

– RAW COTTON TRADING REGULATION –
– SPOT MARKET –

SPOT MARKET REGULATION ON RAW COTTON TRADING

Chapter I

Introductory Provisions

Section I

Definitions

Section II

Scope of Regulation

Chapter II

Trading

Section I

Contract Specifications

Section II

Intermediation

Section III

Member Responsibility

Section IV

Commission Fee

Chapter III

Actual Commodities

Section I

Quality factors

Section II

Quantity factors

Section III

Price

Section IV

Weighing and Grading Processes

Chapter IV

Settlement

Section I**Default****Section II****Netting****Chapter V****Classing and Mediation****Section I****Procedures****Chapter VI****General Provisions****Section I****International Trading****Section II****Arbitration Chamber****Section III****Business Days and Holidays****Section IV****Final Provisions****Appendix**

SPOT MARKET REGULATION ON RAW COTTON TRADING

CHAPTER I INTRODUCTORY PROVISIONS

SECTION I DEFINITIONS

Article 1 – For purposes of this Regulation, the terms below shall have the following meanings ascribed to them:

I – Arbitration – as used herein refers to a process for settling disputes that is less structured than court proceedings. Arbitration proceedings may be initiated before an Arbitration Panel for the settlement of disputes arising from trading and other activities taking place in the markets managed by the Exchange, as contemplated in its Bylaws and other Exchange Regulations and pertinent rules. Arbitration proceedings are conducted pursuant to the rules established in the Exchange Arbitration Regulation.

II – Mediation – as used herein refers to activities performed by recognized licensed mediators to determine type, quality grading and other specifications of actual commodities delivered, pursuant to rules set forth in this Regulation.

III – Member or Exchange Member – means a member of the Brazilian Commodities Exchange, in accordance with its Bylaws.

IV – Intermediary Member – means an Exchange member and participant in any particular trade transaction.

V – Exchange – means the Brazilian Commodities Exchange (*Bolsa Brasileira de Mercadorias*).

VI – Grading Certificate – means a certificate that verifies the quality, quantity and other factors, as defined in applicable legislation and regulatory rules.

VII – Contract(s) or Cotton Contract(s) – means one or more contracts for the purchase and sale of raw cotton, each of which reflects a trade transaction carried out on the Exchange and worded in accordance with the requirements of this Regulation.

VIII – Bylaws – means the bylaws of the Brazilian Commodities Exchange.

IX – HVI or High Volume Instrument – means a technology for high volume, precision instruments used to measure the essential properties of cotton fibers.

X – Incoterms – means the standard international trade definitions known

as the International Commercial Terms, which were established and adopted by the International Chamber of Commerce, or ICC.

XI – Arbitration Chamber or Exchange Arbitration Chamber – means the Arbitration Chamber established by the Brazilian Commodities Exchange to settle disputes in markets managed by the Exchange, pursuant to rules set forth in the Exchange Arbitration Regulation.

XII – Board of Cotton Brokers – means the Board of Cotton Brokers of the Brazilian Commodities Exchange.

XIII – Over-The-Counter Market – means the market and system managed by the Brazilian Commodities Exchange for the trading of variable income instruments and derivatives instruments linked to agricultural commodities.

XIV – Spot Market – means the market on which to trade on actual commodities, specifically herein raw cotton for physical delivery.

XV – Regulation – means this Spot Market Regulation on Raw Cotton Trading.

XVI – USDA – means the United States Department of Agriculture, a United States federal executive department established, among other things, to develop and execute policies on farming, agriculture and food, and promote agricultural trade and production.

SECTION II SCOPE OF REGULATION

Article 2 – Trades in raw cotton carried out on the spot market or the over-the-counter market managed by the Exchange, as intermediated or registered by one or more Members, shall be subject to the provisions of this Regulation, of the Over-The-Counter Market Regulation of the Brazilian Commodities Exchange and of the Exchange Bylaws.

CHAPTER II TRADING

SECTION I CONTRACT SPECIFICATIONS

Article 3 – Trade transactions shall be formalized in a buy and sell Contract, which at a minimum shall provide for the following:

- a) identify the parties or their representatives;
- b) identify every participant Intermediary Member;
- c) state the trade date, which shall be the Contract date;

- d) identify the commodity traded;
- e) state the cotton quality grade, including fiber specifications;
- f) state the quantity traded;
- g) state the price per kilogram, per arroba, per ton, or per pound, net weight;
- h) state the conditions and form of payment;
- i) allocate responsibility for the payment of related expenses and charges;
- j) state the conditions and procedure of delivery or shipment;
- k) state the place and term of delivery or shipment;
- l) state the period and points of delivery for weight and dead weight verification and grading;
- m) state the commission fee;
- n) include a confidentiality commitment, which among other things shall contemplate non-disclosure of confidential and proprietary information disclosed in the Contract, whether of a commercial, technical or financial nature, such that any disclosure shall be contingent on express consent granted by the other party; and
- o) include a provision submitting the Contract to the rules set forth in this Regulation.

Sole Paragraph – The Contracts shall also contain an arbitration commitment, whereby possible disputes shall be submitted to arbitration carried out by the Arbitration Chamber of the Brazilian Commodities Exchange.

Article 4 – The Exchange shall provide Members with a model Contract containing the minimum specifications listed in Article 3.

Sole Paragraph – Without prejudice to the provisions of Article 3, Members may adapt their Contract forms to conform to the peculiarities of each type of trade.

Article 5 – Contracts shall compulsorily be registered with the Exchange within a five (5) -day period from the trade date.

Paragraph 1 – Should more than one Intermediary Member take part in any particular trade transaction, the Contract shall be issued by just one such Intermediary Member, as mutually agreed by the parties.

Paragraph 2 – In the event no consensus can be reached as to the responsibility for issuing the Contract, such responsibility shall be incumbent on the Intermediary Member acting on the sell side.

Article 6 – The Contracts shall be signed by the contracting parties or their representatives and by the Intermediary Member(s), with due regard for the provision of Article 3.

Article 7 – A written addendum shall be required formalizing any mutually agreed assignment of rights or transfer of obligations related to a Contract.

SECTION II INTERMEDIATION

Article 8 – Trade registrations with the Exchange shall be contingent on the execution of an intermediation agreement between the contracting parties and at least on Exchange Member.

SECTION III MEMBER RESPONSIBILITY

Article 9 – Intermediary Members are charged with the responsibility of delivering to each of the parties, within thirty (30) days from each particular trade date, a final counterpart of the related Contract, after having been signed by all participants in the trade transaction.

SECTION IV COMMISSION FEE

Article 10 – A commission fee shall be charged from the seller in any trade transaction, equivalent to a minimum of one percent (1%) of the amount of such trade, which shall be payable within a maximum of three (3) days following the settlement date.

Article 11 – Full or partial default by one or both parties to a trade shall not imply for the Intermediary Member loss of the right to collect the commission fee payable under any transaction in which it may have participated in the capacity of intermediary.

Paragraph 1 – With due regard for the provision of Article 10, the following persons shall be liable for liquidating the commission fee:

- I – a defaulting party, in the event of full or partial default on the Contract;
- II – both the buyer and the seller, in the event of full or partial cancellation of the Contract, or of a mutually agreed termination of the Contract.

Paragraph 2 – In the event more than one Member shall have acted as

intermediary in any particular trade, the Member that acted for the defaulting party shall be required to collect the commission fee in full and, promptly upon receipt thereof, to transfer 50% of such fee to the Member that acted for the other party in the same trade.

CHAPTER III ACTUAL COMMODITIES

SECTION I QUALITY FACTORS

Article 12 – With regard to quality factors, raw cotton may be traded:

I – as to cotton type:

- a) by specified cotton type or types;
- b) by specified type “or better” or “or worse”, or by specified type and “not below” or “not above” a certain grade; or
- c) by sample or private brand grade standards;

II – as to the cotton fiber: the fiber length specified in the Contract shall prevail, as reported in inches or actual millimeters (upper half mean length, or UHML);

III – as to other factors: those that are expressly stated in the Contract.

Paragraph 1 - Quality factors as types or samples of private brand grade standards represent visual traits of cotton being traded.

Paragraph 2 - To be demandable upon delivery, measurable grades must be specified in the related Contract.

Paragraph 3 - Visual and measurable grades are the following:

I - visual: color, luster, staining and discoloration at varying degrees, nub content, leaf grade and extraneous matter, such as leaf particles, bark, grass, seed coat fragments, dust and oil, and presence of cotton damaged by insects or pests;

II – measurable: fiber length, fineness, strength, uniformity, ripeness and other measurable traits.

Article 13 – Trading in raw cotton carried out pursuant to indents “a” and “b” of item I of Article 12 shall also observe the following:

I – should the Contract set forth a particular quantity of each type, physical delivery shall meet the required quantity or percentage of each such type of

cotton;

II – should the Contract not provide for the required quantities or percentages of specific types of cotton, the seller may choose to deliver any type or types of cotton, in the proportions it may deem fit.

Article 14 – A raw cotton seller may in any event deliver better quality cotton than established in the Contract, provided the required traits and grades are met, and provided further no compensation shall be payable for improved quality delivered.

SECTION II QUANTITY FACTOR

Article 15 – With regard to quantity, raw cotton may be traded in kilograms, in tons, in arrobas, in pounds, net weight or in bales, provided any weight unit shall refer to net weight, i.e., net of the bale actual dead weight.

Paragraph 1 – Pursuant to applicable legislation, raw cotton shall always be delivered in bales.

Paragraph 2 – For the time periods set forth in this Regulation, a cotton seller shall account to the buyer for the bale actual dead weight.

SECTION III PRICE

Article 16 – The price for raw cotton, whether set or to be set, may be contractually agreed based on weight and quality:

I – as related to weight price may be established:

- a) by net kilogram;
- b) by net arroba;
- c) by net ton; or
- d) by pound, net weight (meaning four hundred and fifty-three thousandth, five hundred and ninety-seven millionth of a gram);

II – as related to quality price may be established:

- a) based on the forty-one point four (41.4) type;
- b) based on a specified cotton type or types;
- c) based on a particular sample or private brand grade standards; or
- d) based on lot offered for sale.

Article 17 – On setting the price for raw cotton, the parties may adopt the table of premiums and discounts released by the Exchange, if this is expressly foreseen in

the Contract.

Article 18 – The price for cotton may be set based on a previously agreed index.

SECTION IV WEIGHING AND GRADING PROCESSES

Article 19 - The Contract shall establish the grading point at which weight, dead weight and grading shall be assessed.

Sole Paragraph – Either party to a trade is entitled to follow the weighing process, which preferably shall be carried out upon receipt of the actual commodity.

Article 20 – Unless otherwise provided for, raw cotton buyers shall check for conformity of cotton delivered, and may file complaint or apply for mediation to determine conformity to required standards, within the following assigned terms:

I – within a period of ten (10) consecutive days, from the date of delivery to the grading point established in the Contract;

II – within a period of twenty (20) consecutive days, from the trade date, in the event buyer is to withdraw the actual commodity from the grading point established in the Contract.

Paragraph 1 – If the parties agree that delivery shall take place in progressive stages, the term to file complaint or request mediation shall apply in respect of each batch delivered.

Paragraph 2 – No complaint concerning weight, dead weight or quality grading shall be acceptable unless the actual commodity has been delivered to the grading point.

Article 21 – Unless otherwise agreed by the parties, the tolerance limit between the traded quantity of raw cotton and quantity actually delivered shall be more or less three (3) percentage points.

Sole Paragraph – Should delivery be agreed in progressive stages, the tolerance limit foreseen in the main provision of this Article shall apply in respect of each batch delivered, rather than total quantity upon completion of physical delivery.

Article 22 – Verification of weight shall be processed either bale-by-bale weighed on a tested scale, provided fractions in excess of five hundred (500) grams shall be rounded up, whereas fractions below five hundred (500) grams shall be disregarded, and/or by weighing the carrying truck or container both loaded and unloaded.

Article 23 – The party that submits the actual commodity to verification of weight shall provide the other party with a duly signed copy of the weight list.

Article 24 – Whether provided by the seller delivering actual commodities or by the buyer receiving such commodities, the weight list shall state the following:

- I – the number of bales;
- II – the identification and serial number of each bale;
- III – the originally stated weight of each bale;
- IV – the verified weight of each bale, if tested;
- V – the dead weight of each bale;
- VI – the bale density, if required;
- VII – the weighing date; and
- VIII – the delivery and/or shipment (receipt) date.

Article 25 – Absence of either party, or a representative thereof, during the weighing process shall imply:

- I – acceptance of the weighing process results, as carried out on the initiative of the cotton seller or buyer, as the case may be, such that the absent party shall not be entitled to file complaint unless no verifiable evidence can be provided of delivery of the notice;
- II – the absent party's prerogative of requesting weight revision in the event it dissents from the data received from the other party, provided any such revision request must be submitted within three (3) business days following receipt of the data;
- III – weight revision, as contemplated in item II above, and as requested by the interested party, shall have been completed within six (6) business days following the date of the revision request.

Sole Paragraph – If upon completion of the weight revision process no change in weight data is determined vis-à-vis the weight data first verified, the related revision expenses shall be borne by the party that requested such revision.

Article 26 – In the event of a transfer of title to cotton sold at a time when cotton delivered has yet to be weighted, the ultimate holder of title, within the term assigned for such purpose, shall take action to have the cotton weighted, such that the weight date thus obtained shall be final and binding on any party delivering cotton.

Article 27 – Should the weighing process not take place within the period assigned

for such purpose, the originally stated weight list provided upon physical delivery of the commodity shall prevail for all due purposes.

Article 28 – Grading processes shall observe the following procedures:

I – in the event of Contracts providing for use of international grade standards, the cotton bales shall be identified and grading established pursuant to current USDA standards.

II – in the event of Contracts providing for quality pursuant to a particular sample or private brand grade standard of seller, samples pulled off the delivered cotton bales shall be compared against two (2) of the three (3) samples sealed by the seller and held by the buyer, which served as the basis for the Contract;

III – in the case of a previous verification (or take-up) of all samples for a choice of the lot to be delivered, when choosing the samples to be graded, the buyer, as represented by a grader, shall both bear the samples on which the trade and the Contract were based, and the sample sealed by the seller;

IV – in the event of a discrepant result, the third sealed sample shall be unsealed and used to settle doubts upon take-up;

V – should there be no consensus in respect of grading, the graders shall reseal the third sample, which along with other samples representing ten percent (10%) of the collected samples, shall be used for purposes of the mediation procedure, which shall be carried out by three (3) mediators, one of whom appoint by one party, a second mediator appointed by the other party, and a third mediator chosen by the former two;

VI – after having verified all take-up samples, the graders shall seal packages containing the approved, weighted and listed samples, which shall be stored and kept available to the buyers for the subsequent period of thirty (30) days, in the case of domestic sales, or for the subsequent period of six (6) months, in the case of international sales, which periods shall commence as of the date of delivery and shipment of the commodity;

VII – in the case of a discrepancy between the grading of cotton delivered and that of the take-up samples, the sample package shall be opened in the presence of the graders appointed by the parties, and the procedures set forth in items II and VI of this Article shall again take place;

VIII – should the tests conducted by the mediators determine that the samples and the delivered cotton do differ in grade, the seller shall be required to replace the cotton delivered with cotton that meets the required grades;

IX – in the case of import or export transactions, upon determination of a difference in grades, the corresponding Contracts shall be settle by netting.

Paragraph 1 – In the case of Contracts providing for the HVI measurements, the measurement results, unless otherwise provided for, shall be delivered in print on or before samples of delivered cotton are taken up.

Paragraph 2 – In the event contemplated in Paragraph 1, the take-up samples may not be considered approved unless the HVI measurements shall have been delivered.

Paragraph 3 – The buyer may at its discretion accept cotton delivered that according to the HVI measurements does not conform to the Contract specifications, or whose grading does not conform to that which has been agreed.

Article 29 – Samples pulled by the buyer, whether or not assisted by the seller, shall weigh a minimum of two hundred (200) grams by bale and a maximum of three hundred (300) grams by bale, which shall observe the technique adopted by the classification service designated by the Exchange.

CHAPTER IV SETTLEMENT

SECTION I DEFAULT

Article 30 – In the event of full or partial noncompliance with a Contract, the obligations shall be settled through netting carried out pursuant to this Regulation.

Article 31 – Noncompliance shall be deemed to have occurred if a party should fail or neglect to perform and fulfill the terms and conditions of the Contract or to abide by the provisions of this Regulation.

Article 32 – Full or partial noncompliance with a Contract shall entitle the innocent party:

I – to deem the Contract terminated, which shall imply prerogative of cancelling future deliveries under that Contract and having the Contract settled through netting;

II – to claim payment of a compensatory penalty.

Paragraph 1 – In the event of default, the innocent party shall elect to have the Contract canceled or to terminate the Contract through netting, and shall give notice thereof to the noncompliant party, provided the elected alternative shall apply in respect of all deliveries under that Contract.

Paragraph 2 – The notice shall also determine whether the Contract cancellation or its termination and netting apply in respect of all or part of the unfulfilled Contract.

Article 33 – The defaulting party shall have a term of three (3) business days following receipt of the cancellation or termination notice within which to give counter-notice to the other party.

SECTION II NETTING

Article 34 – In the event settlement is arranged or provided through netting, no tolerance limit shall apply in respect of actual delivery, as contemplated in Article 21.

Sole Paragraph – Should the Contract set forth a particular number of bales without establishing total required weight, netting shall take place on the basis of two hundred (200) net kilograms by bale.

Article 35 – Netting may be implemented by mutual agreement of the parties or as a result of an arbitration award.

Paragraph 1 – Notices and counter-notices shall be given with copy addressed to the Exchange.

Article 36 – The netting amount shall be determined based on the agreed prices and the spot market price quotation, as provided by the Board of Cotton Brokers, if so requested.

Sole Paragraph – The main provision of this Article shall apply to the netting of cancelled deliveries, resulting from the provision of item II of Article 32 of this Regulation.

Article 37 – Within a term of six (6) business days following receipt of the arbitration award, the defaulting party shall be required to pay the netting amount to the innocent party.

CHAPTER V CLASSING AND MEDIATION

SECTION I PROCEDURES

Article 38 – Classification of raw cotton by the Exchange or its designee shall be based on internationally recognized quality standards for fiber cotton, the Universal Cotton Grade Standards, or UCGS, by delegation of authority granted by official entities, or according to particular standards or brands deposited with such official entities.

Article 39 – Any interested party dissenting from the original classification may apply to the Exchange for a classification mediation procedure, provided the expenses of such mediation procedure shall be for the account of the applicant.

Paragraph 1 – The mediation procedure shall be carried out based on new samples pulled off the delivered bales by mutual agreement of the parties. The results established through a mediation procedure shall be final and unappealable.

Paragraph 2 – The cotton classification may also be challenged in the event of bale deterioration or damage, as assessed and confirmed by the Exchange or its designee.

Paragraph 3 – Interested parties may follow the cotton pulling-off procedure, provided they may not interfere in the process.

Article 40 – Applications for mediation may be submitted in respect of just a portion of the bales delivered.

Article 41 – Applications for mediation may encompass more than one batch delivered, provided due regard shall be given to the term assigned for such purpose in respect of each batch.

Article 42 – The mediation panel shall be composed by three (3) mediators, one of them appointed by the cotton buyer, one other by the cotton seller, and a third one appointed by the two formerly chosen mediators, all of them chosen from among professional graders that integrate the Exchange List of Mediators.

Article 43 – The samples extracted from bales for purposes of mediation shall be delivered to the mediators for testing without any identification or trace indication.

Article 44 – The cotton classification established by through mediation for the quantity of cotton in dispute shall replace the original classification for all due purposes.

Article 45 – In the event of trades transacted on the basis of samples or particular standards the classification mediation procedure shall be based on a sealed sample or standard.

Article 46 – Disputes related to Contracts based on samples, types or brands shall be settled by the Exchange or its designee, to whom along with its application the applicant shall deliver samples sealed by both parties containing the cotton type, brand or sample traded, such that the mediation procedure shall be based on such samples.

CHAPTER VI GENERAL PROVISIONS

SECTION I INTERNATIONAL TRADING

Article 47 – Raw cotton importation and exportation deals transacted through intermediation of Exchange Members shall be subject to the provisions of this Chapter.

Article 48 – Raw cotton import or export transactions shall be registered in the form contemplated in Article 2 of this Regulation.

Article 49 – The parties may adopt the Incoterms terminology in raw cotton import or export deals transacted through the Exchange.

Article 50 – The parties to import or export transactions contemplated in this Chapter may freely elect the testing and grading rules and mediation place that shall apply in respect of each transaction.

Paragraph 1 – With due regard for the provisions of international agreements entered into between the Exchange and certain international entities, the contracting parties to import or export transactions contemplated in this Chapter may by mutual agreement elect the authority under whose oversight grading mediation procedures shall be conducted, as well as the grading point where such processes shall take place.

Paragraph 2 – Grading mediation procedures conducted in Brazil shall be processed under oversight provided by the Exchange or a designee.

SECTION II ARBITRATION CHAMBER

Article 51 – Disputes arising out of Contracts governed by the provisions of this Regulation, including Contracts executed abroad shall be settled by means of Arbitration carried out by the Exchange Arbitration Chamber.

Sole Paragraph – Arbitration proceedings initiated before an Arbitration Panel of the Arbitration Chamber, shall be processed in accordance with the Exchange Bylaws and the Arbitration Regulation established by the Exchange.

SECTION III BUSINESS DAYS AND HOLIDAYS

Article 52 – For the purposes and effects of this Regulation, in addition to Sundays and official federal or local holidays, the following shall be deemed to be business holidays:

- I – days on which the Exchange closes for business;
- II – days on which a local banking holiday has been declared in any particular place of payment;
- III – days on which railway carriers, public warehouses and customs offices are closed for purposes of receipt or delivery of cargo shipments, which in this event shall be deemed a business holiday for purposes only of the expiration of a term assigned for shipment or delivery of a commodity.

Article 53 – In the event expiration of a contractually agreed term is set in terms of date and time, holidays and dates deemed to be business holidays shall not be computed.

Article 54 – In the event of terms assigned in respect of activities that depend on the operations of public warehouses, the work schedule officially established by each such establishment shall be observed.

SECTION IV FINAL PROVISIONS

Article 55 – The parties to a Contract may at any time, including at any time after the notice, mutually agree to amend the terms and conditions of such Contract.

Article 56 – Forbearance by a party in respect of noncompliance by other parties with its rights and prerogatives established herein or in the Contracts shall not be construed as a waiver of such rights and prerogatives.

Article 57 – Unless otherwise specifically set forth in this Regulation, the counting of assigned terms (time periods) shall observe the provisions of civil and commercial legislation.

Article 58 – Notices which this Regulation requires be addressed to the Exchange shall compulsorily be given in writing.

Article 59 – Pursuant to the Exchange Bylaws, omissions in this Regulation shall be

settled by the Exchange or the Arbitration Chamber.

Sole Paragraph – The provision of this Article shall apply also in the event of doubts in respect of the construal of the provisions of any Contract, if so requested by an interested party.

APPENDIX

Article 132 of the Civil Code:

“Unless otherwise legally or contractually foreseen, the counting of an assigned term (period of time) excludes the commencement date and includes the expiration date.

Paragraph 1 – Should the expiration date fall on a holiday, the term shall be deemed to have been extended through the first subsequent business day.

Paragraph 2 – Middle, in any month, shall be deemed to be the fifteenth (15th) day of the month.

Paragraph 3 – Terms assigned in number of months or years shall expire on the same date [of the expiration month or year] as the term commencement date or, absent a precise correspondence, on the immediately subsequent day.

Paragraph 4 – Terms assigned in number of hours, shall be counted on a minute-by-minute basis.”

Article 327 of the Civil Code:

“Payments shall be made at the place of the payer’s domicile, unless otherwise agreed by the parties or otherwise arising out of the Law, the nature of the obligation or the circumstances.

Sole Paragraph – Should two (2) or more places [of payment] be designated, the creditor has the prerogative of choosing between them.”