made within three working days unless otherwise agreed by the parties.

### **Rule 211**

Claims that are made in accordance with the terms of the contract must be paid within 21 days (three weeks) of the claim date. If the party responsible for the payment does not do so, they will also have to pay interest on the final amount of the claim at a rate agreed by both parties. If the parties cannot agree, the claim amount and interest rate will be fixed by arbitration under our Bylaws.

### **Rule 212**

Claims for clerical errors in invoices will be accepted if there is evidence to support.

### **Rule 213**

The price of cotton set out in the contract will not include any Value Added Tax due, unless the contract says that it does.

## Sales 'on call'

### Rule 214

1. On Buyer's call:
  - i. For sales on call based any Intercontinental Exchange ('ICE') Cotton futures contract:
    - The final price of cotton sold on call will be fixed based on the ICE Cotton futures contract month specified in the sales contract.
    - The Buyer must communicate to the Seller executable fixation instructions in writing, either directly or through their appointed agent.

Unless agreed otherwise by the parties:

- Cotton shall be fixed no later than 12:00 pm (midday) Eastern Time 3 business days before first notice day for the ICE Cotton futures contract specified in the sales contract.
  - If for whatever reason, the Buyer fails to fix cotton prior to the fixation deadline, the right and discretion to fix the contract price will pass immediately from the Buyer to the Seller and the final price shall be based on the trade the Seller attains by trading around Trade at Settlement (TAS) at the end of that session for the futures contract stated in the contract and that fixation shall be binding upon both parties.
- ii. For a contract fixation deadline not linked to First Notice Day:
    - If for whatever reason the Buyer fails to fix cotton prior to the fixation deadline established in the contract, the right and discretion to fix the contract price will pass immediately from the Buyer to the Seller and that fixation shall be binding upon both parties.
  - iii. For sales on call with reference to products other than an 'ICE' Cotton futures contract:
    - The final price of cotton sold on call will be fixed based on the quotation of the product specified in the sales contract.
    - The Buyer must communicate to the Seller executable fixation instructions in writing, either directly or through their appointed agent. The Seller should communicate any filled fixation level and the resultant price to the Buyer as soon as possible after the fill.

Unless agreed otherwise by the parties:

- Cotton must be fixed prior to the expiration of the product specified.

- If cotton has not been fixed prior to the expiration of the product specified then the fixation shall be based on the last published quotation of the product specified, or if no expiration date, then on the date of shipment/delivery.
2. On Seller's call, the roles of the Buyer and Seller are reversed.

## **Bale Tare and Weight**

### **Rule 215**

- 1 Unless the seller declares and guarantees otherwise, all cotton must be sold on actual tare.
- 2 The buyer can insist that the actual tare be established at the time of delivery. The actual tare must be measured within 28 days (four weeks) of the date of arrival of the cotton and must be carried out by the buyer under the supervision of the seller's representatives. This will then be the measurement of tare applied to the weight adjustment.
- 3 If the buyer insists that the tare be established after arrival and it proves to be not more than the allowance in the contract or invoice, the buyer will have to pay the costs of taring, otherwise, the seller must pay these costs.

### **Rule 216**

- 1 To calculate actual tare, a minimum of 5% of the bales, subject to a minimum of five bales of each type of tare composed in any one lot or mark must be checked.
- 2 Actual tare is established by ascertaining the average weight of the wrapping, bands, ropes or wires from each type of the different tares comprising the lot or mark and multiplying the average weight of each type of tare by the total number of bales in the shipment.
- 3 Repaired bales must be tared separately.

### **Rule 217**

All cotton must be weighed 'gross weight' on a bale by bale basis unless otherwise agreed. The tare is to be deducted from the gross weight.

### **Rule 218**

- 1 **Gross Shipping Weights** – must be established by an independent weighing organisation or other organisation as determined in writing between the buyer and seller within 28 days (four weeks), or any other time period as agreed between buyer and seller, after sampling and before shipment.
- 2 **Gross Landing Weights** – all cotton must be weighed by the buyer (for buyer's cost), under the supervision of the seller's representatives (for seller's cost) at the agreed point of delivery or other location as determined by the buyer and seller, in any event within 28 days (four weeks) of the date

of arrival of the cotton. If the cotton has already been sampled, a weight allowance must be made for the samples taken.

3. **Weighbridge Weights** - If on agreement between seller and buyer, truck weigh bridge weighing is acceptable, the buyer must provide the seller's controller a copy of the weigh bridge calibration certificate unless it is agreed between the buyer and the seller the certificate is not required. The certificate must have been issued within the previous 12 months by an accredited authority. Weighting to be performed at the agreed point of delivery or other location as determined by the buyer and seller, in any event within 28 days (four weeks) of the date of arrival of the cotton. If the cotton has already been sampled, a weight allowance must be made for the samples taken
4. Both the buyer and the seller can appoint representatives at their own cost to supervise any weighing. The party arranging the weighing must advise the other party where and when it will take place, allowing a reasonable time to enable the representative to attend.

#### **Rule 219**

1. The weight of bales which are condemned, short-landed or burst will be calculated according to the average gross weight of the landed bales. If less than 25% is in good condition, the weight of these bales will be calculated according to the average invoice weight.
2. Where a contract specifies specific bale numbers and the bales are wrongly marked or not marked then the weights of these bales may be shown separately. Should the quality of the cotton delivered be below that specified in the contract then the buyer may claim in accordance with ICA quality arbitration Rules.
3. If the buyer does not weigh the total shipment within 28 days (four weeks) of the date of the arrival of the cotton, the unweighed bales will be calculated according to the average gross weight of the weighed bales, as long as at least 90% of the lot has been weighed. If less than 90% of the lot has been weighed, the weight of the unweighed bales will be calculated according to the average invoice weight.
4. If the shipment is by container, the 25% referred to in paragraph (1) of this Rule will apply to the number of bales delivered separately under each Bill of Lading.

#### **Rule 220**

When contracts are made for shipments or deliveries of specified quantities during various shipment/delivery periods, each shipment or delivery should fall within the allowed variation. Each month's shipment or delivery shall form one weight settlement, even if shipped or arriving by more than one conveyance.



Proof of any variation in weight, must be sent to the other party within 49 days (seven weeks) of the date of arrival of the cotton. Compensation for variation in weight will normally be based on the invoice price. But, if the variation is more than the amount allowed for in the contract, the buyer may then demand compensation for the market difference over that amount of variation, based on the market value of the cotton on the date of arrival of the cotton. If the contract does not specify an allowable variation, the variation allowed will be 3%.

## Quality of the cotton delivered

### Rule 221

Unless 'average' has been stated in the contract, the cotton must be equal to or better than contracted quality.

### Rule 222

1. The buyer and seller should say in the contract what the grade, length, micronaire, strength and other fibre characteristics of the delivered cotton must be. The contract may also lay down what allowances, differences, limits and so on apply, and, where applicable, what type of instruments must be used to establish the characteristics in the event of a dispute.
2. If the buyer and seller disagree about a claim, the dispute will be settled by arbitration under our Bylaws.
3. The buyer and seller should say in the contract whether the arbitration will be based on the results of manual classification or instrument testing. If the parties fail to include such a clause in their contract, or fail to agree on the method of classification and arbitration, Bylaw 339 will apply.
4. **(Grade):** Where the grade (excluding light spotted, spotted, tinged and yellow stained) is found to be below the contracted quality then the following multiplier of the value differences shall apply:
  - 0.5 full grade – actual value difference
  - 1 full grade – actual value difference
  - 1.5 full grades – 1.25 x value difference
  - 2 full grades – 1.5 x value difference
  - 2.5 full grades – 1.75 x value difference
  - 3 full grades – 2 x value difference
  - 3.5 full grades – 2.25 x value difference
  - 4 full grades – 2.5 x value difference
  - And so on.

N.B. 1 colour grade or 1 leaf grade is equal to half of the value of a full grade.

Please refer to the Value Differences Circular for published value differences and an explanatory note.

5. **(Staple):** Where the staple is found to be below the contracted quality then the following multiplier of the value differences shall apply:

1/32" – actual value difference

1/16" – 1.5 x value difference

3/32" – 2 x value difference

1/8 – 2.5 x value difference

5/32" – 3 x value difference

3/16" – 3.5 x value difference

7/32" – 4 x value difference

And so on.

*N.B. Please refer to the Value Differences Circular for published value differences.*

## Sampling

### Rule 223

1. Sampling must take place at the final point of delivery or other location as determined between buyer and seller. The buyer's and seller's representatives must supervise the sampling.
2. The buyer must notify the seller in writing of any quality claim within 28 days (4 weeks) of the arrival of the cotton at the point of delivery. The parties must provide in writing the names of their representatives to supervise sampling within 14 days (2 weeks) of the notification in writing of any claim. Initially, each party will bear the costs of their nominated representative.
3. In the event that either party fails to nominate their representative within the 14 day (2 week) deadline and reply to the claim of the other, the other party may proceed with sampling by an internationally recognized controller.
4. Samples to be used in any manual or instrument test based quality arbitrations, should be drawn within 28 days (four weeks) of the date of notification in writing of any claim.

5. Bylaw 337 stipulates the time deadlines and procedures for the commencement of quality arbitrations.

#### **Rule 224**

- 1 A sample from a bale of cotton should weigh about 150 grams. Unless otherwise agreed by the parties, samples drawn should be sealed by the buyer's and/or seller's representatives.
- 2 For manual classification claims, instrument testing claims and/or arbitrations, cotton must be sampled 10% unless otherwise agreed. Sampling will be on the basis of 10% random representative samples from each lot, mark, truck or container defined on the seller's commercial invoice or packing list.
- 3 Samples may be drawn from part lots, and/or truck and/or container shipments. However, a claim can only be made on the number of bales available at the time of sampling.
- 4 In the event that a quality arbitration award is made, the cost of drawing, supervision of drawing and dispatch of samples may be recoverable and will be determined by the arbitrators. In normal circumstances, and at the discretion of the arbitrators, the costs may follow the event.
- 5 If the buyer or seller believes that the cotton or cotton waste is false packed, mixed packed or in plated bales, every bale must be sampled, and samples must be drawn from each side of the bale.
- 6 Bylaws 337 to Bylaw 341 stipulate the timetables and procedures governing manual quality and instrument test based arbitrations.

#### **Rule 225**

The buyer must not sample the bales before weighing without the seller's permission.

#### **Rule 226**

If the seller takes a set of samples after the issuance of the invoice, he must pay for them at the contract price of the cotton. If the buyer takes a set of samples before the issuance of the invoice, he must pay for them at the contract price of the cotton.

## **Claims**

### **False packed, mixed plated bales and bales containing foreign matter**

#### **Rule 227**

- 1 The buyer must claim for false packed, mixed packed or plated bales within six months (26 weeks) of the date of arrival of the cotton. The bales must be set aside for inspection for 28 days (four weeks) after the claim is made and the inspection must be done by an agreed expert. If the seller tells the buyer within 14 days (two weeks) of the claim being proved that he intends to take back this cotton, he has the right to do so. If the buyer has already paid for the cotton, the seller must buy it back at the market value of good cotton on the date the claim is proved and repay the buyer his substantiated expenses.
- 2 If the seller does not take back the cotton, the claim must be settled based on the market value of good cotton on the date the claim is proved to the seller. The seller must also repay the buyer his substantiated expenses.
- 3 The buyer must claim for unmerchantable cotton within six months (26 weeks) of the date of arrival of the cotton. The bales must be set aside for inspection for a further 28 days (four weeks) after the claim is made and the inspection must be done by an agreed expert. The buyer will be able to claim reasonable and substantiated expenses from the seller for opening the bales and separating the merchantable from the unmerchantable cotton. The buyer can also claim the value of any unmerchantable cotton removed from the bales. The value must be based on the market value of the merchantable cotton on the date the claim is proved to the seller.
- 4 Foreign matter - the buyer must claim for foreign matter in the cotton within six months (26 weeks) of the date of arrival of the cotton. The bales must be set aside for inspection for 28 days (four weeks) after the claim is made and the inspection must be done by an agreed expert. The buyer will be able to claim reasonable substantiated expenses from the seller for removal of the foreign matter.

#### **Rule 228**

The buyer must give notice of any claim for country damage as detailed in Rule 207 or Rule 208 and the survey shall be completed within 14 days (two weeks) of the notice of the claim, or within 56 days (eight weeks) of the date of arrival of the cotton, whichever is earlier.

#### **Rule 229**

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

- 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 weighing.
- Representative samples must be taken from 5% of the bales in each lot (at least three 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 40 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 immediately to a testing laboratory mutually acceptable to both parties.

#### **Rule 230**

- 1 The buyer must:
  - give notice of any claim for internal moisture within 42 days (six weeks); and
  - produce a report from a mutually agreed laboratory and final claim within 63 days (nine weeks)

of the date of arrival of the cotton.

- 2 The allowance given to the buyer will be based on the laboratory's report. The allowance will be the difference between:
  - the weight of the absolutely dry fibre in the lot plus the percentage of moisture regain set out in the contract; and
  - the total weight of the lot.

This allowance will also be based on the invoice price.

#### **Rule 231**

The party claiming and asking for the moisture test will have to pay the cost of sampling and all related charges. If the claim is proved, sampling, courier and laboratory charges will be reimbursed by the other party.

### **Extending time limits**

#### **Rule 232**

The Directors can extend any time limit stated in Rule 218, 220, 223, 224, 227, 228 or 230 but only if the firm concerned can show that substantial injustice would otherwise be done:

- because it could not reasonably have anticipated the delay; or
- because of the conduct of the other firm.

Applications must be made to us in writing. The Directors will take the other firm's comments into account before they make a decision.

### **Instrument testing**

#### **Rule 233**

This Rule applies to all quality disputes regarding testing of cotton samples of any origin by instruments.

- 1 High Volume Instrument testing or classification shall be carried out in accordance with the approved practices and procedures listed in the latest version of the Universal Cotton Standards Agreement between the United States Department of Agriculture and the international signatories.
- 2 If sealed samples have already been taken for manual arbitration in accordance with Rules 223 and 224, the same samples can be used for the tests, provided they have been resealed.
- 3 The first test may only be undertaken in the ICA Bremen Laboratory or any other ICA Bremen Certified Laboratory agreed by both parties. If the parties cannot agree, either party can ask the President of the Association to appoint a laboratory for the first test. A list of the certified laboratories may be obtained from the ICA website.
- 4 The laboratory which does the first test will issue a test report signed and/or stamped by its authorised personnel. The test report will show the results of the test. The samples will be resealed by the laboratory and retained for up to 35 days (five weeks) in case a second test is called for.
- 5 Either party can request a second test within 21 days (three weeks) of the first results being dispatched. If no request is lodged, the information on the test report will be final.
- 6 Any request for a second test must apply to the total number of bales in the first test. A second test may only be undertaken in the ICA Bremen Laboratory. If the first test was also undertaken in the ICA Bremen Laboratory, a different operator will be used for the second test. The test will be made on samples of cotton drawn from the original resealed samples. The party applying for the second test shall pay for the resealed samples to be dispatched to the ICA Bremen Laboratory
- 7 Test reports will be issued and signed and/or stamped by the laboratory's authorised personnel.
- 8 In the event the parties cannot reach agreement on the allowances to be applied, or the interpretation of the results, arbitrator(s) may be appointed by, or on behalf of, both parties.
9. A contract may say how much variation is acceptable in the fibre characteristics determined by the ICA Bremen Certified Laboratory tests. Control limits should be stipulated in the contract.
10. For micronaire, unless the parties agree otherwise, no control limit will apply. In case the parties agree on a control limit then the usual control limit of 0.1 will apply.
11. For strength, unless the parties agree otherwise, no control limit will apply. In case the parties agree on a control limit then the usual control limit of 1.0 grams/tex will apply.
- 12 Whichever party asks for the tests must pay the laboratory the whole cost. If the buyer pays, the seller must repay the cost of testing every bale which does not come within the control limit set out in the contract or, where the control limit is not

stated in the contract, within the UCL specified in paragraph (10) and paragraph (11) above. If the seller pays, the buyer must repay the cost of testing every bale which comes within the control limit set out in the contract or, where the control limit is not stated in the contract, within the UCL specified in paragraph (10) and paragraph (11) above.

## Micronaire and allowances

### Rule 234

- 1 The Rules apply to all disputes relating to micronaire.
- 2 If the contract states 'micronaire' but does not say whether it should be the 'minimum' or 'maximum', it will be taken to mean 'minimum micronaire'. However, both parties can agree otherwise in writing before they send the samples for testing.

### Rule 235

- 1 In any dispute about micronaire, the procedure in Rule 233 will apply unless the parties agree otherwise.
- 2 Unless the buyer and seller agree otherwise: for contracts which set out a minimum, and / or maximum, micronaire value, the allowance for bales which do not reach this minimum, and / or maximum, will be as set out in the Value Differences Circular.
3. The Value Differences Committee may, at its discretion, introduce or withdraw additional micronaire value differences for specific growths into the Value Differences Circular.

## Strength and Allowances

### Rule 236

- 1 In any dispute about strength, the procedure in Rule 233 will apply unless the parties agree otherwise.
- 2 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:
- 3 The Value Differences Committee may, at its discretion, introduce or withdraw additional strength value differences for specific growths into the Value Differences Circular.

## Closing contracts

### Rule 237

- 1 If for any reason a contract or part of a contract has not been, or will not be, performed (whether due to a breach of the contract by either party or due to any other reason whatsoever) it will not be cancelled.
- 2 The contract or part of a contract shall in all instances be closed by being invoiced back to the seller in accordance with our Rules in force at the date of the contract.

### **Rule 238**

Where a contract or part of a contract is to be closed by being invoiced back to the seller, then the following provisions will apply:

- 1 If the parties cannot agree upon the price at which the contract is to be invoiced back to the seller, then that price will be determined by arbitration, and if necessary, appeal.
- 2 The date of closure is the date when both parties knew, or should have known, that the contract would not be performed. In determining that date the arbitrators or appeal committee will take into account:
  - a the terms of the contract;
  - b the conduct of the parties;
  - c any written notice of closure; and
  - d any other matter which the arbitrators or appeal committee consider to be relevant.
- 3 In determining the invoicing back price, the arbitrators or Technical Appeal Committee shall have regard to the following:
  - a the date of closure of the contract as determined in paragraph (2) above;
  - b the terms of the contract; and
  - c the available market price of the cotton which is the subject of the contract, or such like quality, on the date of closure.
- 4 The settlement payable on an invoicing back will be limited to the difference (if any) between the contract price and the available market price at the date of closure.
- 5 Any settlement due and payable on an invoicing back of a contract closed in accordance with Rules 237 and 238 will be calculated and shall be paid regardless of whether the party receiving or making the payment is considered to be responsible for the non-performance and/or breach of the contract.

### **Other claims and losses**

- 6 Any other losses or claims expressly agreed between the parties as recoverable will not be included in an invoicing back price. Such losses or



claims should be settled by amicable settlement, or claimed at arbitration or appeal.

**Rule 239**

Claims for consequential damages will not be allowed.

**Rule 240**

- 1 The arbitrators will set the invoicing back weight if:
  - the seller has not provided an invoice; or
  - no actual weights are available; or
  - the parties cannot agree the weight.
- 2 For the purpose of determining the invoicing back weight, when part of the contract has already been fulfilled, weight tolerances will not apply to the balance.

## **Appendix A1**

The form of contract approved by us for the shipment of cotton is our International Shipment Contract Form 1. The form covers Cost Insurance and Freight (CIF), Cost and Freight (CFR), Free on Board (FOB) and other similar terms. **Contract Form – online only**

*Website: <http://www.ica-ltd.org/safe-trading/electronic-contract-generator/>*

## **Appendix A2**

### **Appendix A2 - Quality Arbitration Time Lines**

<b>Ref No.</b>	<b>Subject</b>	<b>Bylaw/Rule Number</b>	<b>Action</b>	<b>Starting Date for the Time Limit</b>	<b>Time Limit</b>	<b>Notes</b>
1	Country Damage	Rules 207b/208b	Separate the damaged bales and make a claim	Date of weighing or devanning, whichever is later	7 days	Must be within both time limits
2				Arrival of the conveyance at the location or point of delivery stated on the bill of lading	42 days	
3	Bale Tare	Rule 215.2	Measure the actual tare	Date of arrival	28 days	
4	Gross Shipping Weights	Rule 218.1	Measure the Gross Shipping Weights	Date of sampling and before shipment, or other date agreed by the two parties	28 days	
5		Rule 218.2	Measure the Gross Landing Weights	Date of arrival	28 days	
6	Bale weighing	Rule 219	If the buyer does not weigh the total shipment within the time limit, the unweighed bales will be calculated in accordance with this rule.	Date of arrival	28 days	
7	Variation in weight	Rule 220	Notify the variation in weight	Date of arrival	49 days	

8	Sampling and quality claim	Rule 223.2	Notify the seller in writing of any quality claim	Arrival of cotton at the point of delivery	28 days	
9			Parties to provide names of their representatives to supervise sampling	Notification in writing of any claim	14 days	
10		Rule 223.3	If either party fails to nominate their representative within this time limit and reply to the claim of the other, the other party may proceed with sampling by an internationally recognised controller.	Notification in writing of any claim	14 days	
11		Rule 223.4	Samples to be used in any manual or instrument test based quality arbitrations, should be drawn with this time limit	Notification in writing of any claim	28 days	
12	False packed, mixed packed and plated bales	Rule 227.1	Make a claim	Date of arrival	6 months (26 weeks)	
13			Set bales for inspection	Date of claim	28 days	
14			Seller to take back the cotton	Date of claim being proved	14 days	
15	Unmerchantable cotton	Rule 227.3	Make a claim	Date of arrival	6 months (26 weeks)	
16			Set aside bales for inspection	Date of claim made	28 days	

17	Foreign matter	Rule 227.4	Make a claim	Date of arrive	6 months (26 weeks)	
18			Set aside bales for inspection	Date of claim made	28 days	
19	Country damage	Rule 228	Complete the survey	Date of claim in accordance with Rules 207/208	14 days	Whichever is earlier
20				Date of arrival	56 days	
21	Internal moisture	Rule 230	Make a claim	Date of arrival	42 days	
22			Produce a report from a mutually agreed laboratory and final claim	Date of arrival	63 days	
23	Instrument testing	Rule 233.6	Retain samples if tested by a non-certified laboratory (in case of a second test)	Date of first test	35 days	
24		Rule 233.7	Request a second test	Date of first test	21 days	
25	Appointment of arbitrators	Rule 333	Second firm to appoint an arbitrator	Date of arbitration commencement	14 days	
26			Objection to the appointment of an arbitrator	Date of appointment of an arbitrator	7 days	
27		Rule 335.1	Objection to the appointment of an arbitrator	Date of appointment of an arbitrator	7 days	
28		Rule 335.2	Ask the President to make a compulsory appointment of an arbitrator	Date of being requested to appoint an arbitrator or a replacement arbitrator of a substantiated and valid objection to a nomination	14 days	

29		Rule 335.3	President to make a compulsory appoint of an arbitrator	Date of ICA's notice	14 days	
30		Rule 335.4	Objection to the appointment of an arbitrator or a member of the appeal committee	Date of receiving notice of appointment	7 days	
31		Rule 335.7	Objection to the President's compulsory appointment of an arbitrator	Date of receiving notice of appointment	7 days	
32	Revoke the authority of an arbitrator	Rule 336.3	Revoke an appointment of a sole arbitrator	Date of appointment of an arbitrator or the arrival of the samples at the place of arbitration, whichever is the later.	21 days	
33			Revoke appointment of two arbitrators	Date of appointment of an arbitrator or the arrival of the samples at the place of arbitration, whichever is the later.	21 days	
34			Revoke appointment of the umpire	Date of appointment	7 days	
35		Rule 336.4	Objection to the revoking	Date of notice of revoking	7 days	
36	Manual and instrument quality arbitration	Bylaw 337.1	Commence arbitration	Date of notification in writing of any claim	42 days	
37			Send samples to place of arbitration and/or place of testing	Date of arrival	56 days	
38	Arbitration award	Bylaw 339.2	Arbitrators may make an award if an agreed allowance is not paid	Date of the test report being issued	14 days	

39	Standards	Bylaw 343	Confirm the standards and standards become effective	Date of written notice of proposed changes	14 days	
40	Anonymous arbitration	Bylaw 349.5	President to appoint an umpire	Date of arbitrators not agreeing on an award	21 days	
41		Bylaw 349.6	President to appoint a new arbitrator or a new umpire	Date of an arbitrator unable to act, or an umpire does not give his written decision	7 days	
42	Quality appeals	Bylaw 352.2	Must receive the payment within the time limit otherwise the appeal will be dismissed	Date of the invoice for application fee	14 days	

**Appendix B:**  
**Container Trade Rules Agreement**

This agreement is between  
The International Cotton Association Limited  
and the American Cotton Shippers Association  
(Amended 19 November, 1992)



# Agreement

*(Please read Rule 204)*

## 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.
- Note: Responsibilities of the buyer and seller for the costs and charges relating to Definitions 3 to 6 are given at Annex 1.
- 7 'Mini-bridge' means cargo carried by rail or substitute transportation from US port area to another US 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 car or other transport equipment.
- 13 'Bunker adjustment factor', '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.
- 14 '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 US 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 the shipment of US cotton in containers from US 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 Unless otherwise stated, sales should be based on freight rates for 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 on-carried by feeder vessels or other means, payment shall be made upon arrival of the feeder vessels or on-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.

Delineation of responsibility for cost and performance

House to house

		FOB		FAS		CIF		C&F	
		Responsibility for		Responsibility for		Responsibility for		Responsibility for	
		Cost	Performance	Cost	Performance	Cost	Performance	Cost	Performance
1	Draying of empty container to point of stuffing	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
2	Stuffing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
3	Transport of full container to point of loading on railroad or vessel	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
4	Lift on charges	Included in freight							
5	Freight	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
6	Lift off charges to ship's rail	Included in freight							
7	Clearance and port/terminal charges after ship's rail	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
8	Transport of container to point of destination	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
9	De-vanning	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

House to pier

		FOB		FAS		CIF		C&F	
		Responsibility for		Responsibility for		Responsibility for		Responsibility for	
		Cost	Performance	Cost	Performance	Cost	Performance	Cost	Performance
1	Draying of empty container to point of stuffing	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
2	Stuffing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
3	Transport of full container to point of loading on railroad or vessel	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
4	Lift on charges	Included in freight							
5	Freight	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
6	Lift off charges to ship's rail	Included in freight							
7	Clearance and port/terminal charges after ship's rail	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
8	De-vanning at point of arrival or CFS	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier
9	Transport of cotton to warehouse or mill	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Note 1: Normally included in freight charge. If not included buyer bears cost.

Pier to pier

		FOB		FAS		CIF		C&F	
		Responsibility for		Responsibility for		Responsibility for		Responsibility for	
		Cost	Performance	Cost	Performance	Cost	Performance	Cost	Performance
1	Delivery of cotton to point of shipment or CFS	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
2	Stuffing	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier
3	Lift on charges	Included in freight							
4	Freight	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
5	Lift off charges to ship's rail	Included in freight							
6	Clearance and port/terminal charges after ship's rail	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
7	De-vanning at point of arrival or CFS	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier
8	Transport of cotton to warehouse or mill	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Note 1: Stuffing and de-vanning charges normally included in freight. If not included, seller bears cost of stuffing, buyer bears cost of de-vanning.

Pier to house

		FOB		FAS		CIF		C&F	
		Responsibility for		Responsibility for		Responsibility for		Responsibility for	
		Cost	Performance	Cost	Performance	Cost	Performance	Cost	Performance
1	Delivery of cotton to point of shipment or CFS	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
2	Stuffing	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier	Note 1	Carrier
3	Lift on charges	Included in freight							
4	Freight	Buyer	Carrier	Buyer	Carrier	Seller	Carrier	Seller	Carrier
5	Lift off charges to ship's rail	Included in freight							
6	Clearance and port/terminal charges after ship's rail	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
7	Transport of container to point of destination	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier	Buyer	Carrier
8	De-vanning	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Note 1: Normally included in freight charge. If not included seller bears cost.



**Section 3:**  
**Arbitration Bylaws**

## Section 3: Arbitration Bylaws

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# ARBITRATION BYLAWS

**Bylaws are the mandatory provisions of this Association which cannot be changed or varied by the parties.**

Any dispute arising out of, or in connection with, a contract which incorporates and provides for arbitration under these Bylaws shall be referred to arbitration. Arbitrators, an umpire, a technical appeal committee or a quality appeal committee (as the case may be) will determine all matters placed before them in accordance with the following Bylaws.

## Introduction

### Bylaw 300

- 1 We will conduct arbitration in one of two ways:
  - Quality arbitrations will deal with disputes arising from the manual examination of the quality of cotton and/or the quality characteristics which can only be determined by instrument testing. Bylaws especially applicable to quality arbitrations and appeals are set out herein.
  - Technical arbitrations will deal with all other disputes. Bylaws especially applicable to technical arbitrations and appeals are set out herein.
- 2 The law of England and Wales and the mandatory provisions of the Arbitration Act 1996 (the Act) shall apply to every arbitration and/or appeal under these Bylaws. The non-mandatory provisions of the Act shall apply save insofar as such provisions are modified by, or are inconsistent with, these Bylaws.
- 3 The seat of our arbitrations is in England. No one can decide or agree otherwise.
- 4 Disputes shall be settled according to the law of England and Wales wherever the domicile, residence or place of business of the parties to the contract may be.
- 5 If parties have agreed to arbitration under our Bylaws, then, subject to paragraph (6) below, they must not use any court at all unless we have no further power to do what is required, or the Act allows, in which case they must apply to the courts in England or Wales.
- 6 A party can apply to a court anywhere to obtain security for its claim while arbitration or an appeal is taking place.
- 7 If a party is prevented from proceeding with an arbitration as a result of the application of the provisions of Bylaw 302 (3) or Bylaw 330 (1), it is free to apply to any court which is willing to accept jurisdiction.
- 8 Any contract in dispute referred to us for arbitration that has not been, or will not be, performed, will not be treated as cancelled. It will be closed by being invoiced back to the seller under our Rules in force at the date of the contract.
- 9 After eight weeks has passed from the receipt by the Tribunal or Technical Appeal Committee of final written submissions from the parties, the Tribunal or Technical

Appeal Committee will send a message to the parties providing them with an update on the status of the Award.

## Notices

### Bylaw 301

- 1 Any notice or other communication that may be or is required to be given by a party under these Bylaws shall be in writing and shall be delivered by registered postal or recognised international courier service or transmitted by fax, e-mail or any other means of telecommunication that provide a record of its transmission.

Where service of notices or other documents on parties by a tribunal or appeal committee via the Secretariat using e-mail or fax is concerned, the day after the date of despatch of an e-mail or fax shall be deemed to be the date of service on the party. Service on agents, brokers or representatives shall be deemed proper service under these Bylaws. So far as concerns such notices, this Bylaw over-rides any other provisions concerning notices in the parties' contract.

- 2 A party's last-known residence or place of business or last known e-mail or fax address during the arbitration shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change to such address by that party to the other parties, the Tribunal, Appeal Committee or Secretariat.

- 3 For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be treated as having been received on the day after it is delivered or deemed to have been delivered. If we give notice that something must be done within a set period, the period begins the day when it is deemed that the relevant notice has been delivered.

- 4 For the purpose of calculating a period of time under these Bylaws, such period shall begin to run on the day following the day when a notice or other communication is delivered or deemed to have been delivered. If the last day of such period is an English bank (official) holiday, the period is extended until the first business day which follows. English bank (official) holidays or non-business days occurring during the running of the period of time are included in calculating that period.

- 5 The Directors or, if appointed, the Tribunal or Appeal Committee may at any time extend (even where the period of time has expired) time prescribed under these Bylaws for the conduct of the arbitration, including any notice or communication to be served by one party on any other party.

- 6 If something is to be given or paid to us by a set date or within a period, it must arrive on or before 23.59 hours on the last day it is due. If it is something that is delivered to us by hand, this must be done during our office hours. If money is paid by cheque or something similar and the bank refuse to pay us the amount due, we will consider that it was not paid on the date it was received by us.

## Technical Arbitration

### Commencement of Arbitration

#### Bylaw 302

- 1 Any party wishing to commence arbitration under these Bylaws (“the claimant”) shall send us a written request for arbitration (“the request”).
- 2 When sending the request, the claimant shall also send:
  - the name, address including email address, telephone and facsimile number of the other party (“the respondent”),
  - a) a copy of the contract signed by both parties; or
  - b) a copy of the arbitration agreement signed by both parties if not included in the contract; or
  - c) a copy of the contract with any additional supporting evidence,
  - the name of their nominated arbitrator, or, if appropriate, the name of the sole arbitrator agreed by the parties, and
  - such application fee and deposit as may be due under Appendix C of the Rule Book. An arbitration may be dismissed if the deposit is not received within one calendar month.
- 3 Upon receipt of the above, we shall copy the request to the respondent and the arbitration shall be considered to have officially commenced as of that date.
- 4 We may refuse arbitration facilities where one of the parties to the dispute has been suspended from the Association or expelled.

#### We will refuse arbitration facilities where:

- The name of one of the parties appeared on the Association’s List of Unfulfilled Awards Part 1 at the time that the contract under dispute was entered into.
- The claimant applies for arbitration referencing contract (s) that predate their placement on the Association’s List of Unfulfilled Awards Part 1.
- Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.
- In the case of a Member Firm being suspended, that Member Firm would not be allowed to arbitrate on disputes where the contracts are dated during the suspension period. This includes related companies to that Member Firm.
- Contracts involving a Member Firm that has been suspended which predate the suspension date will be accepted for arbitration during the suspension period but at the non-members rate, for the suspended member.

- 5 Without prejudice to any other powers under section 37 of the Arbitration Act 1996, the tribunal may consult sources within the cotton trade in order to obtain information relating to the market price of cotton which is the subject of the arbitration or such like quality on a particular date or within a particular range of dates. The parties shall be given a reasonable opportunity to comment on any price information so obtained but shall have no right to disclosure of the sources of such information.

## **The Tribunal**

### **Bylaw 303**

Disputes which fall to be determined under these Bylaws shall be heard by a tribunal of three arbitrators or, if both parties agree, by a sole arbitrator who, for the purposes of these Bylaws, shall be deemed to be a qualified Arbitrator. Each party shall appoint one arbitrator and we shall appoint the third arbitrator who shall serve as Chairman of the tribunal. The tribunal shall ensure that the parties are treated with impartiality and equality and that each party has the right to be heard and is given a fair opportunity to present its case as directed within the Chairman's directions. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute.

## **Appointment of Arbitrators**

### **Bylaw 304**

- 1 Upon receipt of a Request made in accordance with Bylaw 302, we shall ask the respondent to appoint their arbitrator or to agree to the appointment of a sole arbitrator within 14 days (two weeks) and to notify us and the claimant of the name of their arbitrator.
- 2 We shall appoint the third arbitrator who shall serve as Chairman of the tribunal within seven days (one week) of the appointment of the second arbitrator, whether appointed by us or the respondent. The Chairman will be selected from those arbitrators that are members of the ICA Arbitration Strategy Committee.
- 3 We may appoint an observer for training purposes who will not form part of the tribunal.
- 4 Arbitrators must be Individual Members of our Association when they are appointed. Arbitrators must additionally be qualified to the standards set by the Directors from time to time before they may accept such appointments.
- 5 If a vacancy arises because any arbitrator dies, resigns, refuses to act, ceases to hold the requisite qualifications or becomes incapable of performing his functions, the vacancy shall be filled by the method set out in paragraph (1) above.
- 6 By accepting appointment (whether by a party or by us) an arbitrator binds himself to the Association to act in accordance with the Bylaws and Articles.
- 7 If either firm:
  - fails to nominate an arbitrator within 14 days (two weeks) of being requested to do so; or

- fails to agree on a replacement arbitrator within 14 days (two weeks) of a substantiated and valid objection to a nomination,

We will make an appointment on behalf of the firm that has failed to nominate an arbitrator, or failed to agree on a replacement arbitrator within the time allowed.

- 8 If either firm objects to an arbitrator or any member of a tribunal or an observer, it must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result.
- 9 If an objection is not acted on and not withdrawn, the President must be asked to decide whether it is to be valid.
- 10 If new evidence comes to light after the normal time limits for raising an objection have expired, an objection may still be raised. The President will decide whether it will be heard and whether it is valid.
- 12 If a firm disagrees with the President's intention or decision it can appeal to the Directors but it must do so within seven days (one week) of notice having been given of the Presidents' decision. The Directors can use any of the powers given to the President at paragraph (6) and paragraph (7) above.
- 13 If the President should have a possible conflict of interest, he will not appoint arbitrators under these Bylaws. In that situation, the Vice-President or an acting President, will have the same powers of appointment as the President.

### **Revoking the authority of an arbitrator or appeal committee member**

#### **Bylaw 305**

- 1 Once an arbitrator or appeal committee member has been appointed, his authority cannot be revoked by either firm unless both firms agree.
- 2 If an arbitrator or appeal committee member ceases to be a Member of the International Cotton Association, he cannot continue to act in whatever capacity he was appointed unless the Directors agree.
- 3 The President may revoke an appointment and appoint an alternative:
  - if substantial injustice will be caused by him not doing so; or
  - if requested to do so by either firm in the following circumstances:
    - if he upholds an objection under Bylaw 304;
    - if an appointed arbitrator dies, refuses or becomes unable to act;
    - if a sole arbitrator does not make an award within 56 days (eight weeks) of having received the final written submissions from the parties; or
    - if the tribunal do not make an award within 56 days (eight weeks) of having received the final written submissions from the parties.



- 4 The Association will give notice of the President's intention. If a firm disagrees with the President, it can appeal to the Directors but it must give its reasons in writing within seven days (one week) of notice having been given. The Directors can use any of the powers given to the President.
- 5 The timeframes indicated in paragraph (3) above shall not be construed so as to undermine or overrule the arbitrators' duty under the Act to allow each party reasonable opportunity to reply to any query or order from the tribunal subsequent to the closure of final written submissions.

## **Jurisdiction**

### **Bylaw 306**

Without prejudice to the provisions of the Act relating to jurisdiction, the tribunal may rule on its own jurisdiction, that is, as to whether there is a valid arbitration agreement, whether the tribunal is properly constituted and what matters have been submitted to arbitration in accordance with the arbitration agreement.

## **Conduct of the arbitration**

### **Bylaw 307 a**

- 1 It shall be for the Chairman, having consulted his fellow arbitrators:
  - to determine whether the Tribunal has jurisdiction; and
  - to decide all procedural and evidential matters,

Subject to the right of the parties to agree any matter.

- 2 The Chairman shall ensure the prompt progress of the arbitration, where appropriate by the making of Orders.
- 3 As soon as the Chairman has issued directions and determined a timetable for proceedings, we shall notify the parties.
- 4 The parties have a duty to do all things necessary for the proper and expeditious conduct of the proceedings, including complying without delay with any order or direction of the tribunal as to procedural and evidential matters.  
  
We will copy communications between either party and the tribunal to the other party.
- 5 If either party fails to comply with any procedural order of the tribunal, the tribunal shall have power to proceed with the arbitration and make an Award.
- 6 Decisions, Orders and Awards shall be made by all or a majority of the arbitrators, including the Chairman. The view of the Chairman shall prevail in relation to a decision, order or Award in respect of which there is neither unanimity nor a majority.
- 7 All statements, contracts and documentary evidence must be submitted in the English language. Whenever documentary evidence is submitted in a foreign

language, unless otherwise directed by the tribunal, this must be accompanied by an officially certified English translation.

- 8 We will not accept submissions directly from legal firms or independent lawyers.
- 9 The costs incurred by the parties of obtaining legal advice in connection with the claim presented to a tribunal shall not be recoverable, even if claimed.

### **Bylaw 307 b**

The parties confer on the Tribunal or Technical Appeal Committee and/or the Secretariat:

- the power to consolidate arbitral proceedings between the same legal entities with other arbitral proceedings, or ;
- that concurrent hearings shall be held on such terms as may be agreed by the Tribunal or Technical Appeal Committee and/or the Secretariat, and;
- if two parties appeal an award, the first party to appeal shall be called the appellant and the second appellant shall be called the respondent.

### **Oral hearings**

#### **Bylaw 308**

- 1 Where either party or both parties request an oral hearing, they shall apply in writing to the tribunal. The tribunal may grant or decline the request without giving reasons. Their decision shall be final. If a request is granted, the Chairman, having consulted his fellow arbitrators, shall decide the date, time and place of the hearing and the procedure to be adopted at the hearing.
- 2 The Chairman, having consulted his fellow arbitrators, may, in advance of the hearing, give detailed directions with any appropriate timetable for all further procedural steps in the arbitration, including (but not limited to) the following:
  - written submissions to be advanced by or on behalf of any party,
  - examination of witnesses,
  - disclosure of documents.
- 3 The Chairman may impose time limits on the length of oral submissions and the examination or cross-examination of witnesses.
- 4 Parties may be represented by one of their employees, or by an Individual Member of the Association, but they may not be represented by a solicitor or barrister, or other legally qualified advocate. Parties may be accompanied by a legal representative at any oral hearing. Such legal representative may advise the party but may not address the tribunal.

### **Technical Arbitration Awards**

#### **Bylaw 309**

- 1 An Award shall be in writing on our official form dated and signed by all members of the tribunal or the sole arbitrator as applicable and shall contain sufficient reasons to show why the tribunal has reached the decisions contained in it, unless the parties agree otherwise or the Award is by consent. The Chairman will be responsible for drafting the Award but can delegate this responsibility to a qualified member of the tribunal. The members of the tribunal need not meet together for the purpose of signing their award or for effecting any corrections thereto.
- 2 Any Award shall state that the seat of the arbitration is in England and the date by which we must receive notice of appeal.
- 3 All Awards made under our Bylaws will be treated as having been made in England, regardless of where matters were decided, or where the Award was signed, despatched or delivered to the firms in dispute.
- 4 We will stamp every Award in our offices on the date of the Award, and apply the scale of fees laid down in Appendix C of the Rule Book.
- 5 An Award will only become effective and binding when we stamp it.
- 6 After we stamp an Award, we will notify all of the parties concerned.
- 7 The Award will only be released upon payment of the stamping fee and any outstanding fees, costs and expenses.
- 8 The Parties must honour or appeal the Award within 28 days (four weeks) from the publication date.
- 9 The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Tribunal or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## **Interest on Awards**

### **Bylaw 310**

The tribunal and technical appeal committee can award simple or compound interest from such dates and at such rates as they consider meets the justice of the case.

## **Corrections to Awards**

### **Bylaw 311**

- 1 The tribunal, sole arbitrator or appeal committee may on its own initiative or on the application of a party or secretariat:
  - correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or

- make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award.
- 2 These powers shall not be exercised without first affording the parties a reasonable opportunity to make representations to the tribunal.
  - 3 Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.
  - 4 Any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.
  - 5 Any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree.
  - 6 Any correction of an award shall form part of the award.

## Technical Appeals

### Bylaw 312

1. If either party disagrees with the tribunal's Award, it can be appeal to us within the period specified in the Award. It must send Notice of Appeal to us
2. Within 7 days of receipt of its copy of the Notice of Appeal, the respondent in the appeal may exercise an option to require the appellant (as a condition of the appellant being able to proceed with an appeal) to pay 20% of the principal amount awarded against the appellant by the tribunal's Award into an escrow account or to provide a bank guarantee for the same amount. The respondent's option is to be exercised by notice to us, with a copy to the appellant. If no such notice is received by us within the period of 7 days, the option will be deemed to have been waived and will not thereafter be capable of being exercised.
3. Within 7 days of receipt of the respondent's notice, if any, under Bylaw 312(2), the appellant must provide proposals for payment into an escrow account or for a bank guarantee. Within a further 7 days, the respondent must indicate whether the proposals are acceptable or not. In the event that the appellant's proposals for payment into an escrow account or for a bank guarantee are not acceptable to the respondent, the matter shall be referred to the President. The wording, conditions and other details concerning the escrow arrangement and the bank guarantee must be to the complete satisfaction of the President who will, in his absolute discretion, decide on the suitability of the escrow or guarantee arrangements.
4. If the appellant fails to provide its proposals within the 7 day time limit or fails within 21 days of the respondent's agreement to the proposals or of the President's decision in case of dispute to provide the payment into escrow or

bank guarantee that it has proposed (or as may be ordered by the President), the appeal shall be deemed withdrawn and shall not be permitted to proceed.

5 Upon receipt of the Notice of Appeal we may demand that sums of money be deposited with us by the appellant, by way of deposit against any fees, costs or expenses in connection with or arising out of the Appeal in accordance with Appendix C. The appellant must also deposit any costs or stamping fees that the tribunal's Award ordered them to pay. Failure to pay within the specified period will result in the Appeal being dismissed.

6 The Directors, or appeal committee if appointed, can extend the time limits in paragraph (2) above, but only if the firm concerned can show that substantial injustice would otherwise be done and the request for an extension is reasonable in all the circumstances. Any request for an extension should be made in writing and should outline the reasons why substantial injustice may occur if an application is refused.

## **Oral hearings (on appeal)**

### **Bylaw 313**

- 1 Where either party or both parties request an oral hearing, they shall apply in writing to the appeal committee. The appeal committee may grant or decline the request without giving reasons. Their decision shall be final. If a request is granted, the Chairman, having consulted his fellow arbitrators, shall decide the date, time and place of the hearing and the procedure to be adopted at the hearing.
- 2 The Chairman, having consulted his fellow arbitrators, may, in advance of the hearing, give detailed directions with any appropriate timetable for all further procedural steps in the arbitration, including (but not limited to) the following:
  - written submissions to be advanced by or on behalf of any party,
  - examination of witnesses,
  - disclosure of documents.
- 3 The Chairman may impose time limits on the length of oral submissions and the examination or cross-examination of witnesses.
- 4 Parties may be represented by one of their employees, or by an Individual Member of the Association, provided the Individual Member has not acted as arbitrator in the dispute, but they may not be represented by a solicitor or barrister, or other legally qualified advocate. Parties may be accompanied by a legal representative at any oral hearing. Such legal representative may advise the party but may not address the appeal committee.

## **Technical Appeal Committee**

### **Bylaw 314**

- 1 As soon as the appellant has paid all fees due under Bylaw 312 (5), made a payment into escrow or provided a bank guarantee as provided for in bylaws 312(2) to 312(4) and served its case for appeal the Directors shall appoint a Technical Appeal Committee ('appeal committee')
- 2 A Director cannot be involved in any decision about an appeal or be on an Appeal Committee if he has acted as an arbitrator in the dispute or if substantial injustice could result.
- 3 An Individual Member cannot be on an appeal committee if he has acted as an arbitrator in the dispute, or substantial injustice could result.
- 4 An appeal committee will consist of a Chairman and four other people, who must be Individual Members when they are appointed. The Chairman will be selected from those arbitrators that are members of the ICA Arbitration Strategy Committee and the members will be selected from the list of ICA qualified arbitrators.
- 5 We may appoint an observer for training purposes who will not form part of the technical appeal committee.
- 6 A member of an appeal committee may only attend and vote at committee meetings if he has been present at all previous meetings.
- 7 At any meeting of an appeal committee, a quorum must comprise the Chairman and three, or at the Chairman's discretion, two members. In the event that there is no quorum, the Directors will appoint a new appeal committee. However, the provisions of this paragraph may be varied by the Directors if both parties agree in writing.
- 8 If the Directors appoint an appeal committee, either party can object to the Chairman or any member of the committee but must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result.
- 9 If the Directors uphold an objection, they shall immediately nominate a substitute.
- 10 An appeal involves a new hearing of the dispute and the appeal committee can allow new evidence to be put forward. It may confirm, vary, amend or set aside the award of the first tribunal and make a new award covering all of the matters in dispute.
- 11 The appeal committee will decide the issues by a simple majority vote. Every member, including the Chairman will have one vote. If both sides have the same number of votes, the Chairman will vote again to decide the issue.
- 12 The Chairman and Secretary of the appeal committee will sign the award.

## **Appeal timetable**

### **Bylaw 315**

- 1 The appellant must submit its Notice of Appeal to us within the time specified in the Award. The appellant must then submit all fees due under Bylaw 312 (2) and its case for appeal within 14 days (two weeks) of the Association receiving its Notice of Appeal, failing which the appeal will be dismissed.
- 2 If the respondent intends to make a submission, it should do so within 14 days (two weeks) of receiving a copy of the appellant's case.
- 3 If the respondent replies, the appellant may make a further submission within seven days (one week) of receiving a copy of the respondent's reply.
- 4 The respondent may make a final submission within seven days (one week) of receiving a copy of the appellant's further comment.
- 5 The Directors, or appeal committee if appointed, can extend these time limits, but only if the firm concerned can show that substantial injustice would otherwise be done and the request for an extension is reasonable in all the circumstances. Any request for an extension should be made in writing and should outline the reasons why substantial injustice may occur if an application is refused.
- 6 Applications for extensions must be made before time limits expire.
- 7 Further submissions may only be allowed if both parties agree, or the appeal committee decides that substantial injustice will be caused by rejecting them; then
  - the appellant is allowed to make further comment, but must do so within seven days (one week) of receiving a copy of the respondent's further comments; and
  - the respondent is allowed to make final comment, but must do so within seven days (one week) of receiving a copy of the appellant's further comments.
- 8 Unless circumstances otherwise dictate, the Association shall arrange for the appeal to be heard no later than 14 days (two weeks) after final submissions have been received by the appeal committee.
- 9 Either party may nominate, in writing, a representative, who must be a qualified ICA arbitrator, to act on their behalf in any matter concerned with an appeal, provided the representative has not acted as arbitrator in the dispute. We will then communicate with them and no-one else.
- 10 All appeal material must be submitted to us by:
  - the firms in dispute; or
  - the arbitrators acting as appointed representatives.
- 11 We will not accept submissions directly from legal firms or independent lawyers.
- 12 The costs incurred by the parties of obtaining legal advice in connection with the claim presented to an appeal committee shall not be recoverable, even if claimed.

- 13 The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the TAC or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

### **Small Claims Technical Arbitration (for disputes with a value at, or less than, US\$ 25,000)**

#### **Bylaw 316**

- 1 Disputes which fall to be determined under these Bylaws shall be restricted to all disputes related to a total value not exceeding US\$ 25,000 (twenty five thousand United States Dollars) but excluding those disputes for any contract that has not been, or will not be performed, and is to be closed by being invoiced back to the seller under our Rules in force at the date of the contract.
- 2 A sole arbitrator appointed by us will hear such disputes. The sole arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case. The sole arbitrator shall conduct the proceedings with a view to expediting the resolution of the dispute. We will copy all communications between either party and the sole arbitrator to the other party.
- 3 If upon receipt of the submissions from both parties the sole arbitrator considers that the matter is not within the remit of the small claims procedure or the matter is too complex for a sole arbitrator to consider, he will advise the parties of this and they will have the right to proceed to a full tribunal hearing to resolve the dispute.
- 4 The previously appointed sole arbitrator will act as the tribunal Chairman if he is a member of the Arbitration Strategy Committee, unless either party objects. In the event he is not a member of the Arbitration Strategy Committee, the tribunal Chairman will be appointed in the normal manner. Any objection must be made in writing within seven days (one week) of notice being given of the relevant appointment and accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result. Each party will appoint their own arbitrator within 14 days (two weeks) of being requested to do so by us. If either party fails to appoint an arbitrator within the stated period, the President will appoint an arbitrator and give notice of the appointment to the parties.

#### **Commencement of Arbitration**

#### **Bylaw 317**

- 1 Any party wishing to commence arbitration under these Bylaws ("the claimant") shall send us a written request for arbitration ("the request"), and we shall copy the request to the other party ("the respondent").



- 2 When sending the request, the claimant shall also send:
- the name, address including email address, telephone and facsimile number of the other party (“the respondent”),
  - a) a copy of the contract signed by both parties; or
  - b) a copy of the arbitration agreement signed by both parties if not included in the contract; or
  - c) a copy of the contract and any supporting evidence,
  - details of the claim value which must be no more than US\$ 25,000, and
  - such application fee and deposit as may be due under Appendix C of the Rule Book. An arbitration may be dismissed if the deposit is not received within one calendar month.
3. We will refuse arbitration facilities where:

- The name of one of the parties appeared on the Association’s List of Unfulfilled Awards Part 1 at the time that the contract under dispute was entered into.
- The claimant applies for arbitration referencing contract (s) that predate their placement on the Association’s List of Unfulfilled Awards Part 1.
- Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.
- In the case of a Member Firm being suspended, that Member Firm would not be allowed to arbitrate on disputes where the contracts are dated during the suspension period. This includes related companies to that Member Firm.
- Contracts involving a Member Firm that has been suspended which predate the suspension date will be accepted for arbitration during the suspension period but at the non-members rate, for the suspended member.

## **Appointment of a sole arbitrator**

### **Bylaw 318**

- 1 Upon receipt of a Request made in accordance with Bylaw 317, we will nominate the sole arbitrator within seven days (one week). If the parties have agreed in writing to appoint a particular sole arbitrator, we will appoint him so long as his appointment complies with the conditions set out in the ICA Articles, Bylaws and Rules and the Arbitrators’ Code of Conduct.
- 2 The sole arbitrator must be an Individual Member of our Association when appointed. The arbitrator must additionally be qualified to the standards set by the Directors from time to time before he may accept such an appointment.
- 3 If the sole arbitrator dies, resigns, refuses to act, ceases to hold the requisite qualifications or becomes incapable of performing his functions, a replacement sole arbitrator will be appointed by the President.

- 4 By accepting appointment (whether by the parties or by us) a sole arbitrator binds himself to the Association to act in accordance with the Bylaws.
- 5 If either party raises an objection to a nominated sole arbitrator, it must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result. If the objection is upheld, the President shall appoint a replacement sole arbitrator.
- 6 If new evidence comes to light after the normal time limits for raising an objection have expired, an objection may still be raised. The President will decide whether it will be heard and whether it is valid.
- 7 If a party disagrees with the President's intention or decision it can appeal to the Directors but it must do so within seven days (one week) of notice having been given of the Presidents' decision. The Directors can use any of the powers given to the President at paragraph (5) and paragraph (6) above.
- 8 If the President should have a possible conflict of interest, he will not appoint the sole arbitrator under these Bylaws. In that situation, the Vice-President or an acting President will have the same powers of appointment as the President.

## **Revoking the authority of a sole arbitrator**

### **Bylaw 319**

- 1 Once a sole arbitrator has been appointed, his authority cannot be revoked by either party unless both parties agree.
- 2 If a sole arbitrator ceases to be a Member of the International Cotton Association, he cannot continue to act in whatever capacity he was appointed unless the Directors agree.
- 3 The President may revoke an appointment and appoint an alternative:  
if substantial injustice will be caused by him not doing so; or  
if requested to do so by either party in the following circumstances:
  - if he upholds an objection under Bylaw 318;
  - if an appointed arbitrator dies, refuses or becomes unable to act;
  - if a sole arbitrator does not make an award within 56 days (eight weeks) of having received the final written submissions from the parties.
- 4 If, upon appointment as the tribunal Chairman, the sole arbitrator declines to act, he must give notice in writing and the President will appoint a replacement within seven days (one week) of notice having been given.

- 5 The Association will give notice of the President's intention. If a party disagrees with the President, it can appeal to the Directors but it must give its reasons in writing within seven days (one week) of notice having been given. The Directors can use any of the powers given to the President.
- 6 The timeframes indicated in paragraph (3) above shall not be construed so as to undermine or overrule the arbitrators' duty under the Act but to allow each party reasonable opportunity to reply to any query or order from the sole arbitrator subsequent to the closure of final written submissions.

## **Association's fees and deposits on account of Small Claims Arbitration fees**

### **Bylaw 320**

- 1 Sole arbitrators shall be entitled to charge fees which shall be fixed by reference to the total amount of time reasonably devoted to the arbitration and shall be in accordance with the fees laid down in Appendix C of the Rule Book.
- 2 Where the sole arbitrator finds it necessary to obtain legal advice on any matter arising from an arbitration, reasonable legal fees thereby incurred will be payable by the parties, as specified in the Award.
- 3 When an Award is presented for stamping in accordance with Bylaw 323, the sole arbitrator shall invoice us for all fees, clearly stating their applicable hourly rate. The sole arbitrator is required to submit a time sheet in a format approved by the Directors.
- 4 The only expenses a sole arbitrator shall be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt.
- 5 The time sheet shall be forwarded to both parties by the Secretariat within 14 days (two weeks) of the award being released.
- 6 The payment of fees and expenses to the sole arbitrator is conditional upon the Association's receipt of the time sheet.
- 7 Subject to the foregoing, the sole arbitrator shall be entitled to prompt payment of fees and expenses following release of the Award. If, following a review under Bylaw 359 the Directors determine that any fees or expenses are unreasonable, the sole arbitrator shall act in accordance with the decision of the Directors.

## **Jurisdiction**

### **Bylaw 321**

Without prejudice to the provisions of the Act relating to jurisdiction, the sole arbitrator may rule on his jurisdiction, that is, as to whether there is a valid arbitration agreement and what matters have been submitted to arbitration in accordance with the arbitration agreement.

## **Conduct of the Small Claims Technical Arbitration**

### **Bylaw 322**

- 1 The conduct of the small claims arbitration will be based on documentary evidence only.
- 2 It shall be for the sole arbitrator;
  - to determine whether he has jurisdiction; and
  - to decide all procedural and evidential matters,subject to the right of the parties to agree any matter.
- 3 The sole arbitrator shall ensure the prompt progress of the arbitration, where appropriate by the making of Orders.
- 4 As soon as the sole arbitrator has determined a timetable for proceedings, we shall notify the parties.
- 5 The parties have a duty to do all things necessary for the proper and expeditious conduct of the proceedings, including complying without delay with any order or direction of the sole arbitrator as to procedural and evidential matters.
- 6 If either party fails to comply with any procedural order of the sole arbitrator, the arbitrator shall have power to proceed with the arbitration and make an Award.
- 7 All statements, contracts and documentary evidence must be submitted in the English language. Whenever documentary evidence is submitted in a foreign language, unless otherwise directed by the sole arbitrator, this must be accompanied by an officially certified English translation.
- 8 We will not accept submissions directly from legal firms or independent lawyers.
- 9 The costs incurred by the parties of obtaining legal advice in connection with the claim presented to a sole arbitrator shall not be recoverable, even if claimed.

## **Small Claims Technical Arbitration Awards**

### **Bylaw 323**

- 1 An Award shall be in writing, dated and signed by the sole arbitrator and shall contain sufficient reasons to show why he has reached the decisions contained in it, unless the parties agree otherwise or the Award is by consent.
- 2 Any Award shall state that the seat of the arbitration is in England and the date by which we must receive notice of appeal.
- 3 All Awards made under our Bylaws will be treated as having been made in England, regardless of where matters were decided, or where the Award was signed, despatched or delivered to the firms in dispute.

- 4 We will stamp every Award in our offices on the date of the Award, and apply the scale of fees laid down in Appendix C of the Rule Book.
- 5 An Award will only become effective and binding when we stamp it.
- 6 After we stamp an Award, we will notify all of the parties concerned.
- 7 The Award will only be released upon payment of the stamping fee and any outstanding fees, costs and expenses.
- 8 The Award must be honoured within 28 days (four weeks) from notification to all of the parties under paragraph (6) above.
- 9 The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Tribunal or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## **Interest on Awards**

### **Bylaw 324**

A sole arbitrator or small claims appeal committee can award simple or compound interest from such dates and at such rates as he or they consider appropriate.

## **Costs**

### **Bylaw 325**

The general principle is that costs follow the event, but subject to the overriding discretion of the sole arbitrator and small claims appeal committee as to which party will bear what proportion of the costs of the arbitration or appeal. In the exercise of that discretion the sole arbitrator or small claims appeal committee shall have regard to all the material circumstances.

## **Small Claims Technical Appeals**

### **Bylaw 326**

- 1 If either party disagrees with the sole arbitrator's Award, it can appeal to us within the period specified in the Award. It must send Notice of Appeal to us.
- 2 Upon receipt of the Notice of Appeal we may demand that sums of money be deposited with us by the appellant, by way of deposit against any fees, costs or expenses in connection with or arising out of the Appeal. The appellant must also deposit any costs or stamping fees that the Tribunal's Award ordered them to pay. Failure to pay within the specified period will result in the Appeal being dismissed.
- 3 The Directors, or appeal committee if appointed, can extend the time limits in paragraph (2) above, but only if the firm concerned can show that substantial

injustice would otherwise be done and the request for an extension is reasonable in all the circumstances. Any request for an extension should be made in writing and should outline the reasons why substantial injustice may occur if an application is refused.

## **Small Claims Technical Appeal Committee**

### **Bylaw 327**

- 1 The conduct of the small claims technical appeal will be based on documentary evidence only.
- 2 As soon as the appellant has paid all fees due under Bylaw 326 (2) and served its case for appeal, the Directors shall appoint a Small Claims Technical Appeal Committee ('appeal committee').
- 3 A Director cannot be involved in any decision about an appeal or be on an appeal committee if he has acted as the arbitrator in the dispute or if substantial injustice could result.
- 4 An Individual Member cannot be on an appeal committee if he has acted as the arbitrator in the dispute, or substantial injustice could result.
- 5 An appeal committee will consist of a Chairman and two other people, who must be Individual Members when they are appointed. All appeal committee members must additionally be qualified to the standards as set by the Directors from time to time.
- 6 At any meeting of an appeal committee, the Chairman and both members must be present. In the event a member of the committee cannot continue to act, the Directors will appoint a new appeal committee member. However, the provisions of this paragraph and paragraph (5) above may be varied by the Directors if both parties agree in writing.
- 7 If the Directors appoint an appeal committee, either party can object to the Chairman or any member of the committee but must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result.
- 8 If the Directors uphold an objection, they shall immediately nominate a substitute.
- 9 An appeal involves a new hearing of the dispute and the appeal committee can allow new evidence to be put forward. It may confirm, vary, amend or set aside the award of the sole arbitrator and make a new award covering all of the matters in dispute.
- 10 The appeal committee will decide the issues by a simple majority vote. Every member, including the Chairman, will have one vote.

## Appeal timetable

### Bylaw 328

- 1 The appellant must submit its Notice of Appeal to us within the time specified in the Award. The appellant must then submit all fees due under Bylaw 326 (2) and its case for appeal within 14 days (two weeks) of the Association receiving its Notice of Appeal.
- 2 If the respondent intends to comment, it should do so within 14 days (two weeks) of receiving a copy of the appellant's case.
- 3 If the respondent replies, the appellant is allowed to make further comment, but must do so within seven days (one week) of receiving a copy of the respondent's reply.
- 4 The respondent is allowed to make final comment, but must do so within seven days (one week) of receiving a copy of the appellant's further comment.
- 5 The Directors, or appeal committee if appointed, can extend these time limits, but only if the firm concerned can show that substantial injustice would otherwise be done and the request for an extension is reasonable in all the circumstances. Any request for an extension should be made in writing and should outline the reasons why substantial injustice may occur if an application is refused.
- 6 Applications for extensions must be made before time limits expire.
- 7 Further submissions may only be allowed if both parties agree, or the appeal committee decides that substantial injustice will be caused by rejecting them; then
  - The appellant is allowed to make further comment, but must do so within seven days (one week) of receiving a copy of the respondent's further comments.
  - The respondent is allowed to make final comment, but must do so within seven days (one week) of receiving a copy of the appellant's further comments.
- 8 Unless circumstances otherwise dictate, the Association shall arrange for the appeal to be heard no later than 14 days (two weeks) after final submissions have been received by the appeal committee.
- 9 Either party may nominate, in writing, a representative, who must be an Individual Member, to act on their behalf in any matter concerned with an appeal, provided the Individual Member has not acted as arbitrator in the dispute. We will then communicate with them and no-one else.
- 10 All appeal material must be submitted to us by:
  - the firms in dispute; or
  - our Individual Members acting as appointed representatives.

- 11 We will not accept submissions directly from legal firms or independent lawyers.
- 12 The costs incurred by the parties of obtaining legal advice in connection with the claim presented to an appeal committee shall not be recoverable, even if claimed.
- 13 The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the appeal committee or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## Quality Arbitration

### Commencing arbitration

#### Bylaw 329

If an application is required, it must be accepted by us before arbitration can commence. If that is done or if an application is not required, arbitration will commence when one firm tells the other in writing that it intends to go to arbitration and:

- asks the other firm to agree to use a sole arbitrator and suggests the name of an arbitrator; or
- names his arbitrator and asks the other firm to do the same.

#### Bylaw 330

1 If firms agree to quality arbitration under our Bylaws, our Individual Members can arbitrate and hear appeals. We will assist with the arbitral process. This applies to both registered and non-registered firms subject to the following:

- Non-registered firms must apply for arbitration. We can refuse to accept such applications. The applicant has a right of appeal to the Directors. Their decision is final.
- If a firm was not registered on the date of the contract giving rise to the dispute, an application fee may be due. Details are set out in Appendix C.

We will refuse arbitration facilities where:

- The name of one of the parties appeared on the Association's List of Unfulfilled Awards Part 1 at the time that the contract under dispute was entered into.
- The claimant applies for arbitration referencing contract (s) that predate their placement on the Association's List of Unfulfilled Awards Part 1.
- Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.



- In the case of a Member Firm being suspended, that Member Firm would not be allowed to arbitrate on disputes where the contracts are dated during the suspension period. This includes related companies to that Member Firm.
- Contracts involving a Member Firm that has been suspended which predate the suspension date will be accepted for arbitration during the suspension period but at the non-members rate, for the suspended member.

- 2 If an application for arbitration is required under this Bylaw, no Individual Member can act as an arbitrator until informed that the application has been accepted and any fee due has been paid.

## **Appointment of arbitrators**

### **Bylaw 331**

- 1 Quality arbitration will be conducted by two arbitrators unless the firms in dispute agree that one arbitrator is sufficient.
- 2 If two arbitrators are appointed and they cannot agree, an umpire will make a decision.
- 3 Arbitrators and umpires must be Individual Members of our Association when they are appointed.
- 4 Either firm can ask the President of the Association to appoint an arbitrator on its behalf.

### **Bylaw 332**

- 1 If one firm commences arbitration in line with Bylaw 329 and asks the other firm to agree to a sole arbitrator, then within 14 days (two weeks) the other firm must:
  - either
    - accept the name of the suggested arbitrator; or
    - agree the name of another sole arbitrator;
  - or
    - say that it does not agree to using a sole arbitrator;
    - name its own arbitrator; and may
    - object to the arbitrator named by the first firm.
- 2 If the second firm names its own arbitrator, the first firm must object to the nomination within seven days (one week) or it will be considered to have been accepted.
- 3 If the second firm does not respond, the arbitration cannot proceed with a sole arbitrator. Arbitrators must be appointed by or on behalf of both firms.

### **Bylaw 333**

If one firm commences arbitration in line with Bylaw 329 but does not ask the other firm to agree to a sole arbitrator, the other firm must nominate its arbitrator in writing

within 14 days (two weeks). Unless a reasoned objection is made in writing within seven days (one week), any arbitrator nominated by either firm will be considered to have been accepted by the other.

#### **Bylaw 334**

Once the arbitrator or arbitrators have been nominated and the periods allowed for objections have expired, and any objections dealt with, the arbitrator or arbitrators will be considered to have been appointed. Firms must then allow arbitrators to act independently in accordance with the law.

#### **Bylaw 335**

1 If one firm raises an objection to an arbitrator nominated by the other it must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result.

2 If either firm:

- fails to nominate an arbitrator within 14 days (two weeks) of being requested to do so, or
- fails to agree on a replacement arbitrator within 14 days (two weeks) of a substantiated and valid objection to a nomination,

the other firm can ask the President to make an appointment on behalf of the firm that has failed to nominate an arbitrator, or failed to agree on a replacement arbitrator within the time allowed.

3 The Association will give notice of the President's intention. If the firm in default does not nominate an arbitrator acceptable to the other firm within 14 days (two weeks) of that notice being given, the President may act.

4 Either firm can object to the Chairman or any member of a Quality Appeal Committee, but must do so within seven days (one week) of notice being given of the relevant appointment. Any objection must be made in writing, accompanied by the reasons for objection. An objection to an appointment will only be valid if the President decides that substantial injustice could result.

5 If an objection is not acted on and not withdrawn, the President must be asked to decide whether it is valid.

6 If new evidence comes to light after the normal time limits for raising an objection have expired, an objection may still be raised. The President will decide whether it will be heard and whether it is valid.

7 If a firm disagrees with the President's intention or decision it can appeal to the Directors but it must do so within seven days (one week) of notice having been given. The Directors can use any of the powers given to the President at paragraph (3) and paragraph (4) above.

- 8 If the President should have a possible conflict of interest, he will not appoint arbitrators under these Bylaws. In that situation, the Vice-President or an acting President will have the same powers of appointment as the President.

### **Revoking the authority of an arbitrator, umpire or appeal committee member**

#### **Bylaw 336**

- 1 Once an arbitrator, umpire or appeal committee member has been appointed, his authority cannot be revoked by either firm unless both firms agree.
- 2 If an arbitrator, umpire or appeal committee member ceases to be a Member of the International Cotton Association, he cannot continue to act in whatever capacity he was appointed unless the Directors agree.
- 3 The President may revoke an appointment and appoint an alternative:  
  
if substantial injustice will be caused by him not doing so; or  
  
if requested to do so by either firm in the following circumstances:
  - if he upholds an objection under Bylaw 335;
  - if an appointed arbitrator dies, refuses or becomes unable to act;
  - if a sole arbitrator does not make an award within 21 days (three weeks) of having been appointed or the arrival of the samples at the place of arbitration, whichever is the later;
  - if the two arbitrators do not make an award or appoint an umpire within 21 days (three weeks) of both having been appointed or the arrival of the samples at the place of arbitration, whichever is the later; or
  - if the umpire does not make an award within seven days (one week) of the date of his appointment.
- 4 The Association will give notice of the President's intention. If a firm disagrees with the President, it can appeal to the Directors but it must give its reasons in writing within seven days (one week) of notice having been given. The Directors can use any of the powers given to the President.

### **Timetables**

#### **Bylaw 337**

- 1 **In manual quality and instrument test based arbitrations:**

Rule 223 stipulates the time limits for the notification of any claim and for the drawing of samples. Unless agreed otherwise, any party must notify the other of any quality claim in writing in accordance with Rule 223, prior to the commencement of arbitration.

- arbitration must be commenced in line with Bylaw 329 within 42 days (six weeks) of the date of notification in writing of any claim; and
  - samples must be sent to the place of arbitration and/or to the place of testing within 56 days (eight weeks) of the date of the notification in writing of any claim.
2. The Directors can extend these limits, but only if the firm concerned can show that substantial injustice would otherwise be done and that the request for an extension is reasonable in all the circumstances. Applications must be made to us in writing. The Directors will take the other firm's comments into account before it makes a decision.

## **The place of arbitration**

### **Bylaw 338**

- 1 Manual quality arbitrations can be held anywhere by agreement between the firms in dispute. If the firms cannot agree on the location for manual arbitration, such manual quality arbitrations will be held in our arbitration room.
- 2 In the event of an appeal on manual arbitration, the Directors will decide where the manual appeal will be heard.
- 3 We will stamp arbitration and appeal Awards and make them effective in Liverpool, without regard to where the arbitration or appeal takes place.

## **Procedures**

### **Bylaw 339**

1. Quality arbitrations will be conducted on the basis of samples and decided by manual examination for grade and staple, unless both parties agree in writing to accept instrument testing.
2. Instrument testing arbitrations will be conducted on the basis of test reports. The information on the test reports will be final, provided the parties have followed the steps established under Rule 224 and Rule 233. The arbitrators may make an award if either of the parties fails to:
  - agree on the allowances to be applied; or
  - agree on the interpretation of the test report as applicable to the contract; or
  - pay an agreed allowance within 14 days (two weeks) of the test report being issued; or
  - agree on the place of testing.

3. -Bylaws 346 and 347 do not apply for instrument testing arbitrations.
4. -Either firm can appeal against an award given by the arbitrator, arbitrators or umpire in line with Bylaw 352, but no further instrument tests will be conducted.

## **Jurisdiction**

### **Bylaw 340**

Without prejudice to the provisions of the Act relating to jurisdiction, the arbitrators and umpire may rule on their own jurisdiction, that is, as to whether there is a valid arbitration agreement.

### **Bylaw 341**

- 1 If one firm commences a quality arbitration and the other firm disputes jurisdiction or the terms of the contract regarding quality, there will be a technical arbitration unless the firms agree otherwise. The technical Award will say:
  - whether we have jurisdiction,
  - what matters are subject to quality arbitration; and
  - what contract terms apply with regard to quality.
- 2 A firm can challenge this Award by appeal to the Directors in the normal way.
- 3 A quality arbitration may then take place providing the technical arbitration or appeal finds that:
  - there is a valid arbitration agreement; and
  - our Bylaws apply.

## **Standards**

### **Bylaw 342**

- 1 When we refer to any of the 'Universal Standards' for quality, we mean the Universal Standards for colour and leaf grade, adopted under the Universal Cotton Standards Agreement existing between us and the United States Department of Agriculture.
- 2 The Association will hold a complete set of 'Universal Standards'. Individual Members can inspect them during our office hours. They may be used in settling arbitrations and appeals.
- 3 The Standards will be available for regular inspection by the Quality Appeal Panel. If they ever consider that any standard has changed, the Panel will take action.

### **Bylaw 343**

- 1 'ICA Official Standards' are those that have been approved by the Directors and confirmed by the Association.
- 2 The Association will hold the standards. Individual Members can inspect them during our office hours. They may be used in settling arbitrations and appeals.
- 3 The Standards will be available for regular inspection by the Quality Appeal Panel. If they ever consider that any standard has changed, the Panel will take action.
- 4 The Directors will approve changes to the standards after considering comments of the Quality Appeal Panel. We will give each Registered Firm and Individual Member 14 days (two weeks) written notice of proposed changes. We will then confirm the changes. The new standards will come into effect the day after they have been confirmed. They will apply to contracts made on or after that date.
- 5 New standards for growths or grades of cotton will be used as soon as we have confirmed them.

### **Application of value differences to disputes**

#### **Bylaw 344**

- 1 Unless Bylaw 348 or Bylaw 354 applies, or the firms in dispute agree otherwise, quality arbitration Awards will be based on the differences in value fixed by the Value Differences Committee.
  - In the case of CIF and CFR contracts, the value difference that will apply will be the difference on the date of arrival of the cotton.
  - In the case of FOB contracts, the value difference that will apply will be the difference on the date of the bill of lading or other document of title.
  - In all other cases, the value difference that will apply will be the difference on the day the buyer receives title to the cotton.
- 2 Value differences take effect from the start of the day after they are published.
- 3 If differences are not fixed, Awards will be based on the differences in value in a market appropriate to the contract. The arbitrator or arbitrators, or umpire, or Quality Appeal Committee will decide the appropriate differences.
- 4 Where non-USA cotton is sold on the basis of Universal Standards (USDA grades) then ICA USA Other American Raingrown Value Differences shall apply for grade and staple. This shall not apply for growths that are already described in the ICA Value Differences Circular in terms of Universal Standards.
- 5 The above methods will be used to calculate an Award.

#### **Bylaw 345**

- 1 In quality arbitrations, Awards can be shown as cash amounts or they may be shown as fractions of the appropriate currency for the weight specified in the contract.
- 2 In CIF and similar contracts, the Awards for grade and staple length will be shown separately. This does not apply to contracts for cotton linters or cotton waste.

### **'Average grade'**

#### **Bylaw 346**

- 1 Arbitration on cotton sold as average for any particular grade will be settled by classing the different lots. Grades or fractions of grades will be sorted into those above and below the grade's standard. Whatever turns out to be average will be passed. An allowance will be made on the rest.
- 2 This will apply unless the buyer and the seller agree otherwise.

### **Classification**

#### **Bylaw 347**

- 1 If a firm appeals against a quality arbitration Award and pays the extra set fee, the Quality Appeal Committee will issue a certificate showing the true classification breakdown for grade, colour or staple length.
- 2 American Upland Cotton  

The colour and leaf grade of American Upland cotton will be classified under the 'Universal Standards'.

American Pima Cotton

The grade and colour of American Pima cotton will be classified under the official cotton standards of the USA.

In both cases, staple length will be classified under the terms of the United States Department of Agriculture standards.
- 3 Non-American Cotton  

In the case of a growth for which we have 'ICA Standards', grade will be classified by those standards. Staple length will be classified under the terms of the United States Department of Agriculture standards.
- 4 Anyone who wants cotton to be classified must ask at the same time as they apply for an appeal.
- 5 Classification will only refer to the bales sampled.

### **Cotton which is outside the normal quality range**

#### **Bylaw 348**

- 1 In arbitrations and appeals on cotton which is outside the normal quality range of its relevant growth, the intrinsic value of the cotton will be established. That value will be taken into account in arriving at an Award. In cases where the value cannot be determined, arbitration will be based on the contract price.
- 2 In arbitrations and appeals on cotton waste, linters, pickings and so on, arbitration will be based on the known value. Arbitration will be based on the contract price if the actual value cannot be established.
- 3 The arbitrator or arbitrators, or umpire and an appointed Quality Appeal Committee can take advice or evidence from firms or individuals who are connected with the cotton trade and are experts in cotton waste, linters, pickings and so on.

## **Anonymous arbitration**

### **Bylaw 349**

- 1 Anonymous quality arbitration means that we will not disclose the names of the firms in dispute, or the arbitrators' and umpire's names.
- 2 If a dispute about quality arises and both firms agree that it should go to anonymous quality arbitration, the following paragraphs are exceptions to the general arbitration procedure.
- 3 Either firm can apply for anonymous arbitration by writing to the Secretary. They must explain the point at issue and give proof that the other firm is in agreement with the request.
- 4 Those asking for the arbitration must give information about the status of the firms to the Secretary, to enable fees and charges to be set.
- 5 When the President receives the proof, he will appoint two Individual Members as arbitrators. If the arbitrators cannot agree on an Award within 21 days (three weeks) of being appointed, the President will appoint an umpire.
- 6 The President can appoint a new arbitrator or arbitrators or umpire in either of the following situations:
  - if an arbitrator or umpire dies during the arbitration process, refuses or becomes unable to act; or
  - if an umpire does not give his written decision on any matter referred to him by the arbitrators within seven days (one week) of him being asked to do so by either of them.
- 7 The arbitrators and umpire will not be given the names of the firms in dispute, and the firms will not be given the arbitrators' and umpire's names.
- 8 The Secretary will be responsible for giving any relevant selling type and samples, or the test results, and contract extracts to the arbitrators and umpire. The extracts will only be those which refer to quality. For manual arbitration he will replace the seller's type and samples identification marks with numbers before they go to the arbitrators and umpire.



- 9 Awards must be made on special forms. If all fees and expenses have been paid, we will send the Award to the firms in dispute. The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Tribunal or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## Quality Arbitration Awards

### Bylaw 350

- 1 An Award shall be made in writing on our official form, dated and signed by the arbitrator(s) or the umpire as applicable. The Chairman or Deputy Chairman and the Secretary of the appeal committee must sign an appeal Award.
- 2 A quality Award will not contain reasons for the Award.
- 3 Any Award shall state that the seat of the arbitration is in England and the date by which we must receive notice of appeal.
- 4 All Awards made under our Bylaws will be treated as having been made in England, regardless of where matters were decided, or where the Award was signed, despatched or delivered to the firms in dispute.
- 5 We will stamp every Award in our offices on the date of the Award, and apply the scale of fees laid down in Appendix C of the Rule Book.
- 6 An Award will only become effective and binding when we stamp it.
- 7 After we stamp an Award, we will notify all of the parties concerned.
- 8 The Award will only be released upon payment of the stamping fee and any outstanding fees, costs and expenses.
- 9 The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Tribunal or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## Interest on Awards

### Bylaw 351

The arbitrator(s), umpire or Quality Appeal Committee can award simple or compound interest from such dates and at such rates as they consider just.

## Quality Appeals

## **Bylaw 352**

- 1 If either firm disagrees with an arbitrator's or arbitrators', or umpire's Award, it can appeal within the period allowed in the Award. It must send Notice of Appeal to us in writing. The reasons for appeal must be given when the appeal is made. The Chairman or Deputy Chairman of the appeal committee will then set the dates by which any further reasons or responses must be received.
- 2 We can demand an application fee set by the Directors. Details are laid down in Appendix C of the Rule book. We must receive these amounts within 14 days (two weeks) of the date of our invoice or the appeal will be dismissed.
- 3 This Bylaw does not apply to disputes over the costs of arbitration.
- 4 The appeal will be heard by a Quality Appeal Committee ('appeal committee') to be selected from the Quality Appeal Panel elected annually. The members of the Quality Appeal Panel will select a Chairman and Deputy Chairman. The Chairman and Deputy Chairman will select from the panel no less than two and no more than four of the members who are considered most qualified to judge the growth concerned to form a Quality Appeal Committee.
- 5 The appeal committee will not hear an appeal before the end of the period allowed to appeal unless both firms agree, or both have appealed.
- 6 The appeal committee can allow new evidence to be put forward covering all of the matters in dispute, unless the appeal refers to an instrument test arbitration, in which case the information contained in the last test report will be final.
- 7 The appeal committee will decide the issues by a simple majority vote. Every member, including the Chairman and Deputy Chairman will have one vote. If both sides have the same number of votes, the Chairman will vote again to decide the issue.
- 8 A Director cannot be involved in any decision about an appeal or be on an appeal committee if he has acted as an arbitrator or umpire in the dispute, or substantial injustice could result.
- 9 An Individual Member cannot be on an appeal committee if he has acted as an arbitrator or umpire in the dispute, or substantial injustice could result.

## **Bylaw 353**

- 1 Before it refers to the decision of the arbitrators, a Quality Appeal Committee must conduct an assessment of the cotton, or, in the case of instrument testing, the test report, and form an opinion. But, before making its final decision, the committee must refer to the arbitration Award.
- 2 If new arguments are offered to do with jurisdiction or the terms of the contract regarding quality, which have not been the subject of a technical arbitration or appeal, the committee will reach a decision and make an Award based on the evidence.
- 3 However, in appeals against Awards under Bylaw 349:

- the names of the parties to the contract and the parties appealing will not be disclosed to the Quality Appeal Committee at any stage;
- if either party presents a previous appeal Award, or arbitration Award if there has been no appeal, there must also be a letter with it guaranteeing that the lot which is the subject of the appeal to us is the lot, bale for bale, which the previous Award was for; and
- the committee can refer to the arbitration or appeal decision before giving its Award, but will not be bound by them.
- The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Quality Appeal Committee or parties to the Secretariat, prior to the publication date (one week's notice) for a fee.

## Appeals on arbitrations conducted elsewhere

### Bylaw 354

- 1 If a manual quality arbitration was conducted under the rules of another Association, an appeal can still go to the Quality Appeal Panel. However, this must be agreed in writing by the firms in dispute.
- 2 The appeal Award will be based on the value differences used for the arbitration Award, but the cotton will be judged against the appropriate 'Universal Standards' or 'ICA Standards'. If no other value differences are available, our differences will apply.
- 3 Appeals must be lodged within the time limits laid down in the rules of the association under which the arbitration was held.
- 4 The samples for the appeal must be the same samples that were used in the arbitration. They must be sealed as the authentic samples and they must be signed as being so. The samples must then be sent to us. They must come with a statement saying whether the arbitration was held under natural or artificial light.
- 5 If an instrument test arbitration was conducted under the rules of another association, an appeal can still go to the Quality Appeal Panel. However, this must be agreed in writing by the firms in dispute. Bylaw 352 will then apply.
6. The Association will keep an original version of every Award and produce two other original versions. The Secretariat will courier one (and E-mail a PDF copy) of these original versions to each party when the Award is released, whilst sending an electronic copy of the Award to each arbitrator upon publication. Further originals of the Award can be produced upon the written request of the Quality Appeal Panel or parties to the Secretariat, prior to the publication date.

## Amicable settlements

### Bylaw 355

- 1 If firms in dispute achieve a settlement prior to commencement of arbitration, but require a record in the form of an Award, they may agree jointly on appointing a sole arbitrator to make an award recording the agreed settlement.
- 2 If firms settle their dispute after arbitration has commenced, they must inform us immediately. The sole arbitrator, tribunal or appeal committee will then not make any Award unless they are asked to record the settlement in the form of an Award, and they agree to do so.
- 3 If the sole arbitrator, tribunal or appeal committee makes an Award, it will have the same status and effect as any other award, except that the Parties forego the right of appeal in consideration that they agreed to be bound by the terms of the settlement agreement when requesting it to be converted to an Award. There is no right of appeal.
- 4 Any outstanding fees and expenses of the sole arbitrator, tribunal or appeal committee, and any stamping charge set by us must be paid.
- 5 Where money has been deposited with us under Bylaw 358 (4) or Bylaw 312 (2) by way of deposit against any fees, costs or expenses in connection with or arising out of the arbitration or the appeal (as the case may be), the tribunal or appeal committee shall determine what, if any, proportion shall be refunded. Such determination shall take account of the amount of work undertaken, and/or legal fees incurred by the tribunal or appeal committee at the date they receive notice of the settlement.

## Fees and Charges

### Application fees for arbitrations

#### Bylaw 356

- 1 The application fees set by the Directors for arbitrations are laid down in Appendix C of the Rule Book. Any changes to Appendix C take effect when the Directors decision on the fee is made and posted on the ICA website, without the need to refer the amendment(s) to an Extraordinary or other General Meeting of the Association for confirmation of the change(s) concerned.
- 2 A dispute may cover more than one contract, but a firm will have to pay us a separate application fee for each arbitration.

### Application fees for appeals

#### Bylaw 357

- 1 The application fees set by the Directors for appeals are laid down in Appendix C of the Rule Book.

- 2 If they think it is appropriate, the Directors can reduce the amount of the application fee, or refund all or part of it.

## Other Fees and Charges - Technical

### Bylaw 358

- 1 Arbitrators, including technical appeal committee members, shall be entitled to charge fees which shall be fixed by reference to the total amount of time reasonably devoted by each arbitrator/technical appeal committee member to the arbitration/appeal and shall be in accordance with the following scale or such scale as shall be determined by us from time to time:
  - An hourly rate shall be charged up to a maximum of £150 per hour.
  - Fractions of an hour after the first hour shall be charged pro rata.
  - A minimum fee of £100 shall be payable to each arbitrator.
  - An additional fee of £250 per arbitration will be payable to the Chairman.
- 2 The Chairman of the tribunal and the Chairman of a technical appeal committee shall be entitled to increase the above fee scale, and charge fees at a reasonable rate within their discretion in arbitrations/appeals of extraordinary complexity and/or value.
- 3 Where the tribunal or technical appeal committee find it necessary to obtain legal advice on any matter arising from an arbitration or appeal, reasonable legal fees thereby incurred will be payable as directed in the Award.
- 4 At any time after the receipt by us of 'the Request' and from time to time thereafter, the Chairman of the tribunal may demand that sums of money be deposited with us by any party to the dispute, by way of deposit against any fees, costs or expenses in connection with or arising out of the arbitration. Failure by any party to pay any such sums shall entitle the tribunal to suspend or discontinue the arbitration proceedings until such sums are paid.
- 5 When an Award is presented for stamping in accordance with Bylaw 309 each arbitrator or technical appeal committee member shall invoice us for all fees, clearly stating their applicable hourly rate. Arbitrators are required to submit a time sheet in a format approved by the Directors.
- 6 The only expenses an arbitrator or technical appeal committee member shall be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt. Arbitrators may claim any reasonable; travel expenses, accommodation, subsistence rate, charges and per diem travel rate explicitly agreed in advance with both parties.
- 7 The payment of fees and expenses to arbitrators and technical appeal committee members is conditional upon the Association's receipt of the time sheet.
- 8 Subject to the foregoing, arbitrators and Appeal Committee members shall be entitled to prompt payment of fees and expenses following release of the Award. If, following a review under Bylaw 359 the Directors determine that any fees or

expenses are unreasonable, the arbitrators and technical appeal committee members shall act in accordance with the decision of the Directors.

#### **Bylaw 359**

- 1 If, once an award is released, a firm or the Secretariat considers that the fees and expenses charged are unreasonable, it can ask the Directors to review the amounts, giving its reasons for the request in writing. The Directors will decide how much is to be paid.
- 2 We must receive notice of a request under this Bylaw within 21 days (three weeks) of the award being released.

#### **Bylaw 360**

- 1 The general principle is that costs follow the event, but subject to the overriding discretion of the tribunal and appeal committee as to which party will bear what proportion of the costs of the arbitration.
- 2 In the exercise of that discretion the tribunal shall have regard to all the material circumstances, including such of the following as may be relevant:
  - Which of the issues raised in the arbitration has led to the incurring of substantial costs and which party succeeded in respect of such issues.
  - Whether any claim which partially succeeded was unreasonably exaggerated.
  - The conduct of the party which succeeded on any claim and any concession made by the other party.
  - The degree of success of each party.

### **Other Fees and Charges - Quality**

#### **Bylaw 361**

- 1 Quality arbitrations
  - The lowest fees for quality arbitrations are laid down in Appendix C of the Rule Book however the arbitrators may charge more.
  - Both firms are liable to pay a fee. The arbitrators will apportion the fees payable by each firm.
- 2 Quality appeals
  - The lowest fees for quality appeals are laid down in Appendix C of the Rule Book, however the appeal committee may charge more.
  - Each firm appealing will be liable to pay a fee. The appeal committee will apportion the fees payable by each firm.
- 3 Cotton waste, linters and pickings

The quality arbitration and appeal fees on cotton waste, linters and pickings are the same as the fees for quality arbitration and appeals on cotton.

4 Classifications

The fee for classification under Bylaw 347 is laid down in Appendix C of the Rule Book. Only the firm asking for the classification will have to pay the fee.

**Bylaw 362**

- 1 If an umpire is appointed in a quality arbitration, he will receive an amount equal to 50% of the lowest fee to be paid for quality arbitration by a Principal Firm.
- 2 The arbitrator whose Award/findings vary the most from that of the umpire will be liable to pay the umpire fees from his fee. If there is equal disagreement, each arbitrator will pay half. In a quality appeal, the appeal committee will decide which arbitrator has to pay the umpire.

**Bylaw 363**

- 1 If, once an Award is released, a firm considers that the fees and expenses charged by the arbitrator or arbitrators, umpire or appeal committee are unreasonable then it can ask the Directors to review the amounts. The Directors will decide how much is to be paid.
- 2 We must receive notice of a request under this Bylaw within 14 days (two weeks) of notice of fees and expenses being given or the Award being released, whichever is the earlier.

**Stamping charges**

**Bylaw 364**

- 1 The stamping charges are laid down in Appendix C of the Rule Book. The rate to be paid will be in line with the firm's registration status on the date of the contract giving rise to the dispute. If a firm has been suspended or expelled from registration, or has been refused re-registration since arbitration was commenced, it must pay the non-registered rate.
- 2 Quality arbitrations and appeals  
  
In a quality arbitration both firms will be liable to pay a stamping charge but the arbitrators will apportion the charge payable by each firm.  
  
In a quality appeal under Bylaw 354 each firm appealing will be liable to pay any stamping charge but the appeal committee will apportion the charge payable by each firm.

**Liability for payment of fees**

## **Bylaw 365**

If a Principal Firm appoints an arbitrator or umpire for one of its subsidiary firms that is not a registered firm, and the non-registered firm fails to pay, the Principal Firm will be liable for any arbitration, umpire and stamp fees due.

## **Unfulfilled awards and defaulting parties**

### **Reporting**

#### **Bylaw 366**

- 1 If the Association receives written advice from a party to an Award, (“the Reporting party”) or from their representative that an Award has not been complied with by the other party to the Award (“the alleged defaulter”), the Directors are to be informed.
- 2 Before acting on such advice, the Secretary shall write to the alleged defaulter notifying them of the Directors’ intention to list their name unless, within a period of 14 days (two weeks), the alleged defaulter provides them with compelling reasons not to do so. The Directors shall consider any reasons submitted by the alleged defaulter before deciding whether or not the information received from the Reporting Party should be circulated.
- 3 The Directors may pass on the name of the defaulting party to Individual Members, Member Firms, Member Associations of the Committee for International Co-operation between Cotton Associations (CICCA) or any other organisation or person by any method it chooses, including the listing of the name of the defaulter and appropriate details in the publicly accessible area of the Association’s website.
- 4 If the Directors so decide, this information and any other appropriate information will be circulated on a list of unfulfilled Awards, to be known as the ‘ICA List of Unfulfilled Awards: Part 1’.
- 5 If the Association receives written advice that a party has made an application to the English High Court for leave to appeal an Award, the Directors may, at the request of the Reporting Party, circulate a notice to Individual Members and Member Firms, and Member Associations of the Committee for International Co-operation between Cotton Associations (CICCA) advising the name of the party and that an award remains unfulfilled pending the outcome of the High Court judgement. When requested, the party shall be obliged to demonstrate to the satisfaction of the Directors that the action is progressing to a conclusion, failing which the Directors may add the party’s name to the List of Unfulfilled Awards: Part 1 until the outcome of the High Court appeal is announced or the award is settled to the satisfaction of the Reporting Party.
- 6 The Directors may also at any time circulate to Individual Members, Member Firms, and Member Associations of the Committee for International Co-operation between Cotton Associations (CICCA), a notice advising them of any entity which appears to be related to a defaulter. Such notice shall be known as the ICA List of Unfulfilled Awards: Part 2.



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- a Where the party requesting the issue of an ICA List of Unfulfilled Awards: Part 2 is not the Reporting party who has provided the advice referred to in paragraph (1) above (“the Advising party”) the Secretary will write to the Reporting party notifying them of the request and seeking comments within seven days (one week).
  - b After receipt of comments, if any, from the Reporting party, the Secretary may write to the defaulter and other parties that it proposes to name in the ICA List of Unfulfilled Awards: Part 2, informing them of the proposed contents of the List and asking them to provide evidence to rebut the contents of the same within 14 days (two weeks).
  - c The Directors will consider any comments or evidence received under paragraph (7a) and paragraph (7b) above and will decide whether or not an ICA List of Unfulfilled Awards: Part 2 ought to be issued.
- 8 The Reporting party has responsibility for the accuracy of the information supplied directly to the ICA under this Bylaw and shall indemnify and hold harmless the Association and its Directors from and against all liabilities, damages, costs and expenses incurred by them or either of them by reason of any inaccuracy in such information. The reporting party shall inform the Association immediately should the Award be settled to enable the party to be removed from the List of Unfulfilled Awards.
- 9 The Advising party has responsibility for the accuracy of the information supplied directly to the ICA under this Bylaw with regard to paragraph (6) and paragraph (7a) above and shall indemnify and hold harmless the Association and its Directors from and against all liabilities, damages, costs and expenses incurred by them or either of them by reason of any inaccuracy in such information.
- 10 The parties to any arbitration shall be deemed to have consented to the Directors taking the action set out in this Bylaw.

# **Section 4: Administration Bylaws**

## Section 4: Administration Bylaws

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# ADMINISTRATION BYLAWS

## Membership and registration

### Bylaw 400

Applications for membership must be made on forms approved by the Directors. The forms are available from the Secretary.

### Bylaw 401

Individual Members and Registered Firms must write to the Secretary at once if any of the information presented to the Association in their application changes. If the Secretary asks an Individual Member or Registered Firm to confirm that the information they gave in their application is still correct, they must reply immediately.

### Bylaw 402

If the Directors suspend a Registered Firm, the following will apply:

- In the case of a Member Firm being suspended, that Member Firm would not be allowed to arbitrate on disputes where the contracts are dated during the suspension period. This includes related companies to that Member Firm.
- Contracts involving a Member Firm that has been suspended which predate the suspension date will be accepted for arbitration during the suspension period but at the non-members rate, for the suspended member.

### Bylaw 403

The conditions for registration are laid down in the Articles of Association.

### Bylaw 404

- 1 Each year Member Firms will pay the registration fee set by the Directors.
- 2 All Member Firms are entitled to receive a current copy of our Bylaws and Rules and all later amendments.
- 3 The Directors may cancel the registration of a Member Firm but will refund the registration fee paid, proportionate to the unexpired period in the year in which cancellation is effected.

### Bylaw 405

- 1 A **Principal Firm** is either a Merchant or a Producer or Mill.

Applications for registration must be proposed and seconded by Individual Members of the Association.

Each firm will have at least one Individual Member.

Principal Firms may apply to register any of their related companies as a Related Company. There is no limit on the number of Related Companies a Principal Firm may register, but no more than five will pay the fee set by the Directors.

- 2 An **Affiliate Industry Firm** is a firm or organisation that provides a service to the cotton trade.

Applications for registration must be proposed and seconded by Individual Members of the Association.

Each firm will have at least one Individual Member.

Affiliate Industry Firms may apply to register any of their related companies as a Related Company. There is no limit on the number of Related Companies an Affiliate Industry Firm may register, but no more than five will pay the fee set by the Directors. The relationship between Affiliate Industry Firms and Related Companies will be kept confidential.

- 3 An **Agent Firm** is any firm that provides an agency service so as to bring a Principal Firm into contractual relationships with other parties.

Applications for registration must be proposed and seconded by Individual Members of the Association.

Agent Firms will not be entitled to have an Individual Member.

- 4 An **Affiliated Association** is any recognised association related to the cotton industry that declares its support of the principles of the ICA and its Bylaws and Rules.

Applications for registration must be made in writing to the Directors.

- 5 An **Association Member Firm** is any producer or mill that is also a member of an Affiliated Association.

Applications for registration must be proposed and seconded by Individual Members of the Association.

Association Member Firms will not be entitled to have an Individual Member.

#### **Bylaw 406**

- 1 An Individual Member, Principal Firm, Related Company or Association Member Firm cannot resign if:

- he or it is involved in arbitration arising out of a contract governed by International Cotton Association Bylaws or Rules or ICA arbitration; or
- there is an unfulfilled quality or technical arbitration or appeal award against them, made under our Bylaws.

- 2 Paragraph (1) does not take away the Directors' right to suspend or expel an Individual Member or Member Firm found guilty of an offence at any time under the Articles.

- 3 The Directors may cancel the registration of an Individual Member and may refund the registration fee paid, proportionate to the unexpired period in the year in which cancellation is effected.
- 4 If any Individual Member or Registered Firm resigns, but the Directors do not accept the resignation, the Individual Member or Registered Firm will lose all rights and privileges that they get from membership or registration. They will not be able to withdraw from or avoid arbitration arising from contracts they have entered into.
- 5 The loss of rights and privileges will not prevent another firm seeking arbitration on claims arising out of existing contracts.

## Committees

### General

#### Bylaw 407

Individual Members who are entitled to do so can put their own names forward to serve on Members' Committees. They do not need to be proposed or seconded. With the exception of the Arbitration Strategy Committee, committees and their Chairmen will be appointed annually by the Directors.

#### Bylaw 408

Committees must act efficiently but can run in any way they choose, including:

- meetings;
- telephone discussions;
- teleconferences;
- e-mail exchanges and
- video conferences.

#### Bylaw 409

- 1 The below committees will comprise the number of persons as stipulated in the table. A quorum is the lowest number of members of the committee needed to be present before any valid business can be performed.

	Appointed members	Persons needed to form a quorum
Arbitration Strategy Committee	See Bylaw 410	5
Rules Committee	12	5

- 2 Representatives of CICC Member-Associations may be appointed to serve on the Rules Committee whenever common regulations are under consideration under the Articles. But, they cannot be Chairman or Deputy Chairman of the Committee unless they are an Individual Member of the ICA.
- 3 With the exception of the Arbitration Strategy Committee, membership of committees will only last for one year. A retiring member will be eligible for re-appointment.

### Arbitration Strategy Committee

#### Bylaw 410

- 1 The Arbitration Strategy Committee will comprise up to 10 members who must all be fully qualified arbitrators.
- 2 Half of the Committee will be elected by all fully qualified arbitrators, and the other half will then be appointed by the Directors. This will occur every three years.
- 3 Membership of the Committee will last for three years. A retiring member will be eligible for re-election or re-appointment.
- 4 The Chairman will be appointed by the Directors.
- 5 In their absolute discretion and after consulting with the Arbitration Strategy Committee; the Board of Directors, may appoint up to five further members for a three-year term of office, from amongst those who have a demonstrable knowledge of arbitration and who can contribute to the discussion of the Arbitration Strategy Committee at a strategic level. These persons will not be eligible to chair Tribunals, Technical Appeal Committees or other ICA arbitrations. They will only be eligible to attend extended meetings of the Arbitration Strategy Committee which are mainly or wholly devoted to strategic arbitration issues.

### Value Differences Committee

#### Bylaw 411

- 1 The Value Differences Committee will comprise up to 4 members appointed by us, up to 4 members appointed by Bremer Baumwollboerse and up to 8 further Individual Members appointed by the Directors from those expressing interest.
- 2 The Value Differences Committee can agree to add Individual Members or non-Members to the committee. The people they nominate will have the same voting rights as appointed members.
- 3 The Value Differences Committee will consult at least once in each four-week period. The Chairman can call meetings more often.

- 4 As long as the Chairman approves, members of the Value Differences Committee can ask an alternate to attend. The alternate:
  - must be from the same firm as the member;
  - may be an Individual Member or a person other than an Individual Member; and
  - can vote at committee meetings.

## **Quality Appeal Panel**

### **Bylaw 412**

- 1 A Quality Appeal Committee can agree to add any Individual Member to the committee to advise them on cotton submitted to them. The person drafted on will be seen as a committee member when judging that case.
- 2 Each firm cannot have more than one vote at any of the Quality Appeal Committee meetings. A representative of the American Cotton Shippers Association may be appointed to serve on Quality Appeal Committees whenever “American Cotton”, American/Pima varieties, or other cotton which has been traded by a member of the American Cotton Shippers Association is concerned. But, he cannot be Chairman or Deputy Chairman of a committee.
- 3 This Bylaw does not apply to contracts for the shipment of American cotton from any place in the United States of America.

### **Bylaw 413**

No more than two members of the same firm may be appointed from the Quality Appeal Panel to any one Quality Appeal Committee.

### **Bylaw 414**

Candidates for membership of the Quality Appeal Panel must work in the cotton trade.

## **Disciplinary Procedures**

### **Bylaw 415**

- 1 A Member Firm that enters into a contract for the purchase or sale of raw cotton or for the provision of services with or on behalf of an individual, firm or company listed on the CICC and ICA List of Unfulfilled Awards (that contract being concluded on or after the day following notification of the listing of the company) or entering into a contract for the purchase or sale of raw cotton or for the provision of services with the intention of circumventing the ICA List of Unfulfilled Awards, shall be subject to an investigation and any disciplinary procedures as laid down in the Articles.
- 2 If a newly elected Member Firm has an outstanding contract with a party whose name appears on the CICC and ICA List of Unfulfilled Awards, within seven days



(one week) of their election, the Member Firm shall provide the Directors with a copy of that contract or contracts showing the date, reference number and estimated date of fulfilment of that contract, with any confidential information redacted as required. Subject to compliance with the above, the provisions of paragraph (1) above shall not apply to that contract or contracts

3. If a Member Firm wishes to trade with a party against whom it has an outstanding award listed on the CICCA and ICA List of Unfulfilled Awards: Part 1 with the sole purpose of settling that award then that Member Firm will be required to advise the Directors in writing of that intention. Within seven days (one week) of entering into a contract or contracts for that purpose, the Member Firm shall provide the Directors with a copy of that contract or contracts showing the date, reference number and estimated date of fulfilment of that contract and the relevant settlement agreement, with any confidential information redacted as required. In addition, they should provide supporting correspondence giving evidence of the settlement agreement. Subject to compliance with the above, the provisions of paragraph (1) above shall not apply to that contract or contracts.
4. If a Member Firm has an outstanding contract with a party whose name subsequently appears on the CICCA and ICA List of Unfulfilled Awards, within seven days (one week) of the listing, the Member Firm shall provide the Directors with a copy of that contract or contracts showing the date, reference number and estimated date of fulfilment of that contract, with any confidential information redacted as required. In addition, they should provide supporting correspondence giving evidence of the settlement agreement. Subject to compliance with the above, the provisions of paragraph (1) above shall not apply to that contract or contracts.

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