

# Bylaws and Rules of The International Cotton Association Limited

This Rule Book was amended by our Members on 6<sup>th</sup> October 2021, the amendments came into force on 1<sup>st</sup> January 2022.

The Bylaws and Rules in this book supersede all previous Bylaws and Rules, with the following exception: Any Rule in Section 2 which conflicts with any contract term agreed before the Book came into force.

## Preface to Rule Book

We highlight some of the key principles of ICA Bylaws and Rules. The following ideas underpin all that is contained in the cotton trading rules. We strongly urge you to read the complete Bylaws and Rules which always take precedence in determining the outcome of any dispute.

- ICA arbitration is an impartial means of resolving contractual disputes. It is based on the concept of 'No Fault' dispute resolution. The purpose is not to apportion blame or to find fault, but rather to restore both parties to the position that they would have been in, to the extent that is possible, had the contract been fully executed.
- These Bylaws and Rules stipulate that if the contract has not been or will not be performed for any reason, it will not be cancelled, but the contract shall be invoiced back in accordance with the Rules in place at the date of the contract.
- Contract sanctity is at the centre of the ICA Bylaws and Rules. This means that, in the event of dispute between parties, the starting point for resolving their differences will be the terms of the contract agreed between them.
- Based on English Law, a contract is a legally binding agreement between two or more parties that defines and governs their rights and duties. Ideally the agreement will be contained in a formal contract, but it need not be written down. A contract can be evidenced from a verbal agreement, or correspondence between the parties in any form. Transparency and clarity of intent should be hallmarks of a cotton contract.
- In order that ICA arbitration may apply, the contract must include a clause that makes clear that parties will refer disputes to the ICA under these Bylaws and Rules.
- This volume has two components. ICA **Bylaws** are the mandatory provisions of the trading framework. They may not be changed or varied by the parties. The **Rules** contain terms which may be superseded within the contract by agreement of the parties.

This preface does not form part of the Bylaws and Rules of the International Cotton Association. It is intended to describe the purpose and principles on which both the trading rules, and dispute resolution, are based.

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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 Chair of a first tier tribunal or technical appeal committee. In order to be eligible to become a Chair 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 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, 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 their 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 "Controller" Means an independent 3rd party, inspection company, or experienced in cotton weighing, taring, sampling and surveying.

39 'Cotton waste' will be treated as cotton if it had been included in contracts which are subject to our Bylaws and Rules.

40 '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:

- a exposed to the weather; or
- b stored on wet or contaminated surfaces,  
prior to loading to trucks/containers or the vessel.

Country damage does not include:

- c any internal damage; or
- d any other contamination; or
- e any damage which takes place after loading to trucks/containers or the vessel.

41 'Date of arrival' will, depending on the context, have one of the following meanings:

- a 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.
- b 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.
- c For other means of transport it will be the date each delivery is made to the place stated in the contract.

- 42 '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.
- 43 'False packed bale' is a bale containing:
- substances which are not cotton; or
  - damaged cotton; or
  - good cotton on the outside and inferior cotton on the inside; or
  - pickings or linters instead of cotton
- 44 'Far East cotton' means cotton grown in Bangladesh, Burma, China, India or Pakistan.
- 45 'Fixed Price' is the value per unit the Buyer pays the Seller for cotton. The Fixed Price is arrived at in two ways:
- a The value per unit quoted at the time of the sale and stated as price per unit on the contract.
  - b 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.
- 46 'Foreign matter' means anything that is not part of the cotton plant.
- 47 'Full container load' and 'FCL' mean an arrangement which uses all the space in a container.
- 48 '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.
- 49 'House to', 'container yard to' and 'door to' mean loading controlled by the shipper at the place (house, CY or door) of their 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.
- 50 'ICA Bremen Certified Laboratory' means a laboratory certified by ICA Bremen.
- 51 'Immediately' means within three days.
- 52 'Institute Cargo Clauses' and 'Institute Commodity Trades Clauses' mean the clauses of the Institute of London Underwriters.
- 53 '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.

- 54 'Lot' is a number of bales placed under one mark.
- 55 'Lot number' is a group of bales within a shipment or delivery identified by the same mark or lot number. In the absence of marks or lot numbers, the lot number will be deemed to be the container or truck number
- 56 'Member Controller' means an 'Controller' that is a current active Member of the ICA.
- 57 'Mixed packed bale' is a bale containing many different grades, colour or staple.
- 58 '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.
- 59 'Micronaire' means a measurement of the combination of fineness and maturity of raw cotton fibre.
- 60 'No control limit' and 'NCL' mean that no control limit is allowed.
- 61 'Nominated Representative' Means a Company's own employee, or such qualified expert or any other entity entrusted to represent the appointing party's interests to act in matters of sampling, surveys, weighing and taring'
- 62 'On-board bill of lading' means a bill which is signed by the captain or their agent when the cotton has been loaded on the ship.
- 63 'Percentage allowance' means a percentage of the invoice price.
- 64 '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.
- 65 'Plated bale' is a bale in which a layer of very different quality cotton appears on the outside of at least one side.
- 66 'Point of destination' means the exact place where the cotton is delivered to the person who has ordered it, or is delivered to their agent, and where the carrier's responsibility ends.
- 67 'Point of origin' means the exact place where the carrier or their agent receives the cotton and where the carrier's responsibility begins.
- 68 'Prompt' means within 14 days (two weeks).
- 69 'Shipment' means the loading of cotton onto any means of transport for delivery from the seller or their agent to the buyer, or to a carrier who can provide a bill of lading or a combined transport document.

- 70 'Shipper's load and count' means the shipper is responsible for the contents of the container.
- 71 'Shipping' or 'shipped' means loading or loaded for shipment.
- 72 'Shipping documents' means the document of title showing how the cotton is to be shipped under the contract.
- 73 '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
- 74 '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.
- 75 '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.
- 76 'Tare' means the weight of wrapping, bands, ropes or wires used to cover cotton bales.
- 77 'To house', 'to container yard' and 'to door' mean delivery to the warehouse or mill selected by the person who booked the freight.
- 78 'To pier', 'to container freight station' and 'to container base' mean that the carrier will unload (de-van) at their warehouse in the port of destination, in a container freight station or container base.
- 79 '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.
- 80 '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 are governed by English law, deemed to have been made in England and any disputes about their interpretation or effect are to be determined by the exclusive jurisdiction of the English High Court. The Bylaws and Rules apply to all parties contracting under our Bylaws and Rules plus any others engaged in matters mentioned or connected to, the Bylaws in this Rulebook.

### Bylaw 102

- 1 If a contract is made under our Bylaws and Rules:
  - a all of the Bylaws in this book will apply to the contract and no amendment by the buyer and seller is allowed; but
  - b 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 and costs etc. in Appendix 'C' 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.
- 4 If there is any conflict or contradiction between a provision contained in the contract(s) and a provision of the Letter(s) of Credit (or other related payment instrument) the contracts(s) will have precedence over the Letter(s) of Credit and, for the purposes of determining any dispute, will be deemed to govern the terms agreed between the parties.

### 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:

- 1 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.
- 2 Unless the buyer and seller agree otherwise, a kilogram will equal 2.2046 pound weight (lb).
- 3 'He', 'him' and 'his' mean 'she', 'her' and 'hers' if necessary.
- 4 Words referring to people can also refer to firms if necessary.
- 5 Words in the singular also cover the plural. Words in the plural also cover the singular.
- 6 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.

#### **Bylaw 107**

- 1 The Association may at any time, and from time to time by Special Resolution, make, vary, alter or rescind Bylaws and Rules (not being inconsistent with any of the provision of the Articles) with the exception that any change to the appendices of the Bylaws and Rules can be made by Ordinary Resolution of the Directors.
- 2 If a claimant owes unpaid arbitrators or other fees to the ICA, they shall not be allowed to apply for or commence arbitration until the amount is paid in full.

#### **Bylaw 108 / 109**

- 1 The ICA management team has a quality assurance role with respect to ICA arbitration services.
- 2 Assisting where directed by the Tribunal or TAC concerned.
- 3 Ensuring that ICA Arbitrations are carried out in full compliance with the Arbitration Act, other relevant case law, accepted international best practise and in accordance with the Tribunal and TAC's directions.

- 4 Helping to collate the evidence, process submissions by the parties and make recommendations to the President for the allocation of arbitrators in accordance with the ICA BL&R.
- 5 Sustaining the timeliness and cost-effectiveness of ICA arbitration.
- 6 Reviewing arbitration awards before they are published and offering advice to the panel to assist in and avoidance of error.

In order to enable an effective and respected service to be available to the industry and to sustain the reputation of the ICA.

## 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:
  - a 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.
  - b 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.
  - c 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.
  - d 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.
- 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:

- 1 the Uniform Law on International Sales Act (1967); and

- 2 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:

- 1 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.
- 2 The fixation level and final price stated in the fixation confirmation for that fixed portion of cotton shall be binding upon both parties.
- 3 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):
  - a enters into an arrangement with their creditors or;
  - b has a receiver or administrator appointed to run their business; or
  - c is asked to wind up the company through a petition; or
  - d 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, they 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, they 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:

- 1 'Marine cargo insurance' and 'transit insurance' in line with the Institute Cargo Clauses (A) or Institute Commodity Trades Clauses (A);
- 2 'War Risks Insurance' in line with the Institute War Clauses (Cargo) or the Institute War Clauses (Commodity Trades);
- 3 '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:

- 1 There must be a policy document or certificate of insurance. This document or certificate must be produced as one of the shipping documents.
- 2 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 or controller 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:

a 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

b the cost of the survey

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

- 3 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:

- 1 So that the buyer can arrange insurance, the seller must give the buyer the necessary details of each shipment.
- 2 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 or controller 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:

a 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

b the cost of the survey if the loss is not covered by seller's insurance the seller must pay.

- 3 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:
  - a the buyer is responsible for marine insurance;
  - b the seller is responsible for booking the freight;
  - c the seller books the freight on a different ship from the one the buyer has asked for; and
  - d 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:
  - a the seller is responsible for marine insurance;
  - b the buyer is responsible for booking the freight;
  - c the buyer books the freight on a different ship from the one the seller has asked for; and
  - d 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**

1. 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.

- 2 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.
- 3 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 vessel. If the contract does not specify an allowable variation, the variation allowed will be 3%.

#### **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:
  - a For sales on call based any Intercontinental Exchange ('ICE') Cotton futures contract:
    - i The final price of cotton sold on call will be fixed based on the ICE Cotton futures contract month specified in the sales contract.
    - ii 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:

- iii 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.
- iv 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.

- b For a contract fixation deadline not linked to First Notice Day:
  - i 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.
- c For sales on call with reference to products other than an 'ICE' Cotton futures contract:
  - i The final price of cotton sold on call will be fixed based on the quotation of the product specified in the sales contract.
  - ii 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:

- iii Cotton must be fixed prior to the expiration of the product specified.
  - iv 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 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 in order to establish the "net weight.
- 2 For net landing weight contracts, the seller must declare the name of their Controller or nominated representative on the invoice. In the absence of any separate written instructions to the Controller or nominated representative, the nomination on the invoice will be considered to constitute a controlling appointment for weighing on arrival of the cotton.
- 3 Except where it is a custom of the trade that the buyer will pay the Controllers travel and sojourn cost, each party is responsible for the costs of their appointed Controller or

nominated representative. 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. Weighing to take place within normal Business Hours.

## **Weights**

### **Rule 216**

#### **1 Gross Shipping Weights**

- a** Gross shipping weights are arranged and paid by the seller. Unless otherwise agreed, the buyer has the option to supervise the weighing prior to expected date of shipment. If the buyer wishes the weighing be supervised, they must notify the seller the name of their Controller or nominated representative for weighing at the time of the contract and/or the issuance of shipping instructions. Weights should be ascertained within 28 days (four weeks) prior to expected shipment. The seller must invoice the buyer according to the weights supervised by the buyer's Controller or nominated representative prior to shipment. If the cotton is sampled by the seller after weighing, a weight allowance must be made for the samples taken.
- b** If the buyer fails to nominate a Controller or nominated representative prior to the shipment of the cotton, the seller will invoice the buyer, and the buyer must accept gross shipping weights final with no further claim.
- c** If the buyer has notified the seller of the appointment of a Controller or nominated representative, and the seller proceeds to shipment without allowing the buyer's Controller or nominated representative to supervise the ascertaining of the weights, either bale by bale or where agreed, by weighbridge, the buyer may present the seller with a weight claim for gross landed weights supervised by a Member Controller. Any claim must be presented in accordance with the Gross Landed Weights Rule 216.2.

#### **2 Gross Landed Weights**

- a** All cotton must be weighed by the buyer (for buyer's cost), under the supervision of the seller's Controller or nominated 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 vessel. If the cotton has already been sampled by the buyer, a weight allowance must be made for the samples taken.
- b** If the seller has failed to nominate a Controller or nominated representative prior to the arrival date of the vessel, the buyer may proceed unilaterally to appoint a Controller or nominated representative to proceed with the supervision of weighing of the cotton. The seller must accept the weight report provided by the

buyer's appointed Controller or nominated representative and the seller will be responsible for the controlling fees.

- c If the seller has notified the buyer of the appointment of a Controller or nominated representative, then the buyer or their Controller or nominated representative must notify the seller's Controller or nominated representative of the place, date and time of the weighing. If the buyer fails to comply with these conditions, with the result that weighing takes place, either bale by bale or where agreed, by weighbridge, without the seller's Controller or nominated representative being present, the landed weights shall be declared as the net invoice weight plus 1.5 percent.

### **3 Weighbridge Weights**

- a Either party must reply to any request for weighbridge weighing in writing within 72 hours (3 working days) of any request. Either party may reject such a request, and weighing must then proceed according to Rule 216.1 and Rule 216.2 above. on a bale by bale basis. However, the absence of any reply to such a request will be taken as consent to accept weighbridge weighing, and the appointed Controller or nominated representative will proceed accordingly.
- b If full/empty or empty/full weighbridge weighing (container or truck) is agreed by the parties, the party arranging the weighing must provide the other party's Controller or nominated representative a copy of the weighbridge calibration certificate unless it is agreed between the parties that the certificate is not required. The certificate must be valid at the time of weighing and issued by an accredited authority. Weighing 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 vessel for landed weight contracts and within 28 days (four weeks) of shipment for shipped weight contracts.
- c For container weighbridge weighing, the net weight must be established by the deduction of the actual container tare following full/empty or empty/full weighing of the container. Weighbridge weighing with a deduction of the declared container tare stated on the outside of the container is not permitted.

## **Bales Tare**

### **Rule 217**

- 1 Unless the seller declares and guarantees otherwise, all cotton must be sold on actual tare. The buyer can insist that the actual tare be established at the time of delivery during weighing.
- 2 If either party insists that actual tare be established after arrival (for Gross Landed Weight contracts) or prior to shipment (for Gross Shipping Weight contracts), at a time

other than when the weights are established, the costs incurred in ascertaining the tare and a tare tolerance must be agreed by the parties in advance.

### **3 Gross Shipping Weight Contracts**

- a The actual tare must be established within 28 days (four weeks) prior to the date of shipment of the cotton and must be carried out by the seller under the supervision of the buyer's Controller or nominated representative. This will then be the measurement of actual tare applied to the weight adjustment to establish the net weight.
- b If the buyer has notified the seller of the appointment of a Controller or nominated representative to establish actual tare, and the seller proceeds to shipment without allowing the buyer's Controller or nominated representative to certify the tare weights, the buyer may present the seller with a weight claim for tare weights certified by their Controller or nominated representative according to Gross Landed Weights. Any claim must be presented in accordance with Rule 216.2.

### **4 Gross Landed Weight Contracts**

- a If the seller has failed to nominate the Controller or nominated representative to establish the actual tare, the buyers may proceed unilaterally to appoint a Controller or nominated representative to establish the actual. The seller must accept the actual tare report provided by the buyer.
- b If the seller has notified the buyer of the appointment of a Controller or nominated representative, then the buyer or their Controller must notify the seller's Controller or nominated representative of the place, date and time to establish the actual tare. If the buyer fails to comply with these conditions, with the result that establishment of the actual tare takes place without the seller's Controller or nominated representative being present, then the seller is not obliged to accept the buyer's report for the actual tare, and the seller may declare invoice tare final.

#### **Rule 218**

- 1 To establish actual tare, a minimum of 3% of the bales, subject to a minimum of five bales of each type of tare of each invoice, must be determined.
- 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 of that type of tare in the shipment.
- 3 Repaired bales must be tared separately.

## **Quantity of Bales**

## **Rule 219**

- 1 In case of shipper's load and count, the seller is liable for the contents of the container, and for any variation from the invoiced bale quantity. Any claim must be supported by a report issued by the Controller or nominated representative stating each container serial number and seal number and certifying that the seal was intact.

## **2 Gross Shipping Weight Contracts**

- a If the buyer has requested that their Controller or nominated representative be present for the stuffing and sealing of containers in order to verify the quantity of bales to be shipped, and the seller proceeds to stuff and seal containers without the presence of the buyer's Controller or nominated representative, the buyer may subsequently present a claim for the quantity of bales landed in accordance with Rule 219.3.
- b If the buyer has failed to nominate a Controller or nominated representative prior to the stuffing of the container to verify the quantity of bales shipped, no further claim may be made by the buyer for the quantity of bales shipped.

## **3 Gross Landed Weight Contracts**

- a Devanning must occur immediately following unsealing of containers. Containers must not be left unsealed at any time prior to devanning. If the original seals are broken by customs or other authorities at port of entry prior to devanning, it is the final buyer's responsibility to arrange the opened containers to be resealed and new seal numbers provided to seller's Controller or nominated representative by the same customs or port authority.
- b If the seller has failed to nominate the Controller or nominated representative prior to the date of seal breaking and devanning, the buyers may proceed unilaterally to appoint a Controller or nominated representative to establish the quantity of bales landed. The seller must accept the buyer's Controller or nominated representative's report evidencing the quantity of bales landed.
- c If the seller has notified the buyer of the appointment of a Controller or nominated representative, then the buyer or their Controller or nominated representative must notify the seller's Controller or nominated representative of the place, date and time of seal breaking and devanning. If the buyer fails to comply with these conditions, with the result that the seal breaking and devanning takes place without the seller's Controller or nominated representative being present, then the seller is not obliged to accept the buyer's report evidencing the quantity of bales landed.

## **Rule 220**

The weight of the bales which are short landed, burst, or deemed unsuitable for weighment (as determined by the Controller or nominated representative of the sellers), will be calculated according to the average gross landed weight of the landed bales.

- 1 If less than 25% of each invoice is in good condition, the weight of these bales will be calculated according to the average invoice weight.
  - 2 If the buyer does not weigh the total shipment within 28 days (four weeks) of the date of the arrival of the vessel, 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 plus 1.5 percent.
  - 3 Unless otherwise agreed by the parties, proof of any variation in weight, must be sent to all parties within 49 days (seven weeks) of the date of shipment (for Gross Shipping Weight contracts) or date of arrival of the vessel (for Gross Landed Weight contracts).
  - 4 The Directors can extend any time limit stated in Rules 216, 217 and 219 but only if the firm concerned can show that substantial injustice would otherwise be done:
    - a because it could not reasonably have anticipated the delay; or
    - b 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.
- 5 Compensation for any variation of weight to be settled in accordance with Rule 211.

## 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 fiber 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 sellers 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 and any quality arbitration will be conducted on the basis of manual examination for grade and staple.

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

full grade – actual value difference

1.5 full grades – 1.25 x value difference

full grades – 1.5 x value difference

2.5 full grades – 1.75 x value difference

full grades – 2 x value difference

3.5 full grades – 2.25 x value difference

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 the final point of delivery or other location as determined between buyer and seller. The buyer's and seller's Controller or Nominated Representative 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 Controller or Nominated Representative 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 Controller or Nominated Representative.
- 3 In the event that either party fails to nominate their controller or nominated representatives within the 14 days (2 weeks) deadline and reply to the claim of the other, the other party may proceed with sampling by a Member Controller only.
- 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. If possible, the sample should be identified by mark and bale number or any other reference unique to the sampled bale. Unless otherwise agreed by the parties, samples drawn should be sealed by the buyer's and/or seller's nominated representatives.
- 2 For manual classification claims, instrument testing claims and/or arbitrations, cotton must be sampled 10% unless otherwise agreed. The samples must be representative of 10% of the bales that comprise each disputed 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 The following will apply when sampling bales to test for internal moisture:
  - a Samples of at least 150 grams must be taken from each bale to be sampled in accordance with timelines and procedures stipulated in Rule 223(1) to (5).
  - b Representative samples must be taken from 5% of the bales in each lot, mark, truck or container defined on the seller's commercial invoice or packing list (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.
  - c The samples must be sent immediately to a testing laboratory mutually acceptable to both parties.
- 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, they 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**

#### **Rule 227 Mixed pack bales**

- 1 The buyer must claim for mixed packed bales within six months (26 weeks) of the date of arrival of the cotton. The bales to be claimed must be set aside until any survey is completed.
- 2 Each party should appoint their nominated representative or Controller within 7 days (1 week) of the notification of the claim. Alternatively, the parties may agree the appointment of a joint controller. In the event that either party fails to nominate a controller or nominated representatives within the 7 days (1 week) of the notification of claim and reply to the claim of the other, the other party may proceed unilaterally with inspection by a Member Controller only.

- 3 The bales which are subject to any claim must be inspected jointly by the nominated representative(s) or Controller(s), or solely by the joint controller. During an initial inspection, unless the parties agree otherwise, a minimum of 5% of the bales subject to the claim must be selected by the nominated representative(s) or Controller(s) and a preliminary report issued to the buyers and the sellers. The reports must be issued within 3 working days following the last day of the preliminary survey.
- 4 If the parties are unable to resolve any claim within 10 days after the date of the preliminary survey report the claim will be settled as follows:
  - (a) Unless agreed otherwise, 50% of the bales that are subject to the claim must be selected at random by the nominated representative(s) or Controller(s);
  - (b) A joint full survey will be conducted by the nominated representative(s) or Controller(s), or a fully survey will be conducted by the joint controller, to segregate and determine the quantity of the “mixed packed” cotton found within the bales;
  - (c) The nominated representative(s) or Controller(s) must issue their report showing the pro-rata weight of the of the mixed packed cotton found within the claimed bales within 3 working days following the last day of the full survey;
  - (d) The pro rata weight of the “mixed pack cotton” is to be invoiced back to the seller based on the market value of the contracted quality on the 5th working day following the last day of the full survey.
- 5 Initially, each party will be liable for the fees of their appointed controller or nominated representative. If the parties have agreed on the appointment of a joint controller, the fees will be split equally at this stage between the parties. Following the final inspection, the controlling costs and substantiated expenses shall be apportioned between the parties based on the principle that costs follow the event.

#### **Rule 228 Internal Water Damage and Foreign Matter**

- 1 The buyer must claim for bales containing internal water damage (other than internal moisture, see Rule 230) or foreign matter within six months (26 weeks) of the date of arrival of the cotton. The bales to be claimed must be set aside until any survey is completed.
- 2 Each party should appoint their nominated representative or Controller within 7 days (1 week) of the notification of the claim. Alternatively, the parties may agree the appointment of a joint controller.

In the event that either party fails to nominate a controller or nominated representatives within the 7 days (1 week) of the notification of claim and reply to the claim of the other, the other party may proceed unilaterally with inspection by a Member Controller only.
- 3 The Controller(s) or nominated representative(s) of the buyer and seller shall proceed to select and survey the bales in order to segregate the internal water damaged cotton or foreign matter found within the bales. Failing an agreement, a minimum of 10% of claimed bales will be selected to be opened for the survey.

- (a) The nominated representative(s) or Controller(s) must issue their report showing the pro-rata weight and/or detail to segregate the internal water damage or foreign matter found within the claimed bales within 3 working days following the last day of the survey;
  - (b) The pro rata weight of any “internal water damage” or “foreign matter” cotton or contaminant segregated from the bales shall be invoiced back to the seller based on the invoice value of the contracted quality on the 5th working day following the last day of the survey.
- 4 Initially, each party will be liable for the fees of their appointed controller or nominated representative. If the parties have agreed on the appointment of a joint controller, the fees will be split equally at this stage between the parties. Following the final inspection, the controlling costs and substantiated expenses shall be apportioned between the parties based on the principle that costs follow the event.

#### **Rule 229 Country Damage**

- 1 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 by a Lloyd’s agent, a Member Controller or a qualified surveyor recognised by the insurance company of the sellers and the buyers 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.
- 2 In the event that one of the parties fails to appoint a Lloyd’s agent, a Member Controller or a qualified surveyor recognised by the insurance company 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, the other party may proceed with the survey following the appointment of a Member Controller.

#### **Rule 230 Internal Moisture**

- 1 Bylaws 337 to Bylaw 341 stipulate the timetables and procedures governing manual quality and instrument test-based arbitrations (covering any claim for internal moisture). 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 allowance given to the buyer will be based on the laboratory’s report. The allowance will be the difference between:
  - a the weight of the absolutely dry fiber in the lot plus the percentage of moisture regain set out in the contract; and
  - b 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.

#### **Rule 232**

In the event that the parties are unable to mutually agree a laboratory to verify any claim, either party may request the President of the ICA to nominate an ICA Bremen certified laboratory to issue a report for the testing of samples drawn. A list of the certified laboratories may be obtained from the ICA website. The President will provide a further 63 days (nine weeks) for the certified laboratory to produce the report and the final claim to be presented.

### **Extending time limits**

#### **Rule 233**

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:

- 1 because it could not reasonably have anticipated the delay; or
- 2 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 234**

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 235**

- 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 236 Strength and Allowances**

- 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 strength value, the allowances for bales which do not reach this minimum 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 237**

- 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 238**

- 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 239**

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 238 and 239 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 240**

Claims for consequential damages will not be allowed.

#### **Rule 241**

- 1 The arbitrators will set the invoicing back weight if:

- a the seller has not provided an invoice; or
  - b no actual weights are available; or
  - c 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/>*

# **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:
  - a 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.
  - b 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 (4) 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.
- 7 At least one week prior to the publication of an award the Tribunal or Appeal Committee must inform the Secretariat of the date of publication.
- 8 In the absence of a reply to the ICA by the Chair within three working days then the remaining arbitrators may, by majority agreement, instruct the ICA to act in lieu of the Chair's instructions.

## 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:
  - a the name, address including email address, telephone and facsimile number of the other party ("the respondent"),
    - i a copy of the contract signed by both parties; or
    - ii a copy of the arbitration agreement signed by both parties if not included in the contract; or
    - iii a copy of the contract with any additional supporting evidence,
  - b the name of their nominated arbitrator, or, if appropriate, the name of the sole arbitrator agreed by the parties, and
  - c 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:

- a 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.
  - b The claimant applies for arbitration referencing contract (s) that predate their placement on the Association's List of Unfulfilled Awards Part 1.
  - c Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.
  - d 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.
  - e 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 Chair 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 Chair'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 Chair of the tribunal within seven days (one week) of the appointment of the second arbitrator, whether appointed by us or the respondent. The Chair 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 their 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 themselves to the Association to act in accordance with the Bylaws and Articles.
- 7 If either firm:
  - a fails to nominate an arbitrator within 14 days (two weeks) of being requested to do so; or
  - b 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.
- 11 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.

- 12 If the President should have a possible conflict of interest, they 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, their 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, they cannot continue to act in whatever capacity they were appointed unless the Directors agree.
- 3 The President may revoke an appointment and appoint an alternative:  
  
if substantial injustice will be caused by them not doing so; or  
  
if requested to do so by either firm in the following circumstances:
  - a if they uphold an objection under Bylaw 304;
  - b if an appointed arbitrator dies, refuses or becomes unable to act;
  - c 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
  - d 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 Chair, having consulted their fellow arbitrators:

- a to determine whether the Tribunal has jurisdiction; and
- b to decide all procedural and evidential matters,

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

2 The Chair shall ensure the prompt progress of the arbitration, where appropriate by the making of Orders.

3 As soon as the Chair 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. When a Tribunal has agreed to placing an arbitration case 'on hold' (i.e. not currently active / 'in stasis') the Tribunal will ask that party if they wish the case to remain 'on hold' every six months. If a party does not respond to this communication, the Tribunal will inform that party to prosecute the arbitration within a specified time, failing which, the Tribunal will make an award or dismiss the claim

6 Decisions, Orders and Awards shall be made by all or a majority of the arbitrators, including the Chair. The view of the Chair 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.

#### **Bylaw 307 b**

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

- 1 the power to consolidate arbitral proceedings between the same legal entities with other arbitral proceedings, or ;
- 2 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;
- 3 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 Chair, having consulted their fellow arbitrators, shall decide the date, time and place of the hearing and the procedure to be adopted at the hearing.
- 2 The Chair, having consulted their 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:
  - a written submissions to be advanced by or on behalf of any party,
  - b examination of witnesses,
  - c disclosure of documents.
- 3 The Chair 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 Chair will be responsible for drafting the Award but can delegate this responsibility, based upon a majority decision if necessary, 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 parties to the Secretariat, prior to the publication date (one week's notice) for a fee.
- 10 Before an award publication date may be finalised, there are two procedural pre-requisites: A final draft of the award is to be received by the arbitration team; and any request for any additional deposits that may be required is circulated to the parties - both at least 7 days before the publication date. The publication date may be finalised only when both pre-requisites are met.

## 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:
  - a 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
  - b 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 or payment into an escrow account or for a bank guarantee within the deadline set by the Secretariat for the payments required under Bylaw 312(5). 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 their 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 they have not previously paid by way of a deposit in the Award they are appealing 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 Chair, having consulted their fellow arbitrators, shall decide the date, time and place of the hearing and the procedure to be adopted at the hearing.
- 2 The Chair, having consulted their 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:

- a written submissions to be advanced by or on behalf of any party,
  - b examination of witnesses,
  - c disclosure of documents.
- 3 The Chair 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 they have acted as an arbitrator in the dispute or if substantial injustice could result.
- 3 An Individual Member cannot be on an appeal committee if they have acted as an arbitrator in the dispute, or substantial injustice could result.
- 4 An appeal committee will consist of a Chair and four other people, who must be Individual Members when they are appointed. The Chair 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 Chair and three, or at the Chair'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 Chair 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 Directors decide 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 Chair will have one vote. If both sides have the same number of votes, the Chair will vote again to decide the issue.
- 12 The Chair 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

- a 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
  - b 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:
  - a the firms in dispute; or
  - b 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 parties to the Secretariat, prior to the publication date (one week's notice) for a fee.
- 14 Before an award publication date may be finalised, there are two procedural pre-requisites: A final draft of the award is to be received by the arbitration team; and any request for any additional deposits that may be required is circulated to the parties - both at least 7 days before the publication date. The publication date may be finalised only when both pre-requisites are met.

## **Small Claims Technical Arbitration (for disputes with a value at, or less than, US\$ 75,000)**

### **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\$ 75,000 (Seventy 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 Chair if they are 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 Chair 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:
  - a the name, address including email address, telephone and facsimile number of the other party (“the respondent”),
    - i copy of the contract signed by both parties; or
    - ii a copy of the arbitration agreement signed by both parties if not included in the contract; or
    - iii a copy of the contract and any supporting evidence,
  - b details of the claim value which must be no more than US\$ 75,000, and

- c 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:
- a 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.
  - b The claimant applies for arbitration referencing contract (s) that predate their placement on the Association's List of Unfulfilled Awards Part 1.
  - c Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.
  - d 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.
  - e 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 them so long as their 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 their 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 themselves 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, their 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, they cannot continue to act in whatever capacity they were appointed unless the Directors agree.
- 3 The President may revoke an appointment and appoint an alternative:  
  
if substantial injustice will be caused by them not doing so; or  
  
if requested to do so by either party in the following circumstances:
  - a if they upholds an objection under Bylaw 318;
  - b if an appointed arbitrator dies, refuses or becomes unable to act;
  - c 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 Chair, 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 their 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;
  - a to determine whether they have jurisdiction; and
  - b 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 they have 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 parties to the Secretariat, prior to the publication date (one week's notice) for a fee.
- 10 Before an award publication date may be finalised, there are two procedural pre-requisites: A final draft of the award is to be received by the arbitration team; and any request for any additional deposits that may be required is circulated to the parties - both at least 7 days before the publication date. The publication date may be finalised only when both pre-requisites are met.

## 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 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 they have acted as the arbitrator in the dispute or if substantial injustice could result.
- 4 An Individual Member cannot be on an appeal committee if they have acted as the arbitrator in the dispute, or substantial injustice could result.
- 5 An appeal committee will consist of a Chair 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 Chair 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 Chair 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 Chair 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

- a 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.
  - b 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:
  - a the firms in dispute; or
  - b 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 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:

- 1 asks the other firm to agree to use a sole arbitrator and suggests the name of an arbitrator;  
or
- 2 names their 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:
  - a 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.
  - b 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:

- c 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.
  - d The claimant applies for arbitration referencing contract (s) that predate their placement on the Association's List of Unfulfilled Awards Part 1.
  - e Where the penalty of denial of arbitration services has been imposed on one of the parties pursuant to Bylaw 415.
  - f 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.
  - g 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
  - a accept the name of the suggested arbitrator; or
  - b agree the name of another sole arbitrator;or
  - c say that it does not agree to using a sole arbitrator;
  - d name its own arbitrator; and may
  - e 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:
  - a fails to nominate an arbitrator within 14 days (two weeks) of being requested to do so, or
  - b 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 Chair 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, their 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 them not doing so; or  
  
if requested to do so by either firm in the following circumstances:
  - a if they uphold an objection under Bylaw 335;
  - b if an appointed arbitrator dies, refuses or becomes unable to act;
  - c 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;
  - d 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
  - e if the umpire does not make an award within seven days (one week) of the date of their 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.
  - a 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
  - b 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:
  - a agree on the allowances to be applied; or
  - b agree on the interpretation of the test report as applicable to the contract; or
  - c pay an agreed allowance within 14 days (two weeks) of the test report being issued;  
or
  - d 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 or technical 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:
  - a whether we have jurisdiction,
  - b what matters are subject to quality arbitration; and
  - c what contract terms apply with regard to quality.
- 2 A firm can challenge this Award by an appeal in the normal way.
- 3 A quality arbitration may then take place providing the technical arbitration or appeal finds that:
  - a there is a valid arbitration agreement; and
  - b our Bylaws apply.
- 4 If requested by either party, the Directors may in their absolute and unfettered discretion, authorise the commencement of a quality arbitration to be held concurrently with the technical arbitration.

## 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 increased by the multiplier if applicable as stated in Rule 222. For contracts made before 1 October 2017 which was the effective date of the amendments relating to Micronaire and strength, the Micronaire and strength value differences will refer to the Rule Book (specifically Rules 234, 235 and 236) prevailing at the date of contract, unless the parties agree otherwise. For contracts made on or after 1 October 2017, the value differences fixed by the Value Differences Committee will apply.
  - a 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.
  - b 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.
  - c 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 EMOT and Other Upland 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
  - a The colour and leaf grade of American Upland cotton will be classified under the 'Universal Standards'.American Pima Cotton
  - b 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
  - a 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, they 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:
  - a if an arbitrator or umpire dies during the arbitration process, refuses or becomes unable to act; or
  - b if an umpire does not give their written decision on any matter referred to them by the arbitrators within seven days (one week) of them 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 they 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 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 Chair or Deputy Chair 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 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 Chair or Deputy Chair 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 Chair and Deputy Chair. The Chair and Deputy Chair 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 Chair and Deputy Chair will have one vote. If both sides have the same number of votes, the Chair 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:
  - a the names of the parties to the contract and the parties appealing will not be disclosed to the Quality Appeal Committee at any stage;
  - b 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
  - c the committee can refer to the arbitration or appeal decision before giving its Award, but will not be bound by them.

- d 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 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.
- 3 The amount in application fees, costs, deposits etc, we charge will be based upon the amount (s) set out in the Bylaws and Appendix C in the Rulebook current at the date the application was received for arbitration, not the year of the contract (s) concerned or any other version of Appendix 'C'.

### **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.
- 3 The amount in Appeal application fees, costs, deposits awarded in the arbitration etc, we charge will be the amount (s) set out in the bylaws and Appendix C (or award) in the Rulebook current at the date the application was received for arbitration, not the year of the contract (s) concerned or any other version of Appendix C or Bylaws.

## **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:
  - a An hourly rate shall be charged up to a maximum of £150 per hour.
  - b Fractions of an hour after the first hour shall be charged pro rata.
  - c A minimum fee of £100 shall be payable to each arbitrator.
  - d An additional fee of £250 per arbitration will be payable to the Chair.
- 2 The amount in application fees, costs, deposits, etc. we charge will be based upon the amount(s) set out in the Bylaws and Appendix 'C' in the Rulebook current at the date the application was received for arbitration, not the year of the contract(s) concerned or any other version of Appendix 'C'.
- 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 Chair 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 or printing costs, up to a maximum of £80 per courier / print, 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.
- 9 A Tribunal or TAC may issue an order to make an interim payment on account of the arbitrators' costs from the funds contributed by the parties and held by the ICA. Such payment may be ordered using the current criteria agreed by 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. The costs incurred by the parties of obtaining legal advice or technical consultant assistance in connection with the claim(s) presented to a tribunal or appeal committee shall not be recoverable, even if claimed.
- 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:
  - a 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.
  - b Whether any claim which partially succeeded was unreasonably exaggerated.

- c The conduct of the party which succeeded on any claim and any concession made by the other party.
- d The degree of success of each party.
- e The costs submissions made by the parties.

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

### **Bylaw 361**

- 1 Quality arbitrations
  - a The lowest fees for quality arbitrations are laid down in Appendix C of the Rule Book however the arbitrators may charge more.
  - b Both firms are liable to pay a fee. The arbitrators will apportion the fees payable by each firm.
- 2 Quality appeals
  - a The lowest fees for quality appeals are laid down in Appendix C of the Rule Book, however the appeal committee may charge more.
  - b 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
  - a 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
  - a 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, they 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 their 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.
- 7
  - a The Secretary will write to the defaulter and other parties (who are related to defaulter names on 'ICA List of Unfulfilled Awards: Part 1') that it proposes to name in the ICA List of Unfulfilled Awards: Part 2, informing them of the proposed addition of a related party name to of the latter List and asking them to provide evidence to rebut the contents of the same within 14 days (two weeks).
  - b The Directors will consider any comments or evidence received and will decide whether or not a related party should be added to the ICA List of Unfulfilled Awards: Part 2. In so doing, they will have obtained and considered evidence showing a 'close relationship' and / or 'Common Controlling Mind', between that party and the defaulter named on 'ICA List of Unfulfilled Awards: Part 1', in question. This decision will be communicated to the related party that is to be listed and the ICA membership.

- c Having been informed of the decision of the Directors to list on the ICA List of Unfulfilled Awards: Part 2, the alleged related party has a right of appeal within 14 days to the ICA. The Directors will consider any additional evidence and decide to delist or not.
  
- 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.
  
- 11 If the buyer is unwilling or unable to amend the shipping instructions to ship to a company listed on the LOUA1 or 2, the seller must close out the contract in accordance with the ICA Bylaws and Rules
  
- 12 If a seller receives a quality claim or a weight claim from a buyer who has shipped the cotton to a company on the LOUA1 or 2, the seller is under no obligation to settle the claim with the buyer.

# **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:

- 1 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.
- 2 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.

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

#### **Bylaw 406**

- 1 An Individual Member, Principal Firm or Related Company cannot resign if:
  - a they or it is involved in arbitration arising out of a contract governed by International Cotton Association Bylaws or Rules or ICA arbitration; or
  - b 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 Chair will be appointed annually by the Directors.

#### Bylaw 408

- 1 Committees must act efficiently but can run in any way they choose, including:
  - a meetings;
  - b telephone discussions;
  - c teleconferences;
  - d e-mail exchanges and
  - e 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
Value Differences Committee	See Bylaw 411	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 Chair or Deputy Chair 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.
- 4 Chairs of ICA committees to be elected in accordance with the Terms of Reference of the committee. Normally, chairs to rotate at least every 3 years.

## 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 Chair 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 Chair can call meetings more often.
- 4 As long as the Chair approves, members of the Value Differences Committee can ask an alternate to attend. The alternate:
  - a must be from the same firm as the member;
  - b may be an Individual Member or a person other than an Individual Member; and
  - c 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, they cannot be Chair or Deputy Chair 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 CICCAs and ICA List of Unfulfilled Awards: Part 1 or Part 2 (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 CICCAs and ICA List of Unfulfilled Awards: Part 1 or Part 2, 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 CICCAs and ICA List of Unfulfilled Awards: Part 1 or Part 2, 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 CICCAs and ICA List of Unfulfilled Awards: Part 1 or Part 2 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 agreements, with any confidential information redacted as required. In addition, they should provide supporting correspondence giving evidence of the confirmation of business (contracts) and 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 or any contract where cotton may have been 'shipped' but has not yet been landed in the destination port with a party whose name subsequently appears on the CICCAs and ICA List of Unfulfilled Awards: Part 1 or Part 2, 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 confirmation of business (contracts) and settlement agreements. Subject to compliance with the above, the provisions of paragraph (1) above shall not apply to that contract or contracts.

### Bylaw 416

If a Member Firm has an outstanding contract, settlement agreement or any contract where cotton may have been 'shipped' but has not yet been landed in the destination port with a party whose name appears on the CICCAs or LOUA1 and 2: the Member Firm shall provide the

Directors every six months updates upon the execution and progression of that contract , settlement agreement etc, showing the date, reference number, executed quantity, outstanding quantity, amendments (if any) and reasonable estimation of the date of fulfilment of that contract, settlement agreement and similar information.

# ICA BYLAWS AND RULES – APPENDICES

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## **Appendix A1: Contract Form**

The ICA e contract form is at [www.ica-ltd.org](http://www.ica-ltd.org).

**Appendix A2**

“Appendix A2 - Quality Arbitration Time Lines” – “Appendix A: Contract Form” becomes “Appendix A1: Contract Form

<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 Controller or Nominated Representative to supervise sampling	Notification in writing of any claim	14 days	

10		Rule 223.3	If either party fails to nominate their Controller or Nominated Representative this time limit and reply to the claim of the other, the other party may proceed with sampling by a Member 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	Foreign matter	Rule 227.4	Make a claim	Date of arrive	6 months (26 weeks)	
16			Set aside bales for inspection	Date of claim made	28 days	
17	Country damage	Rule 228	Complete the survey	Date of claim in accordance with Rules 207/208	14 days	Whichever is earlier
18				Date of arrival	56 days	

19			If either party fails to nominate their Controller or Nominated Representative, the other party may proceed by a Member Controller.	Date of claim in accordance with Rules 207/208	14 days	
20	Internal moisture	Rule 229, Bylaws 337 to 341	Make a claim	Date of arrival	42 days	
21			Produce a report from a mutually agreed laboratory and final claim	Date of arrival	63 days	
22	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	
23		Rule 233.7	Request a second test	Date of first test	21 days	
24	Appointment of arbitrators	Rule 333	Second firm to appoint an arbitrator	Date of arbitration commencement	14 days	
25			Objection to the appointment of an arbitrator	Date of appointment of an arbitrator	7 days	
26		Rule 335.1	Objection to the appointment of an arbitrator	Date of appointment of an arbitrator	7 days	
27		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	
28		Rule 335.3	President to make a compulsory appoint of an arbitrator	Date of ICA's notice	14 days	
29		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	
30		Rule 335.7	Objection to the President's compulsory appointment of an arbitrator	Date of receiving notice of appointment	7 days	

31	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	
32			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	
33		Rule 336.4	Revoke appointment of the umpire	Date of appointment	7 days	
34			Objection to the revoking	Date of notice of revoking	7 days	
35	Manual and instrument quality arbitration	Bylaw 337.1	Commence arbitration	Date of notification in writing of any claim	42 days	
36			Send samples to place of arbitration and/or place of testing	Date of arrival	56 days	
37	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	
38	Standards	Bylaw 343	Confirm the standards and standards become effective	Date of written notice of proposed changes	14 days	
39	Anonymous arbitration	Bylaw 349.5	President to appoint an umpire	Date of arbitrators not agreeing on an award	21 days	
40		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	
41	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.

**Appendix C1:**  
**A summary of our fees and charges for technical arbitrations, small claims arbitrations, quality arbitrations, notarisations and appeals**

## Appendix C1: Fees and charges for Technical Arbitrations and Appeals

### Appendix C1:

#### A summary of our fees and charges for arbitrations and appeals Fees and charges for Technical Arbitrations and Appeals

*Please note that the amount to be paid in each case will be in line with the firm's registration status.*

### Appendix C1 Fees and charges for Technical Arbitrations and Appeals

Membership type	
Principal Firm: Merchants Related companies (must be the same business type)	Arbitration covers both sales and purchase contracts.
Principal Firm: Producers & Mills Related companies (must be the same business type)	Arbitration covers either sales or purchase contracts, not both, this will depend on the type of business.  Sales Contracts:  Producers, Growers, Farmers, Ginners  Purchase Contracts:  Spinners, Textile Manufacturers
Affiliate Industry Firm Related companies (must be the same business type)	Not covered for arbitration.
Agent	Allowed to make claims under the small claims technical arbitration ("SCTA") only. In order to be eligible to apply for SCTA, the agent must have been an ICA member for 12 months, prior to the date of application for SCTA..
Agent as brokers	<i>Agents can be considered as a broker or agents in certain circumstances</i>
<i>Any member should be able to arbitrate a SCTA agency dispute if the member also undertook agency work.</i>	

TECHNICAL ARBITRATIONS	
Application fees	
Principal Firms and Related Companies registered for at least 12 months of eligible membership.	No fee
Principal Firms and Related Companies registered for at less than 12 months. This fee is not recoverable or refundable by the ICA, even in cases where the dispute is settled.	£15000
Non-registered Firms (including those firms whose application for registration has been refused). This fee is not recoverable or refundable by the ICA, even in cases where the dispute has been settled.	£15000
Other arbitration fees	
A deposit of £8000 shall be payable upon submission of an application for arbitration.	
An hourly rate shall be charged by the arbitrators, up to a maximum of £150.	
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 Chair.	
All couriered messages or documents etc sent by the Secretariat, will be charged at the rate of £50 per courier.	
The only expenses an arbitrator shall be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt.	
When an arbitration case is cancelled the Secretariat shall take a percentage of the stamping charge, based on the claimant's membership status, as an "administrative fee" which will be taken out of the deposit at the following rates:	
1. After request for arbitration and deposit obtained	25%
2. During submission stage	50%

3. After submission stage	75%
Three awards will be published by the Secretariat for Technical Arbitration awards. If additional copies are required, a charge of £25 for each additional award will be charged, payable in advance of the publication of the Award. Requests for additional copies of awards must be made at least one week before the publication of the Award.	
Bank charges, postal charges and legal fees will also be recovered.	

SMALL CLAIMS TECHNICAL ARBITRATIONS	
<b>Application fees</b>	
Principal Firms and Related Companies registered for at least 12 months of eligible membership.	No fee
Non-registered Firms.	£1000
<b>Other arbitration fees</b>	
A deposit of £1500 shall be payable upon submission of an application for arbitration.	
An hourly rate shall be charged by the Sole Arbitrator, up to a maximum of £150.	
Fractions of an hour after the first hour shall be charged pro rata.	
A minimum fee of £100 shall be payable.	
The parties must pay all other costs incurred in the course of the arbitration incurred by arbitrators or the Secretariat, such as bank charges, legal fees, first tier recovery costs; when requested.	
All couriered messages or documents etc sent by the Secretariat, will be charged at the rate of £50 per courier.	
The only expenses an arbitrator will be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt.	
When an arbitration case is cancelled the Secretariat shall take a percentage of the stamping charge, based on the claimant's membership status, as an "administrative fee" which will be taken out of the deposit at the following rates:	
1. After request for arbitration and deposit obtained	25%
2. During submission stage	50%
3. After submission stage	75%
Bank charges, postal charges and legal fees will also be recovered.	

TECHNICAL APPEALS	
<b>Application fees</b>	
Principal Firms and Related Companies registered for at least 12 months of eligible membership.	No fee
TAC appeal application fees for Principal Firms and Related Companies registered for less than 12 months and non-registered firms, to be £10,000. This fee is recoverable if so ordered in the award, at the TAC's discretion, but not recoverable from the ICA.	£10000
<b>Other appeal fees</b>	
A deposit of £10,000 shall be payable following a submission of an application for an appeal.	
In accordance with Bylaw 312 (5) Appellant must pay any costs or stamping fee that the Tribunal awarded against them in the first tier.	
The Chair of the appeal committee shall decide the hourly rate to be charged by the appeal committee members, up to a maximum of £150.	
Fractions of an hour after the first hour shall be charged pro rata.	
A minimum fee of £100 shall be payable.	
An additional fee of £250 per arbitration will be payable to the Chair.	
The Association will charge as its fees 25% of the technical appeal committee's total fees.	
All couriered messages or documents etc sent by the Secretariat, will be charged at the rate of £50 per courier.	
The only expenses an arbitrator shall be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt.	
Three awards will be published by the Secretariat for Technical Arbitration awards. If additional copies are required, a charge of £25 for each additional award will be charged, payable in advance of the publication of the Award. Requests for additional copies of awards must be made at least one week before the publication of the Award.	
Bank charges, postal charges and legal fees will also be recovered.	

SMALL CLAIMS TECHNICAL APPEALS	
<b>Application fees</b>	
Principal Firms and Related Companies registered for at least 12 months of eligible membership.	No fee
Small Claims Technical Appeal application fees for non-registered firms to be £1,000 if not paid in Small Claims Technical Arbitration as an application fee.	£1000
<b>Other appeal fees</b>	
A deposit of £750 shall be payable upon submission of an application for a Small Claims appeal.	
The chair of the appeal committee shall decide the hourly rate to be charged by the appeal committee members, up to a maximum of £150.	
Fractions of an hour after the first hour shall be charged pro rata.	
A minimum fee of £100 shall be payable.	
The parties must pay all other costs incurred in the course of the arbitration [technical appeal etc] incurred by arbitrators or the Secretariat, such as bank charges, legal fees, first tier recovery costs; when requested.	
The Association will charge as its fees 25% of the Small Claims appeal committee's total fees.	
All couriered messages or documents etc sent by the Secretariat, will be charged at the rate of £50 per courier.	

The only expenses an arbitrator will be entitled to claim are courier fees, up to a maximum of £50 unless substantiated with a receipt.

Bank charges, postal charges and legal fees will also be recovered.

#### STAMPING AND NOTARISATION OF TECHNICAL AWARDS AND SMALL CLAIM AWARDS

##### Stamping charges

Principal Firms and Related Companies.	£400
Non-registered Firms.	£800

##### Notarisation and legalisation of Awards

All firms.	£350
------------	------

#### QUALITY ARBITRATION

##### Application fees

Registered Firms.	No fee
Non-registered Firms.	No fee

##### Quality arbitration, appeal and classification

The lowest amount the arbitrators or appeal committee will charge for very bale represented by the samples provided is given below. They may charge more. If the samples provided represent less than 50 bales, they will charge for 50 bales.

Quality Arbitration	Price per bale represented
---------------------	----------------------------

Registered Firms.	£0.35
Non-registered Firms.	£1.00

##### Quality Appeal

Registered Firms.	£0.65
Non-registered Firms.	£1.95

##### Classification

For grade, colour and staple.	£1.00
For grade and colour only.	£0.65
For staple only.	£0.65

#### STAMPING AND NOTARISATION OF QUALITY AWARDS AND APPEAL AWARDS

##### Stamping charges

The amount we will charge both firms for every bale represented by the samples provided is given below. If the samples provided represent less than 50 bales, we will charge for 50 bales.

	Price per bale represented
--	----------------------------

Principal Firms and Related Companies.	£0.03
Non-registered Firms.	£0.24

##### Notarisation and legalisation of Awards

All firms.	£550
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**Appendix C2:  
A summary of the criteria and procedures for becoming an ICA  
arbitrator**

## APPENDIX C2

### The criteria and procedures for becoming an ICA arbitrator

This information applies to anyone wishing to become an ICA arbitrator.

NB: Existing ICA arbitrators can only accept new appointments if they have passed (or been exempted from taking) the ICA Advanced Arbitrator Examination.

#### 1 BASIC CRITERIA AND APPLICATION PROCESS

**All applicants to become an ICA arbitrator must fulfil the following basic criteria:**

- a You must be an ICA Individual Member.
- b You must have successfully completed the ICA Basic Level Arbitrator Examination and the first two modules of the ICA Advanced Arbitrator Examination.
- c You must have five years' international experience in the cotton industry (e.g. buying, selling, controlling, farming, ginning, merchandising, spinning etc. of raw cotton) with both trade and commercial knowledge;
- d You must be proficient in the English language (written and spoken), without the need of a translator.
- e Your application must be proposed by an ICA Director and seconded by an ICA member.
- f You must submit your CV (career résumé) with your application form.

#### 2 PROBATIONARY ARBITRATORS

**Once an application is approved by the Directors, the applicant will become a 'Probationary Arbitrator', where they will:**

- a be required to sign a service agreement;
- b be assigned to a mentor (from the Arbitration Strategy Committee);
- c observe arbitrations subject to the approval of both parties (as a guide, at least three arbitrations of varying difficulty should be observed); and
- d be required to pass the third (final) module of the ICA Advanced Arbitrator Examination, noting that:
  - I. a candidate can only attempt the module three examination three times, with six months between each attempt (with their mentor's discretion); and
  - II. if this final module is failed three times, the candidate cannot take the examination again for another three years.

#### 3 MENTORING

- a Mentoring time is not billable to the parties but is reflected in the service agreement with the arbitrator.
- b The Probationary Arbitrator will be required to produce a summary of the substantive Issues of the case for the Chair. The Chair will debrief the Probationary Arbitrator after the final hearing.
- c The mentor will decide when the Probationary Arbitrator is ready to become a fully qualified arbitrator.

## Appendix C3:

### Arbitrators Code of Conduct

This Code of Conduct embodies principles and best practice and natural justice deems necessary by the Board of Directors to maintain existing standards and public confidence in the ICA as an arbitral authority. Not all of the points listed below will cover every aspect of an Arbitrator's ethical and professional conduct. Arbitrators are therefore expected to observe the spirit of the principles outlined below. Reference to the masculine are also intended to the feminine.

#### Impartiality

	The Arbitrator's duty to remain impartial is a continuing one throughout the arbitration process. Should they find themselves in a position whereby they are aware that they cannot remain impartial, they must immediately withdraw themselves from the arbitration process.
	An Arbitrator is under a duty to disclose to the ICA Secretariat and to the parties any interest and / or relationship which may result in a conflict of interest as soon as possible.
	An Arbitrator must not accept an appointment to act as Arbitrator if they are aware that by doing so they place themselves in a conflict of interest. No arbitrator or probationary arbitrator can accept an appointment whilst they or the company through which they are a member of the ICA is/are subject of a disciplinary committee investigation, until that Disciplinary Committee has reached a final decision. If the arbitrator or probationary arbitrator accepts such an appointment, the President can remove them from the arbitration concerned.
	Arbitrators must not act as advisers to the parties to an arbitration whilst the proceedings are on-going or afterwards, concerning the analysis of a particular case. They must not act as advocates for the parties who have appointed them; they may not provide procedural advice.
	Arbitrators must avoid private dialogue with a party to an arbitration, and must not discuss issues arising in an arbitration with a party prior to, during or at any time after the conclusion of the arbitration. Arbitrators must ensure that any communications with the parties are conducted (where possible) via the ICA Secretariat, and always copied in writing to the other party to the dispute for transparency's sake.
	An Arbitrator must not allow external pressure, personal interests or relationships (past or present) with any third parties or fear of criticism to influence their conduct or judgement in dealing with the dispute.
	A conflict of interest e-mail sent by the Secretariat must be answered by the arbitrator concerned, within 14 days of them being e-mailed. Arbitrators must consider if they have a conflict of interest by taking into account English law, the Arbitrators Code of Conduct and the content of the conflict of interest e-mail sent by the secretariat to arbitrators stating they have:-
	No current employment (or any previous employment in last three years).
	Not acted as a consultant over the past two years in arbitration or other cotton related matters.
	No investments in, or other forms of business partnership / beneficial interest e.g. You are not a non-executive director with one of the parties.
	Not advised or acted for the abovementioned parties in any way, in the past two years, excluding acting as an arbitrator.

	Arbitrators shall treat fellow arbitrators and others with respect.
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## Cooperation

In order to operate effectively, ensure that standards are met and maintain public confidence in the ICA and arbitrations carried out by arbitrators, it is necessary for the ICA to establish and follow procedures for the following purposes:	
	The administration and management of ICA membership;
	The administration and management of arbitrations;
	The monitoring of compliance with the ICA's Articles of Association, Rules and Bylaws, this Code and the law;
	The maintenance of the ICA List of Unfulfilled Awards; and
	The investigation and determination of any complaint or allegation made against an Arbitrator or any other Member of Member Firm by any person.
Arbitrators must co-operate fully with such processes (as established from time to time, whether under the Articles of Association, Rules and Bylaws or this Code or otherwise). In particular, Arbitrators must respond promptly, fully and honestly to any inquiries made by the Directors, the ICA Management Team, the Monitoring Team, the Disciplinary Committee for the purposes listed above.	

## Confidentiality

	For the avoidance of doubt, an Arbitrator's duty of confidence does not prevent an Arbitrator from providing information to and cooperating with Directors, the ICA Management Team, the Monitoring Team and the Disciplinary Committee as necessary for the purposes set out under "Cooperation" above.
	Arbitration is a private and confidential process, selected by the parties to dispute to resolve the issues between them.
	An Arbitrator is under a duty to keep all facts, information, correspondence, and documents disclosed to them during the course of an arbitration confidential at all times.
	An Arbitrator shall not use such confidential information outside of the arbitration process for their personal advantage or for purposes other than the performance of their duties as an Arbitrator.
	The Arbitrator's duty of confidentiality continues after the arbitration has concluded, until and unless both parties to the arbitration agree to waive the confidentiality; or the details of the case are lawfully placed in the public domain.
	An unlawful or unauthorised leak of information regarding the case by another Arbitrator or third party will not be justification or licence for an Arbitrator also disclosing details of the case. Such conduct may result in personal liability for the Arbitrator concerned.
	An arbitrator is under an obligation to relate to the Secretariat any concerns they have that the duty of confidentiality has been breached, at any time.
	The ICA Management team reminds arbitrators that one month after the date of publication of an award they should have deleted information held on paper or on their computer etc on the case they have just handled. If they want to retain information, precedents etc, and have a valid reason under the GDPR for doing so, they can do so.

## Conduct of the Arbitration

-	Arbitrators must ensure that they follow the procedures set out in the ICA Bylaws and Rules, and the relevant provisions of the Arbitration Act 1996 when conducting any arbitration and only use ICA approved time sheets, invoices and other forms, when designated for the use of arbitrators by the ICA.
	Arbitrators shall maintain an up to date copy of the ICA Bylaws and Rules at all times.
	Arbitrators must read and consider all of the evidence before them.
	An arbitrator must only accept an appointment to act as Arbitrator if he has sufficient time to allow the arbitration to be conducted in a competent and timely manner. In order to avoid the perception of bias or justifiable doubts as to impartiality an arbitrator may only accept up to and including three appointments for a party or related party to act as arbitrator from a claimants /appellant or respondent, per calendar year. An arbitrator should not be able to have more than 8 active first tier cases open at any one time. These limits (this criteria) will be reviewed regularly (at least annually) by the Arbitration Strategy Committee (ASC) taking into account the recent numbers of applications for arbitration. Any changes will be recommended to the Directors. Those appointments from a party or related party, where the arbitration has been withdrawn / discontinued, without the publication of an Award, do not count against the '3 or 8 rule'.
	An Arbitrator must ensure that any fees charged in the course of an arbitration are reasonable, having regard to all of the circumstances of the case and the hours charged are or work done in the intellectual pursuit of the matter.
	Once the fees have been agreed by the Tribunal/TAC time-sheets and invoices shall be submitted to the Chair prior to the signature sheets being signed. The Chair shall immediately review them and submit them to the ICA Secretariat prior to an award being published.
	An arbitrator will (should external legal advice be required during an arbitration an arbitrator will) seek advice on English law from the ICA's English legal panel, when working on ICA arbitrations.
	The Board of Directors will approve changes to this Code of Conduct.
	At least one week prior to the publication of an Award the Tribunal must inform the Secretariat of the date of publication and time sheets, invoices plus Award to be submitted.
	Arbitrators will adopt ASC recommended 'Best Practice' in their arbitration work.

## **Appendix C4: GDPR**

**APPENDIX C4**  
**GDPR**

<p>The ICA Privacy Policy is held on the ICA website <a href="https://www.ica-ltd.org/privacy-policy/">https://www.ica-ltd.org/privacy-policy/</a> and applies to how the ICA Management Team will manage confidentiality and privacy of your personal data.</p> <p>Further Privacy and Confidentiality Notice applying to parties in arbitration and arbitrators</p>	
<p><b>DEFINITIONS</b></p>	
1	<p>The following definitions and rules of interpretation in this clause apply in this notice:</p>
1.1	<p>“Confidential Information” means any confidential information, whether containing Personal Data or not, disclosed to the ICA by: a Member; or any person or company, in relation to an arbitration carried out under the ICA’s Bylaws and Rules.</p>
1.2	<p>“Data Protection Register” means the register maintained by the Information Commissioner.</p>
1.3	<p>“Member” means an Individual Member or Member Firm, as defined in ICA’s Articles of Association.</p>
1.4	<p>“Personal data” means personal data under the General Data Protection Regulation (GDPR) as implemented into English law.</p>
1.5	<p>“Purpose” means any of ICA’s Objects, as defined in ICA’s Articles of Association, or any purpose incidental or conducive to the attainment those Objects, which includes but is not limited to:</p> <ul style="list-style-type: none"> <li>• The administration and management of arbitrations;</li> <li>• The monitoring of compliance with the ICA’s Articles of Association, Rules and Bylaws, the Arbitrator’s Code of Conduct and the law;</li> <li>• The maintenance of the ICA Lists of Unfulfilled Awards; and</li> <li>• The investigation and determination of any complaint or allegation made against an ICA arbitrator or any other Member by any person.</li> </ul>
1.6	<p>A reference to a statute or statutory provision or constitution or other document adopted by the ICA is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment.</p>
1.7	<p>The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these will apply whenever we process personal data:</p> <ul style="list-style-type: none"> <li>• Consent: the individual has given clear consent for you to process their personal data for a specific purpose.</li> <li>• Contract: the processing is necessary for a contract with an individual, or because they have asked you to take specific steps before entering into a contract.</li> <li>• Legal obligation: the processing is necessary for the ICA to comply with the law.</li> <li>• Legitimate interests: the processing is necessary for legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual’s personal data which overrides those legitimate interests.</li> </ul>

**Appendix C5:**

**RE-ACCREDITATION OF ARBITRATORS APPENDIX**

	<p><b>The Board have delegated the FGC with the power to undertake the three-yearly reaccreditation of qualified ICA arbitrators. The FGC will consider the following requirements and considerations when undertaking this review.</b></p>
1	<p><b>Requirements:</b></p> <p><b>Willingness to offer services as arbitrator.</b> Each current Arbitrator will be invited to confirm that they wish to continue to serve as an ICA arbitrator for a further 3 years.</p> <p><b>Currency:</b> Each arbitrator to have conducted one completed ICA arbitration in the past year.</p> <p><b>CPD:</b> Evidence of an up to date, completed CPD form, submitted to ICA.</p>
2	<p><b>Considerations</b> (to be considered by the Directors and which may inform their decision):</p> <p><b>Competency:</b> in the preceding three years the Directors to be informed of:</p> <ul style="list-style-type: none"> <li>• Any S.57 awards issued to correct mistakes.</li> <li>• Any adverse comments in AAR ('After Arbitration Review) or other complaints or documents.</li> </ul> <p><b>Appeals against fees, upheld, by Directors</b> in past three years.</p> <p><b>Disciplinary Committee matters</b> successfully brought against arbitrator.</p> <p><b>Directors to consider the evidence and make their decision informed by the best interests and reputation of the ICA.</b></p>
3	<p><b>Process.</b> A third of the Pool of Arbitrators is to be reviewed each year for an individual certification / 'chartered arbitrator status' for three years.</p>
4	<p><b>Appeal.</b> In the event of an appeal against the FGC decision on reaccreditation, the arbitrator would be invited to make their case to the ICA Board of Directors.</p>