

SECTION EEEE - CONTRACT RULES: ICE FUTURES LONDON COCOA FUTURES CONTRACT

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<sup>1</sup> Amended 17 March 2015, 26 May 2015

<sup>2</sup> Amended 26 May 2015, 12 October 2016

<sup>3</sup> Amended 17 March 2015, 26 May 2015, 1 August 2015

<sup>4</sup> Amended 26 May 2015, 27 December 2019

<sup>5</sup> Amended 26 May 2015

<sup>6</sup> Amended 26 May 2015

<sup>7</sup> Amended 26 May 2015

<sup>8</sup> Amended 26 May 2015. Amendments in square brackets will take effect from March 2020.

<sup>9</sup> Amended 26 May 2015. Amendments in square brackets will take effect from March 2020.

EEEE.1 INTERPRETATION<sup>10</sup>

(a) Save as otherwise specified herein, words and phrases defined in the Regulations shall have the same meanings in these Contract Rules and in the Administrative Procedures.

(b) In these Contract Rules and in the Administrative Procedures:

“Administrative Procedures”	means the administrative procedures at Rule FFFF from time to time implemented by the Exchange for the purposes of these Contract Rules.
“Allowance”	means either a discount or a premium to the Contract price, <del>expressed in Pounds per Tonne,</del> which is stated in these Contract Rules <del>and the Allowance Table</del> or otherwise <del>shall be published by the Exchange</del> from time to time, <del>by notice posted on the Market.</del>
<u>“Allowance in Lieu of Grading”</u>	<u>means a discount expressed in Pounds per Tonne, calculated in accordance with Rule EEEE.6(d).</u>
“Bean cluster”	means two (or more) Cocoa beans which are joined together and are unable to be split into two (or more) whole single Cocoa beans as a result of the exertion of reasonable hand pressure.
<u>“Allowance Table”</u>	<u>means the Exchange document with the Allowances published by the Exchange from time to time.</u>
“Bulk Delivery Unit”	means an amount of loose Cocoa conforming to Rule EEEE.3(d)(ii) and having a nominal net weight of 1,000 Tonnes.
“Business Day”	means a day on which the market, the Clearing House and banks in London are open for business.
“Buyer”	in respect of a Contract means the person who is obliged under such Contract to accept delivery in respect of each Lot of Cocoa and to pay the invoicing amount in respect of each such Lot (including, except where the context otherwise requires, the Clearing House as a buyer under a registered Contract).
“Buyer’s Position Notice”	means the notice to be given by the Buyer to the Clearing House under Rule EEEE.13(a).
“Cocoa”	means cocoa beans which are the whole seeds of the cocoa tree (Theobroma Cacao L).
“Contract”	means a contract made expressly or impliedly in the terms of these Contract Rules for the sale and purchase of one or more Lots and “registered Contract” means a Contract registered by the Clearing House.
“Conversion Settlement Day”	in respect of a Delivery Month means, subject to Rule EEEE.15(f)(i), ten Business Days immediately following the Settlement Day for such Delivery Month.

<sup>10</sup> Amended 17 March 2015, 26 May 2015

“Converted Delivery Unit”	means a new Delivery Unit which is formed upon the conversion of part or all of a Nominated Delivery Unit.
“Default in Performance”	has the meaning attributed to it in Rule EEEE.18(b).
“Defective”	means a Mouldy Bean or an Insect-damaged Bean or both.
“Delivery Area”	means each geographic area referred to in Rule EEEE.3(c), as varied by the Exchange from time to time, within which a Warehouse must be located.
“Delivery Month”	means each month specified as such by the Exchange pursuant to the Regulations.
“Delivery Unit”	means a Standard Delivery Unit, a Large Delivery Unit or a Bulk Delivery Unit.
“ <a href="#">Delivery Warehousekeeper’s Rent</a> ”	<a href="#">means the actual rent charges per month of the relevant individual Warehousekeeper as notified in advance to the Exchange as part of the annual Warehousekeeper nomination / licensing process or as otherwise amended mid-nomination / licensing year pursuant to the Grading and Warehousekeeping Procedures.</a>
“Depository”	means any person appointed by the Exchange to receive, hold and administer Warrants in immobilised form; details of such persons shall be notified by notice posted on the Market from time to time.
“Dual Capacity Warehousekeeper”	means a Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse Standard, Large and Bulk Delivery Units recorded on Guardian and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by notice posted on the Market.
“EDSP”	means Exchange Delivery Settlement Price and has the meaning attributed to it in Rule EEEE.9.
“Evidence of Import Duty”	has the meaning attributed to it in Rule EEEE.7(c).
“Extended Conversion Settlement Day”	has the meaning attributed to it in Rule EEEE.15(f)(i).
“FFA”	Free Fatty Acids conventionally expressed as oleic acid (molecule weight 282)
“Foreign Matter”	means any substance or matter, other than a whole Cocoa bean or Residue, which in the opinion of the ICE Registered Cocoa Graders is, upon grading, identified as foreign matter.
“Fumigation Charge”	means a monthly fee which a Warehousekeeper shall be entitled to charge in respect of the fumigation and fogging of a Delivery Unit stored in its Warehouse and which is levied pursuant to the Grading and Warehousekeeping Procedures.

[“Global Average Warehousekeeper means the per month figure published by the Exchange from time](#)

Rent to time for average Cocoa rent in-store charges of Warehousekeepers.

"Grading and Warehousekeeping Procedures" means the procedures from time to time implemented by the Exchange pursuant to the Regulations in respect of:

- (i) sampling and storage of Cocoa by Warehousekeepers;
- (ii) grading of Cocoa by the ICE Registered Cocoa Graders; and
- (iii) the Warrant management service for Cocoa,

which may be contained in one or more documents.

"Grading Result" means the result given to a Delivery Unit which has been graded by the ICE Registered Cocoa Graders and containing such information as the Exchange may prescribe from time to time.

"Gross Weight" has the meaning attributed to it in Rule EEEE.5(d)(i).

"Guardian" means the electronic system relating to grading, tender, delivery and warrant management services, or any successor thereto, which, amongst other things, records Cocoa stored in a Warehouse for delivery under a Contract.

"ICE Registered Cocoa Graders" means a panel of Cocoa graders registered with the Exchange in accordance with the Grading and Warehousekeeping Procedures who upon the application of a Nominated Member examine and grade a sample of the Delivery Unit which is the subject of the application and issue a Grading Result in respect of such Delivery Unit pursuant to the Grading and Warehousekeeping Procedures.

"Import Duty Documentation" has the meaning attributed to it in Rule EEEE.7(a)(i).

"Insect-damaged Bean" means a cocoa bean the internal parts of which are found to contain insects at any stage of development or any evidence thereof, or evidence of insect damage, which is visible to the naked eye.

"Interest Rate" means ICE LIBOR for one month deposits in sterling as at 11.00 hours on the Settlement Day for the relevant Delivery Month, provided that the Exchange may at its discretion resolve, prior to the commencement of the calendar month in which the Settlement Day for the relevant Delivery Month falls, that the Interest Rate shall be determined by other means. Any such determination by the Exchange shall be the subject of a notice posted on the Market.

"Invoicing Amount" has the meaning attributed to it in Rule EEEE.10(a).

"Large Delivery Unit" means an amount of bagged Cocoa conforming to Rule EEEE.3(d)(i) and having a nominal net weight of 100 Tonnes.

"Last Trading Day" in respect of a Delivery Month means (subject to Rule EEEE.19(a)) eleven Business Days immediately prior to the last Business Day of such Delivery Month.

“Last Weigh Date”	means the date on which a Delivery Unit was last -re-weighed as attributed to it in Rule EEEE.5(d)(iii)
<u>“Loading Out” or “Loaded Out” or “Load Out”</u>	<u>means the movement of a lot of Cocoa (in bags or bulk) from within a Warehouse on to a truck or reasonable equivalent, as published by the Exchange from time to time.</u>
<u>“Loading Out Charge”</u>	<u>means the fee charged by a Warehousekeeper in respect of the Loading Out.</u>
“Lot”	has the meaning attributed to it in Rule EEEE.2(b).
“Mouldy Bean”	means a cocoa bean on the internal parts of which mould is visible to the naked eye.
“Net Weight”	in respect of a Delivery Unit means the net weight of such Delivery Unit calculated in accordance with Rule EEEE.5(d) and expressed in Tonnes.
“Nominated Bulk Delivery Unit”	means a Nominated Delivery Unit which is a Bulk Delivery Unit.
“Nominated Delivery Unit”	means each Delivery Unit to be converted by or on behalf of the Seller as notified to the Clearing House under Rule EEEE.12(d)(i) or (ii).
“Nominated Large Delivery Unit”	means a Nominated Delivery Unit which is a Large Delivery Unit.
“Nominated Member”	means a Clearing Member who, on behalf of an owner, has been nominated by a Warehousekeeper or another Nominated Member in respect of the registration on Guardian of a Warrant that is to be, or has been, immobilised.
“Notice Day”	in respect of any Lot comprised in a Contract means (subject to Rule EEEE.19(b)) the Business Day immediately following the Last Trading Day.
“Origin”	means the country, or geographic area in a country, in which the cocoa was produced.
“Origin Group”	means each group specified by the Exchange from time to time.
“Original Weigh Date”	means the date that a Delivery Unit was first weighed in an ICE Nominated Warehouse
“Pounds”, “ <u>GBP£</u> ”, “pence” and “penny”	denote lawful currency of the United Kingdom at the date of issue of these Contract Rules, known as “Sterling”.
“Preferential Rate of Import Duty”	has the meaning attributed to it in Rule EEEE.7(a).
“Rent”	means a periodic fee (but not including Fumigation Charges) which a Warehousekeeper shall be entitled to charge in respect of the storage of a Delivery Unit in its Warehouse, and which is levied pursuant to the Grading and Warehousekeeping Procedures.
<u>“Rent Allowance”</u>	<u>means the allowance calculated in accordance with EEEE.6(c)</u>

“Residue”	means any Cocoa element other than a whole Cocoa bean (which may include, without limitation, broken beans, fragments of beans and pieces of shell), which in the opinion of the ICE Registered Cocoa Graders is, upon grading, identified as residue.
“Seller”	in respect of a Contract means the person who is obliged under such Contract to deliver Cocoa in respect of each Lot (including, except where the context otherwise requires, the Clearing House as seller under a registered Contract).
“Seller’s Delivery Notice”	means the notice to be given by the Seller to the Clearing House under Rule EEEE.12(a) and EEEE.12(b).
“Settlement Day”	in respect of a Delivery Month means (subject to Rule EEEE.19(c)), the last Business Day of the Delivery Month.
“Shipment Period”	means the period commencing 1 October in a calendar year and ending on 30 September in the following calendar year.
“Single Capacity Warehousekeeper”	means a Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse Standard and Large Delivery Units recorded on Guardian and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by notice posted on the Market.
“Slaty”	means a cocoa bean which shows a slaty colour on half or more of the exposed surface of the cotyledons.
“Standard Delivery Unit”	means an amount of bagged Cocoa conforming to Rule EEEE.3(d)(i) and having a nominal net weight of 10 Tonnes.
“Standard Deviation of the Bean Count”	means the measure of the deviation of the bean count per 100 grammes of Cocoa from a nominal standard deviation of the bean count per 100 grammes of Cocoa, where the value of the deviation is derived from a methodology and an algorithm prescribed by the Exchange from time to time.
“Substituted Delivery Unit”	means each Delivery Unit which is substituted by the Seller as notified to the Clearing House under Rule EEEE.12(d)(iii).
“Supervision Company”	is a company whose business is the supervision and/or inspection of goods and which is appointed by the Exchange for the purposes of performing inspections.
“Tender”	means the delivery by a Seller in accordance with these terms of a Seller’s Delivery Notice, as amended by one or more notices given under Rule EEEE.12(d) or EEEE.12(f).
“Tonne”	means a metric tonne of 1,000 kilogrammes.
“Valid Grading Result”	has the meaning attributed to it in Rule EEEE.3(e).
“Warehouse”	means a warehouse in respect of which a Warehousekeeper has been nominated by the Exchange in its absolute discretion to store Goods and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by notice posted on the Market. A Warehouse shall, for the purposes of

nomination under the Grading and Warehousekeeping Procedures, be a single structure designed or modified for the purpose of storing Goods, or groups of such structures connected by internal doors allowing for the passage of the relevant Goods. Where there are no such interconnecting doors between such structures these shall be nominated as separate Warehouses.

“Warehousekeeper”

means either a Single or Dual Capacity Warehousekeeper which has been nominated by the Exchange in its absolute discretion to store in its Warehouse Goods piled as either parcels, lots, Standard and Large Delivery Units or Standard, Large or Bulk Delivery Units, as the case may be, and to record such details that are represented by the Warrant on Guardian and which appears on the List of Nominated Warehouses and Warehousekeepers published from time to time by notice posted on the Market.

“Warrant”

means a warrant for the delivery of a Delivery Unit stored in a Warehouse which authorises the possessor of such document to transfer or receive the Delivery Unit referred to therein<sup>11</sup>.

(c) [Not used]

(d) [Not used]

(e) [Not used]

### EEEE.2 CONTRACT SPECIFICATION

- (a) Each Contract shall be for one or more Lots for the Delivery Month specified.
- (b) A “Lot” shall be an amount of Cocoa having a nominal net weight of 10 Tonnes.

### EEEE.3 DELIVERY UNITS<sup>12</sup>

- (a) A Seller shall, in respect of one or more Lots of a Contract, deliver a Standard Delivery Unit, a Large Delivery Unit or a Bulk Delivery Unit, or any combination thereof, of an amount or aggregate amount of Cocoa which is equal to the amount of Cocoa to be delivered under such Lots.
- (b) A Seller may only deliver a Tender for a Delivery Unit, if on or before the day and by the time specified for delivery of such Tender in the Administrative Procedures, the Delivery Unit:
  - (i) has a Warrant that has been immobilised and its details recorded on Guardian;
  - (ii) a Valid Grading Result;
  - (iii) has had the Rent paid in accordance with Rule EEEE.6(c) and this has been recorded by the Warehousekeeper on Guardian,
  - (iv) complies with Rule EEEE.5(e) and, if appropriate, ~~Rule EEEE.5(f)~~, EEEE.5(f), EEEE.5(g), EEEE.7(d) and any other term in these Contract Rules.

<sup>11</sup> The Warrant must not have expired under the relevant terms under which the Warrant was issued.

<sup>12</sup> Amended 26 May 2015, 12 October 2016

- (c) The delivery of a Delivery Unit shall be made in a Warehouse in a geographic area (a “Delivery Area”) which is, in the Exchange’s opinion, in or sufficiently close to Amsterdam, Antwerp, Bremen, Hamburg, Le Havre, Liverpool, London or Rotterdam. The Exchange may from time to time de-list a Delivery Area or list any other Delivery Area which shall have such effect with regard to existing or new Contracts or both as the Exchange may determine in its absolute discretion.
- (d) A Seller shall deliver:
- (i) a Standard or Large Delivery Unit which conforms to Rules EEEE.4 and EEEE.5, which is stored in a Warehouse as a clearly identifiable pile of bagged Cocoa in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery; or
  - (ii) a Bulk Delivery Unit which conforms to Rules EEEE.4 and EEEE.5, which is stored in a Warehouse as segregated loose Cocoa in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.
- (e) A Grading Result issued in respect of a Delivery Unit shall be valid (“Valid Grading Result”) if:
- (i) the Delivery Unit has been graded as “tenderable”;
  - (ii) it has not expired; subject to Rule EEEE.3(f):
    - (A) For contract months up to and excluding the December 2021 contract:
      - (1) In respect of Standard or Large Delivery Units, the Grading Result will expire at the end of the sixth month after the date of issue of the first Grading Result including any unexpired part of the month in which it was graded, or, at the end of the twelfth month following the second and any subsequent grading including any unexpired part of the month in which it was graded; and
      - (2) In respect of Bulk Delivery Units, the Grading Result will expire at the end of the twelfth month after the date of issue of the Grading Result including any unexpired part of the month in which it was graded; and
    - (B) For contract months from and including the December 2021 contract,
      - (1) the first Grading Result of a Delivery Unit will expire at the end of the sixth month after the date of issue of the Grading Result including any unexpired part of the month in which it was graded;
      - (2) the second and any subsequent Grading Result shall (only) expire when the Seller applies to the Exchange for re-grading and re-grading is commenced in accordance with Section E 1.10 of the Grading and Warehousekeeping Procedures;  
taking into account the following:
        - (3) Grading Results which expire prior to December 2021: the relevant Delivery Units shall be re-graded in order to be eligible for delivery from December 2021 onwards;
        - (4) first Grading Results obtained prior to 16 September 2021 shall retain their original expiry date in accordance with Rule EEEE (e)(ii)(A);
        - (5) first Grading Results obtained from 16 September 2021 shall expire at the end of the sixth month after the date of issue of the Grading Result including any unexpired part of the month in which it was graded;



(6) second and subsequent Grading Results obtained prior to 1 December 2020 shall expire at the end of the twelfth month after the date of issue of the Grading Result including any unexpired part of the month in which it was graded; and

~~(2)~~(7) second and subsequent Grading Results obtained from 1 December 2020 shall (only) expire when the Seller applies to the Exchange for re-grading and re-grading is commenced in accordance with Section E 1.10 of the Grading and Warehousekeeping Procedures.

(iii) it has not lapsed, subject to Rule EEEE.14(c)(i) or EEEE.15(c)(i), upon conversion of the Delivery Unit, or upon bagging, re-bagging or debagging of Cocoa contained in the Delivery Unit or regrading of the Delivery Unit under the Grading and Warehousekeeping Procedures.

(f) Notwithstanding that a Valid Grading Result may be due to expire in accordance with Rule EEEE.3(e)(iii), any such Valid Grading Result applying to a Nominated Bulk Delivery Unit shall continue to apply until the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.

(g) For contract months up to and excluding the December 2021 contract:

~~(g)~~(i) If a Delivery Unit was graded by ICE Registered Cocoa Graders as not tenderable prior to May 2000, a Seller may submit such Delivery Unit for regrading.

~~(h)~~(ii) If a Delivery Unit is graded by ICE Registered Cocoa Graders as not tenderable under these terms for the May 2000 or a following Delivery Month, a Seller shall not submit such Delivery Unit for regrading, except where permitted to do so by the Grading and Warehousekeeping Procedures.

~~(+)~~(h) Without prejudice to any exclusion of liability provision in the Regulations or the Clearing House Rules, neither the Exchange nor the Clearing House shall be liable for any loss or damage whatsoever, whether for negligence, breach of contract, misrepresentation or otherwise (other than for fraud or wilful default) in respect of:

- (i) the failure by the Exchange or any Graders to grade or to issue a Grading Result by a particular date; or
- (ii) the performance or non-performance by any Grader of any function relating to grading; or
- (iii) the performance or non-performance of a Warehousekeeper of his supervisory duties; or
- (iv) the performance or non-performance by any Warehousekeeper of his obligations pursuant to these Contract Rules or the Grading and Warehousekeeping Procedures; or
- (v) the performance or non-performance of Guardian; or
- (vi) the accuracy or availability of any information recorded on Guardian; or
- (vii) the safeguarding of rights of any person entitled to a Warrant that has been immobilised or rights asserted by any person claiming to be entitled to be treated as owner; or
- (viii) the legal consequences or enforceability of the Grading and Warehousekeeping Procedures in any jurisdiction; or
- (ix) the performance or non-performance by any Supervision Company of his obligations; or

- (x) the performance or non-performance of the Depository of his duties as an immobilised Warrant depository, including, but not limited to receiving, holding and administering Warrants that have been immobilised.

#### EEEE.4 QUALITY, CONDITION AND ORIGIN<sup>13</sup>

- (a)
  - (i) A Seller shall deliver a Delivery Unit which is of a quality, condition and Origin which complies with this Rule EEEE.4. The quality and condition of a Delivery Unit shall be evidenced by the Valid Grading Result for such Delivery Unit.
  - (ii) A Delivery Unit to be delivered under a Contract may be subject to one or more Allowances as specified in these Contract Rules, ~~and by the Valid Grading Result~~ [the Allowance Table and the Valid Grading Result and calculated in accordance with the Grading and Warehousekeeping Procedures](#). ~~S~~ ~~and~~ such Allowances shall be used in the calculation of the Invoicing Amount in accordance with Rule EEEE.10(a).
- (b) A Seller shall deliver under a Contract a Delivery Unit in which not more than 20% of the beans are Slaty by count. A Delivery Unit in which:
  - (i) less than or equal to 5% of the beans are Slaty by count, shall be delivered under a Contract without a Slaty Allowance; and
  - (ii) more than 5% of the beans are Slaty by count but less than or equal to 20% of the beans are Slaty by count, shall be delivered under a Contract subject to the Slaty discount specified by the Valid Grading Result.
- (c) A Seller shall deliver under a Contract a Delivery Unit in which not more than 15% of the beans are Defective by count. A Delivery Unit in which:
  - (i) less than 5% of the beans are Defective by count, shall be delivered under a Contract subject to the Defective premium specified by the Valid Grading Result;
  - (ii) 5% of the beans are Defective by count, shall be delivered under a Contract without a Defective Allowance; and
  - (iii) more than 5% of the beans are Defective by count but less than or equal to 15% of the beans are Defective by count, shall be delivered under a Contract subject to the Defective discount specified by the Valid Grading Result.
- (d) A Seller shall deliver under a Contract a Delivery Unit which does not have more than 120 beans per 100g bean count. A Delivery Unit which is delivered with a bean count:
  - (i) of less than 100 beans per 100g, shall be delivered under a Contract subject to the bean count premium specified by the Valid Grading Result;
  - (ii) equal to 100 beans per 100g, shall be delivered under a Contract without a bean count Allowance; and
  - (iii) of more than 100 beans but less than or equal to 120 beans per 100g, shall be delivered under a Contract subject to the bean count discount specified by the Valid Grading Result.

<sup>13</sup> Amended 17 March 2015, 26 May 2015, 1 August 2015

## CONTRACT RULES: ICE FUTURES LONDON COCOA FUTURES CONTRACT

- (e) A Seller shall deliver under a Contract a Delivery Unit which does not have a Standard Deviation of the Bean Count of more than 40. A Delivery Unit which is delivered with a Standard Deviation of the Bean Count:
- (i) of 25 or less, shall be delivered without a Standard Deviation of the Bean Count Allowance; and
  - (ii) of more than 25 but less than or equal to 40, shall be delivered subject to the Standard Deviation of the Bean Count discount as specified by the Valid Grading Result.
- (f) (i) A Seller shall deliver under a Contract a Delivery Unit which does not have a quantity of Residue and Foreign Matter in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit and the Origin. An Allowance calculated by reference to the [Allowance Table](#) ~~scale of Allowances~~ for Residue and Foreign Matter applicable to the Origin will be determined with respect to any Residue and Foreign Matter in the Delivery Unit in accordance with the Grading and Warehousekeeping Procedures.
- (ii) A Seller shall deliver under a Contract a Delivery Unit which does not have a quantity of Bean clusters in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit. An Allowance calculated by reference to the ~~scale of Allowances~~ [Allowance Table](#) for Residue and Foreign Matter referred to in the Grading and Warehousekeeping Procedures will be determined in respect of any Bean clusters in a Delivery Unit of a quantity equal to or which exceeds the applicable weight specified in, and determined in accordance with, the Grading and Warehousekeeping Procedures.
- (g) A Seller shall deliver under a Contract a Delivery Unit where the level of FFA is 3.5% or less. A Delivery Unit which is delivered with a FFA content
- (i) of less than or equal to 2%, shall be delivered without a FFA Allowance; and
  - (ii) of more than 2% but not over 3.5% , shall be subject to the FFA Allowance discount as specified by the Valid Grading Result.
- (h) For contract months from and including December 2021, for Bulk Delivery Units, a Seller shall deliver under a Contract a Bulk Delivery Unit where the level of moisture is 8.25% or less. A Bulk Delivery Unit which is delivered with moisture content
- (i) of less than or equal to 8%, shall be delivered without a moisture Allowance; and
  - (ii) of more than 8% but less than or equal to 8.25%, shall be subject to a moisture Allowance discount as specified by the Valid Grading Result.
- ~~(iii)~~(i) A Seller shall deliver under a Contract a Delivery Unit the Cocoa in which, in the opinion of the ICE Registered Cocoa Graders upon grading:
- (i) does not have a smoky, hammy or other taint or smell;
  - (ii) subject to Rule EEEE.4(f), does not contain a substance which is not inherent in Cocoa; or
  - (iii) subject to Rules EEEE.4(b), EEEE.4(c), EEEE.4(d), EEEE.4(e), EEEE.4(f) and EEEE.4(g), is not unsound.
- ~~(h)~~(j) A Seller shall deliver under a Contract a Delivery Unit which exclusively contains Cocoa from a single Origin which is contained in the list of Origin Groups determined by the Exchange from time to time.

A Delivery Unit delivered under a Contract shall be subject to a discount stated in respect of its Origin Group as determined by the Exchange from time to time.

~~(k)~~ The Exchange may at its discretion, in respect of an Origin:

- (i) remove such Origin from, or add it to, an Origin Group;
- (ii) move such Origin between Origin Groups; and
- (iii) vary a discount which applies to Cocoa delivered from such Origin in an Origin Group.

Any such variation, addition or deletion shall have such effect with regard to existing or new Contracts or both as the Exchange may determine in its absolute discretion.

~~(l)~~ In respect of a Delivery Unit delivered under a Contract, the Origin as stated in the bill of lading or, if more than one bill of lading, each bill of lading in respect of Cocoa contained in the Delivery Unit, shall be prima facie evidence of the relevant Origin of such Cocoa.

~~(m)~~ A Seller shall deliver a Delivery Unit which only contains Cocoa shipped during the same Shipment Period. In respect of a Delivery Unit delivered under a Contract, the date of issue of the bill of lading or, if more than one bill of lading, each bill of lading in respect of Cocoa contained in the Delivery Unit, shall be prima facie evidence of the relevant Shipment Period of such Cocoa. In respect of the Shipment Period, the date of issue of the bill of lading shall take precedence over any other date specified in the bill of lading.

~~(n)~~ Cocoa:

- (i) in which more than 20% of the beans are Slaty by count;
- (ii) in which more than 15% of the beans are Defective by count;
- (iii) which has more than 120 beans per 100g bean count;
- (iv) which has a Standard Deviation of the Bean Count of more than 40;
- (v) which has a quantity of:
  - (A) Residue and Foreign Matter; or
  - (B) Bean clusters

in excess of the weight specified in the Grading and Warehousekeeping Procedures applicable to the Delivery Unit and, in the case of Residue and Foreign Matter, the Origin;

- (vi) for Bulk Cocoa where the level of FFA is above 3.5%
- (vii) which does not comply with Rule EEEE.4(h); or
- (viii) which has at any time been graded as not tenderable by ICE Registered Cocoa Graders under these Contract Rules,

shall not form part or all of a Delivery Unit and shall not be delivered by a Seller under a Contract. Notwithstanding Rule EEEE.4(m)(vii), if a Delivery Unit has been regraded pursuant to Rule EEEE.3(~~g~~)(ii) or GWP's E 1.7 and E 1.10, respectively, and a Valid Grading Result has been issued, Cocoa forming part or all of that Delivery Unit may be delivered by a Seller under a Contract.

**EEEE.5 PACKING AND WEIGHTS<sup>14</sup>**

- (a) Subject to Rule EEEE.5(b), Cocoa to be delivered in a Standard or Large Delivery Unit shall be packed in sound bags in external good order and meeting the criteria prescribed by the Exchange from time to time.
- (b) Cocoa contained in a Delivery Unit which is recorded on Guardian may only be bagged, rebagged or debagged in a Warehouse in accordance with the Grading and Warehousekeeping Procedures in force at the time of such bagging, rebagging or debagging. The Clearing House may, at its absolute discretion, supervise the bagging, rebagging or debagging of Cocoa contained in a Delivery Unit.
- (c) Each bag of Cocoa contained in a Standard or Large Delivery Unit shall not have a Gross Weight of more than 75 kilogrammes.
- (d) Each Delivery Unit to be delivered by a Seller under a Contract shall be invoiced in accordance with Rule EEEE.10(a). In Rule EEEE.10(a) the “Net Weight” referred to in “A” shall be calculated in accordance with this Rule EEEE.5(d) and shall equal:
  - (i) the actual weight of a Delivery Unit as specified on the Warrant details recorded on Guardian (“Gross Weight”);
  - (ii) less the weight of any samples drawn from such Delivery Unit after it was last weighed; and
  - (iii) in respect of a Standard or Large Delivery Unit, less the actual tare of the Delivery Unit, to the nearest gramme, as specified on the Warrant details recorded on Guardian.
- (e) A Seller shall deliver under a Contract a Delivery Unit which:
  - (i) in respect of a Standard Delivery Unit, has a Net Weight within a tolerance of 1.5 % above or below the weight specified in Rule EEEE.1(b) for a Standard Delivery Unit;
  - (ii) in respect of a Large Delivery Unit, has a Net Weight within a tolerance of 1.5 % above or 1.0% below the weight specified in Rule EEEE.1(b) for a Large Delivery Unit; or
  - (iii) in respect of a Bulk Delivery Unit, has a Net Weight within a tolerance of:
    - (A) 0.5% to 1.5% above the weight specified in Rule EEEE.1(b) for a Bulk Delivery Unit at the time of first piling; or
    - (B) 1.5% above or 0.5% below the weight specified in Rule EEEE.1(b) for a Bulk Delivery Unit at the time of any subsequent pilings.

For the avoidance of doubt, the Buyer shall not reject a Delivery Unit for not being delivered at the Contract weight, provided it is delivered within the tolerance band for such Delivery Unit as specified in this Rule EEEE.5(e).
- (f) The Seller shall accept a deduction from the Contract price in accordance with:
  - (i) for Delivery Units delivered within the first 183 days from the Original Weigh Date a weight allowance will accrue at a rate of 0.5% per 183 days,

<sup>14</sup> Amended 26 May 2015, 27 December 2019

- (ii) for Delivery Units delivered from 184 to 548 days after the Original Weigh Date, a weight allowance will accrue at a rate of 0.5% per 365 days (in addition to any accrued allowance from the first 183 days),
- (iii) for Delivery Units delivered from 549 to 913 days after the Original Weigh Date, a weight allowance will accrue at a rate of 0.25% per 365 days (in addition to any accrued allowance from the first 548 days)

After 913 days after the Original Weigh Date, the total allowance of 1.25% will have been fully allocated and the Delivery Unit will attract no further allowance.

Delivery Units may be re-weighed at any time. After re-weighing, the nominal weight loss will be calculated from the Last Weigh Date rather than the Original Weigh Date, and

- (g) A Delivery Unit shall be weighed or reweighed in a Warehouse in accordance with the Grading and Warehousekeeping Procedures in force at the time of such weighing or reweighing.

#### EEEE.6 PRICE<sup>15</sup>

- (a) The Contract price shall be expressed in Pounds per Tonne.
- (b) Notwithstanding Rule EEEE.15(i)(ii), the Seller shall pay all Rent and Fumigation Charges up to and including the Settlement Day, except in respect of a Nominated Bulk Delivery Unit, in which case all Rent and Fumigation Charges shall be paid up to the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be. Any Rent and Fumigation Charges paid by the Seller beyond the relevant Settlement Day shall be borne by the Seller and not the Buyer.

- (c) For contract months from and including December 2021, the Seller's invoicing amount shall be adjusted by a Rent Allowance calculated in accordance with formula:

Global Average Warehousekeeper Rent

minus

Delivery Warehousekeeper's Rent

multiplied by

two or three (representing two or three calendar months of rent, calculated as the period from the expiry Delivery Month to the next Delivery Month).

Accordingly, an individual Warehousekeeper Rent that is more expensive than the Global Average Warehousekeeper Rent results in a reduction in the Seller's invoicing amount, and an individual Warehousekeeper Rent which is less expensive than the Global Average Warehousekeeper Rent results in an increase in the Seller's invoicing amount.

- (d) For contract months from and including December 2021, the Seller's invoicing amount shall be adjusted by an Allowance in Lieu of Grading of:

- (i) GBP 4 (four) per Tonne per calendar month for the period of 6-42 calendar months following the second and any subsequent Grading Result excluding any unexpired part of the month in which it was graded; and

<sup>15</sup> Amended 26 May 2015

- (ii) GBP 8 (eight) per Tonne per calendar month for the period from 43 months and onward following the second and any subsequent Grading Result excluding any unexpired part of the month in which it was graded.

The Allowance in Lieu of Grading shall be calculated on the Net Weight.

The Exchange reserves the right to amend the above mentioned Allowances in Lieu of Grading from time to time in its absolute discretion. Any such amendments will be notified to the market in advance of implementation.

- ~~(b)~~(e) For contract months from and including December 2021, all Loading Out Charges up to the point of Loading Out onto a truck or reasonable equivalent is to be pre-paid to the Warehousekeeper by the first Seller to tender the relevant Warrant in advance of that tender. The Warrant details which are recorded on Guardian in relation to Loading Out Charges shall be updated by the Warehousekeeper as having been charged to the first Seller to tender the relevant Warrant at that Warehousekeeper. For charging purposes, it is to be assumed that the eventual Load Out is to occur in the same Warehousekeeper nomination/licensing year and the relevant Cocoa is in the same format (bags or bulk) as first tendered by the pre-paying Seller. For subsequent owners of the same Warrant at the same Warehousekeeper, Load Out Charges shall be considered already pre-paid and cannot be re-charged by the Warehousekeeper to any subsequent owner, even if delivery occurs in a subsequent Warehousekeeper nomination/licensing year. However a Warehousekeeper shall be entitled to recover additional Loading Out Charges further to the original pre-paid Loading Out Charges where an additional cost is occasioned by the owner (including any subsequent owner) changing the storage format of the Cocoa and this shall also be pre-paid by the then relevant owner in advance of the next tender.

## EEEE.7 IMPORT DUTY

- (a) Subject to Rule EEEE.7(c), a Seller may deliver Cocoa qualifying on account of its Origin for a nil or reduced rate of import duty (“Preferential Rate of Import Duty”), if:
- (i) sufficient documentation has been lodged with the appropriate authorities to enable the Buyer to take delivery of Cocoa contained in a Delivery Unit at a Preferential Rate of Import Duty in the country of importation (“Import Duty Documentation”); or
  - (ii) the Preferential Rate of Import Duty has been paid.
- (b) A Seller shall deliver Cocoa which does not qualify for a Preferential Rate of Import Duty under Rule EEEE.7(a) as either:
- (i) import duty unpaid, and any duty will be payable by the Buyer; or
  - (ii) import duty paid, and any duty paid or payable will be borne by the Seller.
- (c) The Clearing House may, at its absolute discretion, request the Seller to provide to the Clearing House evidence that paragraph (i) or (ii) of Rule EEEE.7(a) has been complied with (“Evidence of Import Duty”). The Evidence of Import Duty shall be in the form required by the Clearing House in its absolute discretion from time to time. If the Seller fails to provide satisfactory Evidence of Import Duty to the Clearing House which will entitle the Buyer to claim a Preferential Rate of Import Duty in the country of importation, the Cocoa contained in the Delivery Unit shall be delivered by the Seller as either import duty unpaid or paid in accordance with Rule EEEE.7(b).
- (d) Each Delivery Unit recorded on Guardian shall state:
- (i) if Cocoa contained in a Delivery Unit is subject to either a Preferential Rate of Import Duty or a non-Preferential Rate of Import Duty; and

- (ii) in respect of Cocoa which is subject to a Preferential Rate of Import Duty, if either Import Duty Documentation has been lodged with and accepted by the appropriate authorities or the Preferential Rate of Import Duty has been paid.
- (e) No adjustment shall be made to the Contract price on account of:
  - (i) any difference between Preferential Rates of Import Duty and non-Preferential Rates of Import Duty; or
  - (ii) payment or non-payment, as the case may be, of import duty in respect of Cocoa delivered under a Contract.

#### EEEE.8 LAST TRADING DAY

- (a) On the Last Trading Day:
  - (i) trading in Contracts for the relevant Delivery Month shall cease at such time as may be specified for that purpose in the Administrative Procedures; and
  - (ii) the Exchange will calculate the EDSP for such Contracts in accordance with Rule EEEE.9.

#### EEEE.9 EXCHANGE DELIVERY SETTLEMENT PRICE (“EDSP”)<sup>16</sup>

- (a) Paragraphs (i), (ii) and (iii) of this Rule EEEE.9(a) are subject to Rule EEEE.9(b). The EDSP for Contracts for a particular Delivery Month shall be calculated by Exchange officials on the Last Trading Day as follows:
  - (i) if (as far as reasonably ascertainable) one or more Contracts for that Delivery Month has been made on the Last Trading Day during the period specified for this purpose in the Administrative Procedures, then:
    - (A) if only one Contract has been made, the EDSP shall be the price (as far as reasonably ascertainable) at which that Contract was made; or
    - (B) if more than one Contract has been made, the EDSP shall be the average rounded down to the nearest pound of the prices (as far as reasonably ascertainable) at which such Contracts were made, weighted by reference to the number of Lots (as far as reasonably ascertainable) comprised in each such Contract;
  - (ii) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made but both an offer (or offers) and a bid (or bids) have been made in respect of a Contract (or Contracts) for that Delivery Month, then the EDSP shall be the average of the lowest price (as far as reasonably ascertainable) at which such an offer was made and the highest price (as far as reasonably ascertainable) at which such a bid was made and such average shall be rounded down to the nearest pound;
  - (iii) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made and either no offer or no bid has been made in respect of a Contract (or Contracts) for that Delivery Month, then Exchange officials shall determine the EDSP by

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<sup>16</sup> Amended 26 May 2015



reference inter alia to the price at which any offer or bid, as the case may be, in respect of a Contract for that Delivery Month was made during such period on such day; or

- (iv) if (as far as reasonably ascertainable) on the Last Trading Day, during the period specified for this purpose in the Administrative Procedures, no Contract for that Delivery Month has been made and neither an offer nor a bid have been made in respect of a Contract (or Contracts) for that Delivery Month, then Exchange officials may in their absolute discretion fix the EDSP at a price determined by them as being consistent with the prices at which any Contracts or any offers or bids in respect of a Contract were made on the Last Trading Day for the Delivery Month and period referred to in Rules EEEE.9(b)(i) and (ii) below and, if necessary, rounded down to the nearest Pound.
- (b) If in the opinion of Exchange officials, the EDSP which would result from a calculation made in accordance with Rule EEEE.9(a)(i), (ii) or (iii) would not be consistent with the prices at which any Contracts, or other related contracts, or any offers or bids in respect of a Contract, or other related contracts, were made on the Last Trading Day for:
  - (i) the relevant Delivery Month prior to the applicable period referred to in Rule EEEE.9(a)(i), (ii) or (iii), as the case may be; or
  - (ii) any other Delivery Month during the applicable period referred to in Rule EEEE.9(a)(i), (ii) or (iii), as the case may be,

then Exchange officials may in their absolute discretion fix the EDSP at a price determined by them as being consistent with the prices, offers or bids for the Delivery Month and period referred to in paragraphs (i) or (ii) above, and, if necessary, rounded down to the nearest Pound.

- (c) The Exchange shall publish the EDSP by the time specified for that purpose in the Administrative Procedures. The EDSP shall be final and binding for all purposes.

**EEEE.10 INVOICING AMOUNT<sup>17</sup>**

- (a) Subject to Rule EEEE.10(b), the “Invoicing Amount” in respect of each Delivery Unit to be delivered under a Contract shall be a sum calculated in accordance with the formula:

$$((\text{Contract weight} + A) \times (\text{EDSP} + B)) + C$$

where:

EDSP = the EDSP for the Delivery Month.

A = the Net Weight less the Contract weight.

B = any Allowances made in accordance with Rules EEEE.4, EEEE.5(f), ~~EEEE.1.5(g)~~, and EEEE.6(b)(ii) and these Contract Rules.

C = any Allowance made under Rule EEEE.15(i).

- (b) Where the sum calculated in accordance with Rule EEEE.10(a) is not a number of Pounds and whole pence, if such sum is:
  - (i) less than a number of Pounds, pence and a whole half penny, such sum shall be rounded down to the nearest sum which is a number of Pounds and whole pence; and

<sup>17</sup> Amended 26 May 2015

- (ii) equal to or more than a number of Pounds, pence and a whole half penny, such sum shall be rounded up to the nearest sum which is a number of Pounds and whole pence,

and the Invoicing Amount shall be such nearest sum.

- (c) In respect of a registered Contract, the final Invoicing Amount in respect of a Delivery Unit shall be paid by or to the Clearing House (as the case may require) in accordance with Rules EEEE.16(a) and EEEE.16(f) and the Administrative Procedures.

#### EEEE.11 SETTLEMENT PAYMENTS

- (a) In respect of each Lot referred to in a Seller's Delivery Notice, in addition to any other payment required by these Contract Rules, the following payments shall be made by the time specified for that purpose in the Administrative Procedures:

- (i) where the EDSP exceeds the Contract price, payment by the Seller to the Clearing House or payment by the Clearing House to the Buyer, or both (as the case may require); and
- (ii) where the Contract price exceeds the EDSP, payment by the Buyer to the Clearing House or payment by the Clearing House to the Seller, or both (as the case may require),

of an amount calculated as the difference, in Pounds multiplied by 10 in respect of each Lot, between the EDSP and the Contract price.

#### EEEE.12 SELLER'S DELIVERY NOTICE AND NOTIFICATIONS TO SELLER

- (a) A Seller in whose name are registered one or more Contracts shall give to the Clearing House a Seller's Delivery Notice in respect of each Lot not later than the time on the Notice Day specified for that purpose in the Administrative Procedures.
- (b) A Seller's Delivery Notice shall be presented to the Clearing House by the Seller by such means and in a form prescribed from time to time by the Clearing House. The Seller's Delivery Notice shall in respect of each Delivery Unit to be delivered by the Seller specify the information set out in the Administrative Procedures and such other information as the Clearing House may prescribe from time to time.
- (c) By the time specified for that purpose in the Administrative Procedures on the Notice Day, the Clearing House may in respect of any Bulk or Large Delivery Units specified in the Seller's Delivery Notice, direct the Seller to convert one or more Large Delivery Units into Standard Delivery Units or one or more Bulk Delivery Units into Large or Standard Delivery Units or both.
- (d) If the Clearing House has made a direction pursuant to Rule EEEE.12(c), the Seller shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, notify the Clearing House by such means and in a form from time to time prescribed by the Clearing House that it shall comply with such direction by:
  - (i) converting the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made and shall promptly instruct the Warehousekeeper to undertake such conversion; or
  - (ii) converting one or more other Delivery Units as determined by the Seller, specifying the relevant details of each such Delivery Unit, provided that each such Delivery Unit:
    - (A) in aggregate, is of an amount of Cocoa to enable the Seller to fulfil its delivery obligations under the relevant Lots;

- (B) complies with Rule EEEE.3(b);
- (C) if not of the same size as the Delivery Unit in respect of which such direction was made, is of a size acceptable to the Clearing House, as determined in its absolute discretion, to facilitate delivery by the Clearing House of the relevant Lots; and
- (D) if it is the same size as the Delivery Unit in respect of which such direction was made, does not have one or more discounts to the Contract price in respect of the quality or condition as specified by the Valid Grading Result which is greater than any discount awarded in respect of the same category of quality or condition for the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made,

and shall promptly instruct the Warehousekeeper to undertake such conversion; or:

- (iii) substituting the Delivery Unit specified in the Seller's Delivery Notice in respect of which such direction was made with such other Delivery Units as determined by the Seller, specifying the relevant details of each such Delivery Unit, provided that each such Delivery Unit:
  - (A) in aggregate, is of an amount of Cocoa to enable the Seller to fulfil its delivery obligations under the relevant Lots;
  - (B) complies with Rule EEEE.3(b); and
  - (C) if not of a size required by the Clearing House as specified in its discretion, is of a size acceptable to the Clearing House, as determined in its absolute discretion, to facilitate delivery by the Clearing House of the relevant Lots.

If the Seller makes a notification under Rule EEEE.12(d)(ii) or (iii), the Seller shall in respect of each Delivery Unit to be delivered by the Seller give to the Clearing House the information set out in the Administrative Procedures and such other information as the Clearing House may prescribe from time to time.

- (e) If the Seller has made a notification to the Clearing House under Rule EEEE.12(d)(i) or (ii), the Seller shall, as applicable:
  - (i) convert each Nominated Large Delivery Unit in accordance with Rule EEEE.14 and deliver each Converted Delivery Unit on the Settlement Day in accordance with Rule 16(a)(i); and
  - (ii) convert each Nominated Bulk Delivery Unit in accordance with Rule EEEE.15 and deliver each Converted Delivery Unit on the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be, in accordance with Rule 16(a)(ii).
- (f) A Seller shall not remove, substitute or vary a Tender, or any of its terms, after the time on the relevant Day specified in the Administrative Procedures for delivery of the Tender to the Clearing House, unless:
  - (i) the Seller has obtained the prior consent of the Clearing House, the Clearing House has obtained the Buyer's prior written consent in respect of any Lots referred to in the Tender which have been allocated to such Buyer under Rule EEEE.13(d) and the Seller has notified the Clearing House of the proposed removal, substitution or variation;
  - (ii) the Seller makes a notification to the Clearing House under Rule EEEE.12(d); or

- (iii) the Seller is directed by the Clearing House to make a substitution of the Tender, or any of its terms.
- (g) The Clearing House shall not be obliged to accept a Tender in respect of one or more Lots, unless:
  - (i) the Tender complies with Rules EEEE.12(b), EEEE.12(d) and EEEE.12(f), as applicable; and
  - (ii) the Seller is able to present such other documents or information in respect of such Lots or the Delivery Units to be delivered in respect of such Lots, as may be required by the Clearing House under Rule EEEE.12(f).
- (h) By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, the Clearing House shall make available to the Seller:
  - (i) details of the final Invoicing Amount payable to the Seller by the Clearing House in respect of each Delivery Unit to be delivered by the Seller, other than a Nominated Delivery Unit; and
  - (ii) details of the provisional Invoicing Amount payable to the Seller by the Clearing House in respect of each Converted Delivery Unit to be delivered by the Seller which is formed upon the conversion of a Nominated Delivery Unit.

#### **EEEE.13 BUYER'S NOTIFICATION AND ALLOCATION AND NOTIFICATIONS TO BUYERS**

- (a) A Buyer shall give to the Clearing House a Buyer's Position Notice in respect of each Lot not later than the time on the Notice Day specified for that purpose in the Administrative Procedures.
- (b) A Buyer's Position Notice shall be presented to the Clearing House by the Buyer by such means and in a form prescribed from time to time by the Clearing House. The Buyer's Position Notice shall in respect of one or more Contracts specify the number of Lots to be delivered by the Clearing House to the Buyer, and by the Buyer to each of its underlying clients, and such other information as the Clearing House may prescribe from time to time.
- (c) A Buyer shall not remove, substitute or vary a Buyer's Position Notice, or any of its terms, after the time on the Notice Day specified in the Administrative Procedures for delivery of the Buyer's Position Notice to the Clearing House, without the Clearing House's prior consent.
- (d)
  - (i) In respect of registered Contracts, the Clearing House will, not later than the time on the first Business Day after the Notice Day specified for that purpose in the Administrative Procedures, allocate to a Clearing Member registered as a Buyer one or more Delivery Units referred to in a Tender in respect of each Lot to be delivered to it by the Clearing House and by such method of allocation as may be specified in the Clearing House procedures.
  - (ii) The allocation to a Buyer of any Converted Delivery Unit under paragraph (i) of this Rule EEEE.13(d) will be a provisional allocation and the Clearing House shall confirm to the Buyer, in accordance with Rule EEEE.14(f)(ii) and EEEE.15(h)(ii), as applicable, the final allocation of the Converted Delivery Units to be delivered by the Clearing House.
- (e) The Buyer shall accept the allocation of each Delivery Unit made by the Clearing House under Rule EEEE.13(d) and under Rules EEEE.14(f)(ii) or EEEE.15(h)(ii), as applicable, notwithstanding that such allocation may not reflect either the requirements of the Buyer, or any of the Buyer's underlying clients, or the information provided by the Buyer to the Clearing House in the Buyer's Position Notice.

- (f) By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately following the Notice Day, the Clearing House shall make available to the Buyer:
  - (i) details of the final Invoicing Amount payable by the Buyer to the Clearing House in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Delivery Unit; and
  - (ii) details of the provisional Invoicing Amount payable by the Buyer to the Clearing House in respect of each Converted Delivery Unit to be converted from a Nominated Delivery Unit which has been provisionally allocated to the Buyer.
- (g) The Buyer acknowledges and agrees that any information provided by the Clearing House pursuant to Rules EEEE.13(d) or EEEE.13(f)(ii) may be amended from time to time by the Clearing House under Rules EEEE.14(f)(ii) and EEEE.15(h)(ii).

**EEEE.14 CONVERSION OF NOMINATED LARGE DELIVERY UNITS AND FINAL ALLOCATION<sup>18</sup>**

- (a) This Rule EEEE.14 shall apply to each Nominated Large Delivery Unit in respect of which the Seller has made a notification to the Clearing House under Rule EEEE.12(d)(i) or (ii) and each Converted Delivery Unit formed upon conversion of such Nominated Large Delivery Unit.
- (b) A Seller shall convert a Nominated Large Delivery Unit in accordance with this Rule EEEE.14 and the Grading and Warehousekeeping Procedures in force at the time of delivery. The costs of converting such Delivery Unit shall be borne [in equal proportions] by the Seller [and the Buyer as set forth in further detail in GWP D 2.9.11]. The Clearing House may, at its absolute discretion, supervise the conversion of a Nominated Large Delivery Unit.
- (c) Upon conversion of a Nominated Large Delivery Unit:
  - (i) its Valid Grading Result shall apply to each Converted Delivery Unit including, where appropriate, any FFA Allowance attributed to it under Rule EEEE.4(g)(ii); and
  - (ii) each Converted Delivery Unit shall be weighed and issued with a new Warrant by the Warehousekeeper in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.
- (d) By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Settlement Day, the Seller shall have:
  - (i) completed the conversion of each Nominated Large Delivery Unit;
  - (ii) complied with Rule EEEE.14(c)(ii) in respect of each Converted Delivery Unit and ensure that such Converted Delivery Unit has a Net Weight within the tolerance specified in Rule EEEE.5(e)(i);
  - (iii) presented a notice to the Clearing House by such means and in a form from time to time prescribed by the Clearing House, specifying in respect of each Converted Delivery Unit the information set out in the Administrative Procedures and such other information as the Clearing House may require from time to time; and
  - (iv) requested the Warehousekeeper to record on Guardian the Warrant number for, and weight details of, each Converted Delivery Unit together with such other information as the Clearing House may require the Warehousekeeper to provide from time to time.

<sup>18</sup> Amended 26 May 2015. Amendments in square brackets will take effect from March 2020.

- (e) The Seller shall deliver on the Settlement Day each Converted Delivery Unit in respect of which the Seller has complied with Rule EEEE.14(d). If the Seller has not complied with Rule EEEE.14(d) in respect of any Converted Delivery Unit, the Seller shall be deemed to be in Default in Performance of its obligations under Rule EEEE.18 entitling the Clearing House to take such steps as it deems appropriate under any of the provisions of Rule EEEE.18 including, without limitation, under Rule EEEE.18(e)(i).
- (f) The Clearing House shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Settlement Day make available to:
  - (i) the Seller, in respect of each Converted Delivery Unit to be delivered by the Seller, details of the final Invoicing Amount payable to the Seller in respect of each such Converted Delivery Unit; and
  - (ii) the Buyer, confirmation of the final allocation of the Converted Delivery Units derived from one or more Nominated Large Delivery Units to be delivered to it and details of the final Invoicing Amount payable by the Buyer in respect of each such Converted Delivery Unit.

#### EEEE.15 CONVERSION OF NOMINATED BULK DELIVERY UNITS AND FINAL ALLOCATION<sup>19</sup>

- (a) This Rule EEEE.15 shall apply to each Nominated Bulk Delivery Unit in respect of which the Seller has made a notification to the Clearing House under Rule EEEE.12(d)(i) or (ii) and each Converted Delivery Unit formed upon conversion of such Nominated Bulk Delivery Unit.
- (b) A Seller shall convert a Nominated Bulk Delivery Unit in accordance with this Rule EEEE.15 and the Grading and Warehousekeeping Procedures in force at the time of delivery. The costs of converting such Delivery Unit shall be borne [in equal proportions] by the Seller [and the Buyer as set forth in further detail in GWP D 2.9.11]. The Clearing House may, at its absolute discretion, supervise the conversion of a Nominated Bulk Delivery Unit.
- (c) Upon conversion of a Nominated Bulk Delivery Unit:
  - (i) its Valid Grading Result shall apply to each Converted Delivery Unit including, where appropriate, any FFA Allowance attributed to it under Rule EEEE.4(g)(ii); and
  - (ii) each Converted Delivery Unit shall be weighed and issued with a new Warrant by the Warehousekeeper in accordance with the Grading and Warehousekeeping Procedures in force at the time of delivery.
- (d) By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day, the Seller shall have:
  - (i) completed the conversion of each Nominated Bulk Delivery Unit;
  - (ii) complied with Rule EEEE.15(c)(ii) in respect of each Converted Delivery Unit and ensure that such Converted Delivery Unit has a Net Weight within the tolerance specified in Rule EEEE.5(e)(i) or (ii), as the case may be;
  - (iii) presented a notice to the Clearing House by such means and in a form from time to time prescribed by the Clearing House, specifying in respect of each Converted Delivery Unit the information set out in the Administrative Procedures and such other information as the Clearing House may require from time to time; and

<sup>19</sup> Amended 26 May 2015. Amendments in square brackets will take effect from March 2020.

- (iv) requested the Warehousekeeper to record on Guardian the Warrant number for, and weight details of, each Converted Delivery Unit together with such other information as the Clearing House or the Clearing House may require the Warehousekeeper to provide from time to time.
- (e) The Seller shall notify the Clearing House by such means and in a form from time to time prescribed by the Clearing House as soon as the Seller becomes aware that it is, or is likely to be, unable to comply with Rule EEEE.15(d). Such notice shall not be provided later than the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day. The Seller shall specify in such notice the circumstances and reason for non-compliance with Rule EEEE.15(d), an estimate of the date when the Seller will comply with such Rule, the number of Lots affected and such other information as the Clearing House may require from time to time.
- (f) If upon receiving a notification under Rule EEEE.15(e), the Clearing House determines in its absolute discretion that the Seller is unable to comply with Rule EEEE.15(d):
  - (i) due to an event occurring which is beyond the reasonable control of the Seller or the Warehousekeeper, as the case may be, which without prejudice to the foregoing, may include the unavailability or breakdown of machinery used to convert the Nominated Delivery Unit or the unavailability of bags meeting the criteria prescribed by the Clearing House from time to time, the Clearing House shall determine in its absolute discretion whether to move the Conversion Settlement Day to ten Business Days immediately following the Conversion Settlement Day (“Extended Conversion Settlement Day”) to enable the Seller to comply with Rule EEEE.15(d) by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Extended Conversion Settlement Day; or
  - (ii) due to an event occurring which does not fall within Rule EEEE.15(f)(i) above, the Seller shall:
    - (A) deliver on the Conversion Settlement Day Converted Delivery Units which comply with Rule EEEE.15(d); and
    - (B) in relation to those Lots in respect of which the Seller is unable to deliver Converted Delivery Units, be deemed to be in Default in Performance of its obligations under Rule EEEE.18 entitling the Clearing House to take such steps as it deems appropriate under any of the provisions of Rule EEEE.18 including, without limitation, Rule EEEE.18(e)(i).

The Clearing House shall notify the Seller and the Buyer of any determination made under this Rule EEEE.15(f).

- (g) By the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Extended Conversion Settlement Day:
  - (i) the Seller shall have complied with Rule EEEE.15(d); and
  - (ii) if the Seller has not complied fully with Rule EEEE.15(d):
    - (A) the Seller shall deliver on the Extended Conversion Settlement Day Converted Delivery Units which comply with Rule EEEE.15(d); and
    - (B) in respect of any Converted Delivery Unit which does not comply with Rule EEEE.15(d), the Clearing House may:



- (1) in its absolute discretion take such steps as it deems appropriate under any of the provisions of Rule EEEE.18 including, without limitation, Rule EEEE.18(e)(i); or
  - (2) if the Seller is unable to comply with its obligations under Rule EEEE.15(d) due to an event of force majeure under Rule EEEE.20(a), take such steps as it deems appropriate to facilitate a mutually acceptable arrangement between the parties, which may be on such terms and take such form as is acceptable to the Clearing House, the Seller and the Buyer, and in the absence of such an arrangement, shall refer the matter to the Exchange for its determination which shall be made in accordance with Rule EEEE.20(e).
- (h) The Clearing House shall, by the time specified for that purpose in the Administrative Procedures on the first Business Day immediately prior to the Conversion Settlement Day or on the first Business Day immediately prior to the Extended Conversion Settlement Day, as the case may be, make available to:
  - (i) the Seller details of the final Invoicing Amount payable to the Seller in respect of each Converted Delivery Unit which complies with Rules EEEE.15(d) and EEEE.5(e)(i) or (ii), as the case may be, to be delivered by the Seller and; and
  - (ii) the Buyer, confirmation of the final allocation of Converted Delivery Units derived from Nominated Bulk Delivery Units to be delivered to it on the Conversion Settlement Day or the Extended Conversion Settlement Day and details of the final Invoicing Amount payable by the Buyer in respect each such Converted Delivery Unit.
- (i) The Buyer shall pay a premium on the Contract of a sum equal to:
  - (i) the Interest Rate multiplied by the EDSP for the relevant Delivery Month per Tonne Net Weight in respect of each Converted Delivery Unit to be delivered to it for each day after the Settlement Day up to and including the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be; and
  - (ii) the daily rate per Tonne of the Gross Weight of each Converted Delivery Unit in respect of all Rent and Fumigation Charges, in an amount determined by the Exchange from time to time, which have been paid from the Settlement Day up to and including the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.
- (j) The Seller and the Buyer shall comply with any instructions and determination made by the Clearing House under this Rule EEEE.15. In the case of any disagreement between the Clearing House and the Seller as to whether the Seller can comply with Rule EEEE.15(d) within such time as the Clearing House may specify, the determination of the Clearing House shall be final.

## EEEE.16 DELIVERY

- (a) No later than the time specified for that purpose in the Administrative Procedures, the Buyer shall make payment to the Clearing House of the final Invoicing Amount:
  - (i) on the Settlement Day in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, in accordance with these Contract Rules and the Clearing House Rules; and
  - (ii) on the Conversion Settlement Day or on the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit allocated to the Buyer in accordance with these Contract Rules and the Clearing House Rules.



Payment is to be made without prejudice to the reference of any claim or dispute to arbitration.

- (b) The Seller shall ensure that the Warrant details recorded on Guardian in respect of each Delivery Unit are accurate and complete in all respects.
- (c) Notwithstanding Rule EEEE.15(i)(ii), Rent and Fumigation Charges in respect of each Delivery Unit shall be paid by the Seller in accordance with Rule EEEE.6**(be)**.
- (d) The Seller shall represent and warrant to the Buyer that each Delivery Unit delivered by the Seller is free from any security interest, lien or encumbrance. The Seller shall indemnify the Buyer on demand against each loss, liability and cost which the Buyer incurs or suffers arising out of any claim, made or action brought or threatened alleging infringement of the rights of any third party in respect of any Delivery Unit delivered by the Seller under a Contract.
- (e) For the avoidance of doubt, notwithstanding that the Clearing House is not recorded as the owner of a Delivery Unit on Guardian, it is the buyer to the Seller and the seller to the Buyer in the process of transferring ownership of the Delivery Unit.
- (f) No later than the time specified for that purpose in the Administrative Procedures, the Clearing House shall make payment to the Seller of the final Invoicing Amount, at which point the Seller will be deemed to have transferred the Delivery Unit to the Clearing House:
  - (i) on the Settlement Day in respect of each Delivery Unit delivered by the Seller, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, in accordance with these Contract Rules and the Clearing House Rules; and
  - (ii) on the Conversion Settlement Day or on the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit delivered by the Seller in accordance with these Contract Rules and the Clearing House Rules.
- (g) No later than the time specified for that purpose in the Administrative Procedures, if the Buyer has paid the final Invoicing Amount in respect of a Delivery Unit, the records on Guardian will be updated to reflect the change in ownership from Seller to Buyer in respect of such Delivery Unit, at which point the Buyer will be deemed to have taken up the Delivery Unit from the Clearing House:
  - (i) on the Settlement Day in respect of each Delivery Unit allocated to the Buyer, other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit; or
  - (ii) on the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be, in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit allocated to the Buyer,

in accordance with these Contract Rules and the Clearing House Rules. Each Warrant is to be taken up by the Buyer without prejudice to the reference of any claim or dispute to arbitration. The Clearing House is under no obligation to effect delivery if the Buyer has not paid the final Invoicing Amount in respect of the Delivery Unit which is the subject of the Warrant.

- (h) Without prejudice to any steps taken by the Clearing House under Rule EEEE.18, if payment is not made by the time and on the day prescribed for that purpose in the Administrative Procedures, the Clearing House may sell the Delivery Unit in respect of which payment has not been made. Any surplus or deficit resulting from such sale, with an account for interest and the costs of sale, shall be settled with the Clearing House forthwith.
- (i) A Buyer shall (for all purposes, including the making of any claim for damages) be deemed to have accepted a Delivery Unit delivered under this Rule EEEE.16, by the time stipulated in the Administrative Procedures on the Business Day which:

- (i) in respect of each Delivery Unit other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, is the tenth Business Day immediately after the Settlement Day; or
- (ii) in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit, is the seventh Business Day immediately after the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be,

(each date being referred to as the “Acceptance Date”) unless the Buyer has, not later than the time stipulated in the Administrative Procedures on the relevant Acceptance Date, given notice to the Clearing House in accordance with Rule EEEE.23 and in a form published by the Clearing House from time to time that the Buyer claims that the Delivery Unit does not comply with these Contract Rules, stating in what respects the Delivery Unit is said not to comply and whether the Buyer also claims to reject the Delivery Unit. The Clearing House will notify the Seller of the Buyer’s notification. If the Buyer has not so notified the Clearing House by such time, then any claim by the Buyer of any nature whatsoever in respect of the Delivery Unit shall be deemed to have been waived and absolutely barred.

- (j) Without prejudice to the provisions of Rules EEEE.16(d) and EEEE.18, a failure by the Seller or Buyer to comply with its obligations under any of the provisions of Rules EEEE.12, EEEE.13, EEEE.14, EEEE.15 and EEEE.16, as the case may be, shall constitute a Default in Performance entitling the Clearing House forthwith to take steps under any of the provisions of Rule EEEE.18. Any action taken by the Clearing House shall be without prejudice to any rights, obligations or claims of the Seller or the Buyer or the Clearing House and any costs, claims, losses, taxes or expenses of whatsoever nature incurred or suffered by the Clearing House in connection with such action shall be paid by the Seller or by the Buyer in Default in Performance.

#### EEEE.17 PROPERTY AND RISK

- (a) Property and risk in respect of a Delivery Unit delivered under a registered Contract will pass:
  - (i) from the Seller to the Clearing House as Buyer, once the following has been effected:
    - (A) the deemed transfer by the Seller of the Warrant in respect of such Delivery Unit to the Clearing House; and
    - (B) the payment by the Clearing House of the final Invoicing Amount in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and
  - (ii) from the Clearing House as Seller to the Buyer, once the following has been effected:
    - (A) the payment by the Buyer of the final Invoicing Amount in respect of such Delivery Unit to the Clearing House in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and
    - (B) the deemed take up of the Warrant in respect of such Delivery Unit by the Buyer.
- (b) In the event of the Buyer acquiring under Rule EEEE.17(a) a Delivery Unit which forms part of an identified bulk of Cocoa, the Buyer will acquire proprietary rights in an undivided share in the identified bulk of Cocoa as set out in section 20A of the Sale of Goods Act 1979.

#### EEEE.18 DEFAULT IN PERFORMANCE

- (a) The provisions of this Rule EEEE.18 shall be subject to the default rules from time to time in force of the Clearing House.

- (b) For the purposes of this Rule EEEE.18, a reference to a “Default in Performance” shall, subject to Rule EEEE.18(d), be construed as including an actual failure by a Seller or a Buyer under Rule EEEE.18(c) in performing its obligations under a Contract, or an anticipated failure. An anticipated failure is one which the Clearing House, in its reasonable opinion, thinks will occur and in respect of which the Clearing House considers that it should take action under the provisions of this Rule EEEE.18.
- (c) A Buyer or a Seller shall be in Default in Performance where:
  - (i) he fails to fulfil his obligations under a Contract by the time and in the manner prescribed in accordance with these Contract Rules, the Regulations and the Administrative Procedures and the Clearing House Rules;
  - (ii) he fails to pay any sum due to the Clearing House in respect of a registered Contract by the time specified for that purpose in the Administrative Procedures; or
  - (iii) in the reasonable opinion of the Clearing House, he is in Default in Performance.
- (d) Errors in a notice, which are determined in the Clearing House’s absolute discretion to be clerical errors which can be readily rectified and are rectified, shall not be treated as constituting a Default in Performance.
- (e) Subject to Rules EEEE.18(f)(ii) and EEEE.18(j), if it appears to the Clearing House that a Seller or a Buyer is in Default in Performance under a registered Contract, the Clearing House shall notify the Exchange of the Default in Performance and may, in its absolute discretion:
  - (i) take such steps as it deems appropriate to facilitate a mutually acceptable resolution of the Default in Performance. A resolution of a Default in Performance may be on such terms and take such form as is acceptable to the Clearing House, to the Seller and to the Buyer. Such terms may limit some or all of the rights of the Seller, the Buyer or the Clearing House to refer any matter concerning or arising out of a Default in Performance (or the resolution thereof) to arbitration;
  - (ii) without prejudice to any of its other rights under this Rule EEEE.18, refer to the Exchange any dispute or issue arising between any of the parties. If upon such reference, the Exchange is of the opinion that the Default in Performance is of minor significance it shall determine any such dispute or issue between such parties upon such evidence as it may deem relevant and convey its findings to such parties who shall forthwith accept such determination and shall implement its terms without question, provided that such acceptance and implementation shall be without prejudice to the right of any party to refer the dispute or any related dispute to arbitration; or
  - (iii) take any steps whatsoever which may appear desirable to the Clearing House for the protection of the Clearing House or of the Seller or Buyer not in Default in Performance including, without prejudice to the generality of the foregoing, any steps in order to perform its obligations to a party under a registered Contract.
- (f) If, within five Business Days of the Default in Performance having come to the attention of the Clearing House:
  - (i) the steps taken by the Clearing House have not led or are not likely to lead to a resolution of the Default in Performance; or
  - (ii) the Clearing House has not taken any steps and the Default in Performance remains unresolved,

the Clearing House will refer the matter to the Exchange. If upon reference of the dispute or issue to the Exchange, the Exchange is of the opinion that the Default in Performance may not be determined

by the Exchange in accordance with Rule EEEE.18(e)(ii)), then each Lot of Cocoa the subject of the dispute or issue shall be the subject of cash settlement at a price fixed by the Exchange in consultation with the Clearing House. The price may at the Exchange's absolute discretion take account of any compensation that the Exchange may consider, on the evidence before it, should be paid by either party to the other.

- (g) Any cash settlement price fixed under Rule EEEE.18(f) shall be binding on the parties.
- (h) Any costs, claims, losses, taxes or expenses of whatsoever nature suffered or incurred by the Clearing House in connection with any steps taken by the Clearing House in relation to a Contract to which the Default in Performance relates shall be paid by the Buyer or Seller who is in Default in Performance. Any steps taken by the Clearing House in relation to a Default in Performance shall be without prejudice to any rights (including rights to refer matters to arbitration, obligations or claims of the Buyer, the Seller or the Clearing House in relation to a Contract to which the Default in Performance relates.
- (i) A Buyer or Seller who is in Default in Performance under this Rule EEEE.18, shall forthwith pay to the Clearing House any sums payable by him under Rule EEEE.11 and any sums payable pursuant to this Rule EEEE.18.
- (j) Notwithstanding that a Buyer or Seller may be in Default in Performance under this Rule EEEE.18, the Clearing House may in its absolute discretion determine not to exercise or to delay in exercising any of its rights under this Rule EEEE.18, and no failure by the Clearing House to exercise nor any delay on its part in exercising any of such rights shall operate as a waiver of the Clearing House's rights upon that or any subsequent occasion, nor shall any single or partial exercise of any such rights prevent any further exercise thereof or of any other right.
- (k) A Buyer, a Seller or the Clearing House may refer a dispute or issue arising out of a Default in Performance under this Rule EEEE.18 (subject always to the application of provisions of Rules EEEE.18(e), EEEE.18(f) and EEEE.18(g)) to arbitration.
- (l) The provisions of this Rule EEEE.18 relating to steps that may be taken by the Clearing House, where there appears to the Clearing House to be a Default in Performance by a party to a registered Contract, may be varied, or different steps may be substituted therefor by the Exchange from time to time. Any such variation or substitution shall have such effect with regard to such existing and/or new Contracts and registered Contracts as the Exchange may determine.

#### EEEE.19 EMERGENCY PROVISIONS

- (a) If, at any time after the close of trading two Business Days prior to the day which would have been the Last Trading Day in respect of a Delivery Month, it becomes known to the Exchange that the day which would have been the Last Trading Day will not be a Business Day, then the Exchange may at its discretion determine that the Business Day next following such day shall become the Last Trading Day in respect of that Delivery Month and the Exchange shall publish the Exchange's determination by notice posted on the Market.
- (b) The Notice Day shall be the Business Day immediately following the Last Trading Day so that if the Last Trading Day is moved by the Exchange in the circumstances described in Rule EEEE.19(a), then the Notice Day shall be moved so that it falls on the Business Day immediately following the Last Trading Day.
- (c) The Settlement Day shall be the last Business Day in the relevant Delivery Month. If, at any time after two Business Days prior to the day which would have been the Settlement Day in respect of a Delivery Month, it becomes known to the Exchange that the day which would have been the Settlement Day will not be a Business Day, then the Exchange may at its discretion determine that the Business Day

next following such day shall become the Settlement Day in respect of that Delivery Month, and the Exchange shall publish the Exchange's determination by notice posted on the Market.

- (d) If the Settlement Day, Conversion Settlement Day or the Extended Conversion Settlement Day is moved by the Exchange (whether as a result of the operation of Rule EEEE.19(c) or otherwise), the Invoicing Amount calculated in accordance with Rule EEEE.10 shall be adjusted by the Clearing House to reflect any Allowance made under Rule EEEE.15(i) to reflect such new Day.
- (e) If an adjustment to the Invoicing Amount is required by Rule EEEE.19(d) after the Clearing House has made available details of the final Invoicing Amount to the Seller and Buyer under Rules EEEE.12(h)(i), EEEE.13(f)(i), EEEE.14(f)(ii) and EEEE.15(h), as the case may be, then a sum equal to the difference between that Invoicing Amount and the Invoicing Amount adjusted under Rule EEEE.19(d) shall be payable:
  - (i) by the Seller to the Clearing House and by the Clearing House to the Buyer if the total adjustment gives rise to a reduction in the Invoicing Amount; or
  - (ii) by the Buyer to the Clearing House and by the Clearing House to the Seller if the total adjustment gives rise to an increase in the Invoicing Amount.

Sums payable hereunder shall be payable by such time and in such manner as the Clearing House may specify.

## **EEEE.20 FORCE MAJEURE**

- (a) Subject to Rule EEEE.20(b) and EEEE.15(g)(ii)(B)(2), a "Force Majeure event" shall mean an event beyond the reasonable control of either party to a Contract which delays, hinders or prevents the performance in whole or in part by a party of his obligations under the Contract (other than an obligation to make a payment), including, without limitation, act of God, storm, flood, earthquake, fire, explosion, malicious damage, accident howsoever caused, strike, lock-out, labour dispute, riot, civil commotion, war whether declared or undeclared, armed conflict, use of force by authority of United Nations, act of terrorism, act of government or other national or local authority or any agency thereof, breakdown of machinery, and unavailability, restriction, failure or delay in or computer or data processing systems or communication or energy supplies or bank transfer systems.
- (b) The following shall not be a Force Majeure event: the failure for whatever reason of a computer or other electronic facility to accept a notification made by a Seller or a Buyer (other than the Clearing House) as required by these Contract Rules and the Administrative Procedures.
- (c) A party to a Contract shall not be entitled to rely upon this Rule EEEE.20 unless such party has notified the Clearing House in writing immediately after such party has become aware (or after it ought reasonably to have become aware) of such Force Majeure event, and has continued to seek to perform its obligations in accordance with the Contract (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure event). The notice shall state the date on which the Force Majeure event commenced and the effects of the Force Majeure event on such party's ability to perform its obligations in accordance with the Contract, including an estimate of the period of the Force Majeure event.
- (d) Upon the request of the Clearing House, a party seeking relief under this Rule EEEE.20 shall promptly provide such other information as required by the Clearing House as soon as reasonably practicable to assist the Exchange in determining whether a Force Majeure event has occurred. If a Force Majeure event has occurred, neither party will be deemed in Default in Performance of its obligations under a Contract if such party was unable to perform its obligations as a direct result of the occurrence of such Force Majeure event nor will any penalty or damages be payable if and to the extent that performance of any obligation is hindered or prevented by a Force Majeure event.

- (e) Subject to any steps taken at any time by the Exchange under emergency powers in the Regulations and subject to the default rules from time to time in force of the Clearing House, if the Exchange determines under Rule EEEE.20(d) that a Force Majeure event delays, hinders or prevents a party from performing any obligation under a Contract for a period of at least five Business Days beyond the time limit fixed in or under the Contract any Delivery Unit or part thereof not delivered to the Buyer, shall be the subject of cash settlement at a price to be fixed by the Exchange in consultation with the Clearing House in their absolute discretion. Such price shall be binding on the parties.

**EEEE.21 [NOT USED]**

**EEEE.22 [NOT USED]**

**EEEE.23 ARBITRATION**

- (a) [Not used]
- (b) [Not used]
- (c) (i) Where the Buyer has duly given notice by the time on the Acceptance Date specified in Rule EEEE.16(i) that the Buyer claims that the Delivery Unit does not comply with the terms of the Contract, stating in what respects the Delivery Unit is said not to comply and whether the Buyer also claims to reject the Delivery Unit, then the Delivery Unit shall be subject to an inspection.
- (ii) The Clearing House shall on or before the second Business Day after receipt of such notice notify the Buyer and the Seller of whether such inspection shall be carried out by the Clearing House or by a third party inspector (“Inspector”) to be appointed by the Clearing House. Where an Inspector is appointed, then the Clearing House may, in its absolute discretion, attend as an observer at any inspection carried out by the Inspector. The Buyer shall indemnify the Clearing House in respect of the costs of the Inspector, and shall be responsible for the costs of the Clearing House relating to the inspection, without prejudice to the right of the Buyer to claim such costs hereunder. The Clearing House shall inform the Inspector (if such is appointed) of the respects in which the Buyer claims that the Delivery Unit is not in conformity with the terms of the Contract.
- (iii) The Clearing House or the Inspector (as the case may be) shall inspect the Delivery Unit, carrying out such inspections, sampling and analyses as they consider appropriate (but shall not be required to break up the Delivery Unit, or inspect every bag within the Delivery Unit, for the purposes of any inspection) and shall on or before the Business Day which is the 22nd Business Day immediately after the Acceptance Date issue a report to the Buyer, the Seller and, in the case of a report by an Inspector, the Clearing House stating the facts relevant to the question of whether the Delivery Unit is in compliance with the terms of the Contract in the respects stated by the Buyer. The period of 22 Business Days may be extended by the Clearing House provided that it is satisfied, in its absolute discretion, that exceptional circumstances have prevented or will prevent the completion of the report within the time stipulated. The report of the Clearing House or the Inspector shall be conclusive and binding on the Buyer, the Seller and the Clearing House in respect of the facts stated in it, save in the case of fraud or manifest error.
- (iv) Where the Buyer has claimed to reject the Delivery Unit, then on or before the fifth Business Day after the issuance of the report made by the Clearing House or the Inspector (as the case may be), the Clearing House shall determine in its absolute discretion, on the basis of such report, whether the Buyer’s claim to reject the Delivery Unit is upheld. The Buyer’s claim to reject the Delivery Unit based on a breach of a condition of the Contract on the part of the Seller shall not be upheld if the Clearing House determines that the breach of that condition is so slight that it would be unreasonable for the Buyer to reject the Delivery Unit. The Clearing House may in its absolute discretion consult experts or legal advisers in reaching its determination. The costs of such experts or legal advisers and the costs of the Clearing House and/or the Inspector



relating to the inspection, shall be borne by the Buyer and the Seller in the first instance in such proportions as the Clearing House may direct, without prejudice to the right of either party to claim such costs in arbitration under the Regulations. The determination of the Clearing House shall be binding on the Buyer, the Seller and the Clearing House and they shall comply with it forthwith, without prejudice to the rights of the parties to refer any claim for loss, damage or costs to arbitration under the Regulations.

- (v) Any party wishing to refer a claim for loss, damage or costs to arbitration (whether or not the Buyer has claimed to reject the Delivery Unit) must, on or before the tenth Business Day after the issuance of the report made by the Clearing House or the Inspector (as the case may be), notify the Clearing House in accordance with the Regulations of its intention to refer a claim or dispute to arbitration. If a party has not so notified the Clearing House by such time, then any claim by such party of any nature whatsoever in respect of the Delivery Unit shall be deemed to have been waived and absolutely barred.
- (vi) No claim of any nature whatsoever may be brought by the Buyer in respect of the Delivery Unit until a report by the Clearing House or an Inspector (as the case may be) has been made, and a copy of it delivered to the Buyer and the Seller and, in the case of a report by an Inspector, the Clearing House.
- (vii) If the Buyer has claimed to reject the Delivery Unit, and the Clearing House has upheld such claim, then:-
  - (A) the Seller shall repay to the Clearing House the final Invoicing Amount in respect of the Delivery Unit by 10.00 hours on the day which is the fifth Business Day after the Clearing House has made the determination referred to in sub-paragraph (iv) above (the "Repayment Day"), together with interest thereon at the Interest Rate plus 2% per annum for the period from the day following the Settlement Day up to and including the Repayment Day;
  - (B) the Clearing House shall repay to the Buyer the final Invoicing Amount in respect of the Delivery Unit after 12.00 hours on the Repayment Day, together with interest thereon at the Interest Rate plus 2% per annum for the period from the day following the Settlement Day up to and including the Repayment Day;
  - (C) The records on Guardian will be updated by the Clearing House to reflect the change of ownership from Buyer to Seller.
  - (D) the Seller shall reimburse the Buyer in respect of any costs of the Inspector or of the Clearing House relating to the inspection, any reasonable Rent and Fumigation Charges, and any other reasonable costs or fees in respect of work done by the Warehousekeeper in relation to the inspection of the Delivery Unit by the Inspector or by the Clearing House which have been incurred by the Buyer in respect of the Delivery Unit, on or before the fifth Business Day after receipt of an invoice from the Buyer accompanied by supporting documents evidencing the amounts incurred by the Buyer; and
  - (E) the Buyer, pursuant to Rule EEEE.23(c)(v), shall be entitled to claim damages from the Seller by reference to the market price of Cocoa complying with the requirements of the Contract, but in no event shall either party be liable to the other in respect of any indirect or consequential losses or expenses.
- (viii) Property and risk in respect of a Delivery Unit which the Clearing House has determined that the Buyer is entitled to reject will pass:

(A) from the Buyer to the Clearing House as Seller, once the following has been effected:

- (1) the deemed transfer by the Buyer of the Warrant in respect of such Delivery Unit to the Clearing House; and
- (2) the payment by the Seller of the final Invoicing Amount in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and

(B) from the Clearing House as Buyer to the Seller, once the following has been effected:

- (1) the payment by the Clearing House of the final Invoicing Amount in respect of such Delivery Unit to the Buyer in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and
- (2) the deemed take up of the Warrant in respect of such Delivery Unit by the Seller.

(d) [Not used]

(e) [Not used]

**EEEE.24 [NOT USED]**

**EEEE.25 [NOT USED]**

**EEEE.26 [NOT USED]**

**EEEE.27 STATEMENT IN RELATION TO THE TENDER PROCESS**

- (a) The Exchange draws the following statement to the attention of potential users of the ICE Futures London Cocoa Futures Contract. Members should ensure that their clients are made aware of the statement.

“Statement in relation to the Tender Process:

Potential users of the ICE Futures London Cocoa Futures Contract should familiarise themselves with the relevant Contract Rules and Administrative Procedures and the Grading and Warehousekeeping Procedures in respect of ICE Futures London Cocoa Futures Contracts and ICE Futures Robusta Coffee Futures Contracts. Potential users should also be aware of the fact that for the May 2010 delivery month onwards only Warrants that have been immobilised will be tenderable.”