

## **RGE/ECR Appendix VI AFCOT**

- Rule 1 : Invoicing back
- Rule 2 : Force majeure
- Rule 3 : Arbitration rules for claims exceeding 100.000 euros
- Rule 3-1 Arbitration rules for claims not exceeding 100.000 euros
- Rule 4 : Dispute on quality of cotton (manual classing)
- Rule 4.1: Dispute on quality of cotton (Instrument classing)
- Rule 5: Confidentiality of arbitration

**Changes in blue brought up on 3<sup>rd</sup> June, 2021**

**This rule book was amended on 3<sup>rd</sup> June 2021.**  
The modifications brought on 3<sup>rd</sup> June 2021 apply to all the contracts concluded from this date.

## **Rule 1- Invoicing back**

When either party exercises the right to invoice back all or part of the goods subject to a contract or part of a contract, notice must be given to the other party by any means of communication that ensures that the sender is able to obtain a receipt confirming that the communication was sent and received in full.

Invoicing back of the quantity in dispute is carried out on the basis of the invoice weight or of the weight stated in the contract.

The price used for invoicing back is decided by the party exercising this right: either the invoice price or the contract price, or a price that takes into account the contractual conditions, calculated in consideration of:

- either the average of the offers on the international market for the cotton in dispute, on the day of the notification of invoicing back,

- or, in the absence of offers for the cotton in dispute, the average quotations on the international market for replacement cotton of quality similar to cotton in dispute, on the day of notification of invoicing back.

It is the responsibility of the party performing the invoicing back to justify its invoicing back price.

In case of disagreement on the invoicing back price, the parties may reach an agreement by referring the matter to an expert arbitrator appointed jointly by the parties. If the parties fail to agree on the nomination, the dispute will be submitted to arbitration rules, as per the clause compromissoire/arbitration clause , Appendix VI – Rule 3 or Appendix VI Rule 3.1.

The fees asked for by the expert arbitrator would be deposited with the AFCOT, as stipulated in appendix VI article 3, paragraph 2.2.4

The expert arbitrator would act as amicable conciliator. In the case he cannot conciliate, he will act as a mediator possessing the most extensive powers. The award of the expert arbitrator is final, and not subject to opposition, appeal or reversal.

The award will be notified by the expert arbitrator to both parties by registered letter.

## **Rule 2- Force majeure**

The non-fulfilment, whether total or partial, or the late fulfilment of a contract can only be justified by "cas de force majeure" as understood and interpreted by French Law and case law.

In case of force majeure that prevents the total or partial fulfilment of a contract within the prescribed period, that party which is unable to fulfil all or part of the contract concerned must immediately advise the other party and prove that the cause preventing the fulfilment of the contract arose after the date of execution of the contract and before the deadline agreed for performance of the contract.

If the case of "cas de force majeure" constitutes a momentary hindrance to the fulfilment of the contract, the deadline for its completion shall be extended until the disappearance of the obstacle, but shall be limited to a maximum of three (3) months from the final date for fulfilment of the contract.

During such three-month period, the parties concerned shall do their utmost to fulfil their contractual obligations.

On expiration of such period, the debtor may be required to perform the contract or, failing this, to resolve it by invoicing back pursuant to Appendix VI – article 1 (see AFCOT Appendix of the RGE/ECR), unless the required party provides proof of the persistency of force majeure, as defined in Article 1148 of the Civil Code.

**Rule 3 of the ECR [European Cotton Rules]  
Rules of Arbitration for claims exceeding 100.000 euros  
compromissory clause**

**1 – Arbitration clause**

**1.1 – Commercial arbitration in Le Havre**

Any dispute stemming from a contract governed by the ECR that is not settled in advance on an amiable basis or by quality arbitration shall be settled by arbitration in accordance with the version in effect of the appendix VI, at the time of filing of the arbitration request, of the Rules of the Association Française Cotonnière (French Cotton Association, AFCOT), 157 boulevard de Strasbourg 76600 LE HAVRE, by three arbitrators in Le Havre. The arbitration shall be subject to French law. The arbitrators shall rule as mediators, unless agreement between parties to settle the litigation according to rules of law. The award shall not be subject to appeal except for cancellation as anticipated in the Code of Civil Procedure (articles 1491 to 1493 and 1518 to 1521)

**1.2 – Commercial arbitration pursuant to the I.C.C. rules**

As a departure from article 1.1, the parties may both waive the AFCOT arbitration clause and, by joint agreement, assign a court of arbitration to make a definitive settlement of their differences resulting from the present contract in accordance with the Rules of Arbitration of the International Chamber of Commerce, 38 cours Albert 1<sup>er</sup>, 75008 Paris, France.

To that end, the parties must formalise their agreement in the form of an arbitration agreement, including the following provision: “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules”.

The parties undertake to provide AFCOT with the award made following the I.C.C. procedure. Service of the award on AFCOT has the purpose of developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any award communication by AFCOT for research purposes shall have to be made anonymously.

**1.3 – Exclusive nature of the option**

Recourse to one of the two procedures mentioned in articles 1.1 and 1.2 automatically excludes any subsequent call on the other.

The choice made by the parties in favour of an I.C.C. procedure under the terms of article 1.2., however, does not exclude application of the last paragraph of article 2.4.5. – Execution of the award – relative to the entry in the “default list”.

**2 – Rules of Arbitration:**

**2.0. – Definitions**

For purposes of the present rules, the following terms shall have the indicated meanings:

**Notification:** Any communication made to the parties or to the court of arbitration by registered letter with receipt or by an equivalent procedure in the country of the addressee, or by any means providing written proof of dispatch and of receipt. The fastest procedure must be used whenever possible.

**Calculation of the periods:** The periods provided for in the present rules are expressed in days. They expire at midnight on the day bearing the same date of the month as the day of the document, the event, the decision or the notification initiating the period. If there is no identical date, the period expires on the following day.

A period that would normally expire on a legal holiday or a non-working day is extended to the first following business day.

A period beginning with execution of a notification begins on the day of dispatch.

**Plaintiff:** The plaintiff, also called the "plaintiff party", is the individual or the legal entity taking the initiative in filing arbitration proceedings with a view to obtaining recognition of a right.

**Defendant:** The defendant, also called "the defendant party", is the individual or legal entity that has been served with a writ calling for an appearance before the court of arbitration.

**Statement:** A written document addressed to the court of arbitration as well as to the adverse party to explain a situation and assert legal arguments aimed at obtaining a right or an advantage in connection with the situation explained therein.

**Introductory statement:** An initial brief filed by the plaintiff that entails application to the court of arbitration. It contains the plaintiff's principal applications.

**Defence statement:** A brief filed by the defendant. It contains the defendant's applications.

**Responsive statement:** The brief addressed by one of the parties in response to a previous brief.

**Cross-application:** An application by the defendant in response to the one filed by its adversary. The cross-application is an "incidental claim" that includes the claims asserted during the proceedings.

**Exequatur:** A judicial procedure on behalf of minimal supervision the purpose of which is to make the arbitration award enforceable so as to allow enforcement thereof.

## **2.1 – Court of arbitration**

### **2.1.1 – Principles**

The arbitrators constituting the court of arbitration must be and remain totally independent of each of the parties to the arbitration proceedings. It is up to the adjudicators, before accepting their mission, to reveal as soon as possible, any such circumstance should it arise once they have accepted the mission.

The arbitration proceedings are confidential. The arbitrators and the parties must not disclose any information stemming from the said proceedings, during the proceedings and after issue of the award. The award is also confidential. The content thereof may be disclosed only with the explicit approval of all parties to the case.

### **2.1.2 – Designation of the arbitrators**

The court of arbitration consists of three arbitrators. Each of the parties designates one arbitrator appearing – if the case arises – in a list of arbitrators approved by AFCOT.

The plaintiff designates the first arbitrator in its arbitration application, pursuant to Appendix VI - rule 3 of the ECR. The defendant is given 15 days as from the first day of notification of the arbitration request to inform the plaintiff of the name and particulars of the second arbitrator.

The first two arbitrators designated in this way have a period of 30 days starting with the time of appointment of the second arbitrator to choose, together, a third arbitrator, who is to act as chairman of the court of arbitration.

The parties are informed by the Chairman, who serves notice on the parties concerning the definitive constitution of the court of arbitration.

### **2.1.3 – Challenging an arbitrator**

Any information that could compromise the independence of an arbitrator must be disclosed, in writing, to the parties within 15 days following the designation, or the time at which the arbitration tribunal becomes aware of the said information.

Each party is entitled to challenge, subject to supervision, in case of abuse of that right, by the President of the Commercial Court of Le Havre.

### **2.1.4 – Replacement of an arbitrator**

In case of resignation, death, inability to act or challenge affecting an arbitrator, he shall be replaced in accordance with the procedures governing his designation.

The arbitration proceedings shall be suspended starting with the time of the death, the inability to act or the challenge, and shall resume as of the time of notification of designation of the new arbitrator.

### **2.1.5 – Difficulties in establishing the court of arbitration**

If, once the dispute has arisen, constitution of the court of arbitration encounters a difficulty because of one of the parties or due to implementation of the procedures regarding designation, challenge or replacement of a defaulting arbitrator, the said arbitrator shall be designated by the President of the Commercial Court of Le Havre at the request of the most diligent party.

## **2.2 – Filing of the arbitration proceedings**

### **2.2.1 – Arbitration application**

The party wishing to implement the arbitration proceedings (the plaintiff or the plaintiff party) must send an arbitration request by way of notification to the adverse party (the defendant or the defendant party).

The application must contain the following, in particular:

- Complete identification of each of the parties: name, corporate name, status, mailing and email address, telephone particulars
- A brief explanation of the circumstances and nature of the dispute
- A copy of the arbitration convention
- The subject of the arbitration application
- A rough estimate of the amount of the application
- The designation of the first arbitrator: name, status, mailing and email address, telephone particulars
- Invitation to the defendant to designate the second arbitrator pursuant to article 2.1.2 of Appendix VI – Rule 3 ECR, within 15 days as from the first day of notification of the arbitration request.

#### **2.2.1.1. Withdrawal of arbitration request**

The plaintiff can withdraw its arbitration request after having submitted it. If the parties reach an amicable agreement after the arbitration request has been submitted, they can ask the Court of Arbitration to issue a ruling that includes the content of their agreement.

The Court of Arbitration then gives a ruling on the plaintiff's withdrawal of the arbitration request.

If the plaintiff withdraw his arbitration request after the constitution of the Court of Arbitration, the notification of the briefs and the mission report, the AFCOT's administrative fees will be owed in their entirety. Moreover, the Court of Arbitration will be entitled to claim their fees which cannot exceed 30 percent of the fees, if the arbitration had gone to the end.

If the Court of Arbitration has not yet been appointed at the time of the withdrawal of the arbitration request, the two parties will inform the AFCOT of their agreement, thereby terminating the set up of the tribunal.

#### **2.2.1.2. Amicable conciliation of the parties**

If requested by the parties or with their joint consent, the Court of Arbitration can settle the dispute in the manner that he considers to be appropriate.

If the conciliation leads to an amicable settlement of the dispute, the parties can withdraw their arbitration request and ask the Court of Arbitration to draft a conciliation report or to issue a verdict that incorporates the terms of the amicable settlement between the parties.

The conciliation settlement must indicate the reasons for the request as well as the agreement reach by the parties. It is signed by the Court of Arbitration before being sent to both parties.

It takes effect once both parties have confirmed receipt thereof.

The arbitration procedure will therefore be abandoned.

The AFCOT's administrative fees will be owed in their entirety.

Moreover, the Court of Arbitration will be entitled to claim their fees which cannot exceed 30 percent of the fees, if the arbitration had gone to the end.

#### **2.2.2 – Application to the court of arbitration; service of statements**

Once the court of arbitration has been constituted pursuant to article 2.1, the court of arbitration is applied to as of the time of submission by the plaintiff of a copy of the arbitration application and of the introductory brief, which must be served on the defendant party. The brief must be filed no later than 15 days after the date of constitution of the Court of Arbitration, albeit that the delay in registering this memoir cannot be sanctioned by the debarment.

The defendant has a period of 30 days starting with the time of service of the *introductory statement* in which to serve, on the court of arbitration as well as on the plaintiff, its *defence statement*, accompanied by a *cross-application*, if desired.

In case of a cross-application, the plaintiff has a period of 30 days starting with the time of its receipt in which to serve its *responsive statement* on the court of arbitration and on the defendant.

In case of the defendant's default, the arbitration proceedings continue regardless.

#### **2.2.3 – Assignment report**

Within 30 days following receipt of the defence statement (or of the responsive statement in case of a cross-application), or after the end of the period of 30 days granted to the defendant under article 2.2.2. § 2, the court of arbitration summons the parties with a view to establishment of an assignment report, subject to payment of the deposit mentioned in article 2.2.4.

In the parties' presence, the court of arbitration establishes an assignment report containing the following:

- a delimitation of the subject of its assignment, in accordance with the introductory statement, the defence statement and the responsive statement, if the case arises.

The seat of the arbitration proceedings, in France. Failing an agreement between the parties, the seat shall be Le Havre. The court of arbitration may meet at any other venue it shall deem appropriate for its deliberations. Unless otherwise agreed by the parties, it may also meet at any other venue it shall deem appropriate for other purposes, including hearings. The award shall be deemed handed down at the seat of the arbitration proceedings.

- the schedule of the proceedings
- the language of the proceedings
- the amount of the deposits calculated pursuant to article 2.2.4.
- the arbitration period.

The assignment report is signed by the parties and the arbitrators. If one of the parties defaults, the assignment report is signed by the arbitrators alone.

Signature of the assignment report determines the framework of the arbitration. Any new application then becomes inadmissible, subject to authorisation by the court of arbitration.

The report is sent to the parties.

#### **2.2.4 – Deposit**

The advance mentioned in article 2.2.3 is aimed at making it possible to cover the expenses of the arbitration proceedings, particularly payment of the arbitrators' fees and the expenses of the court of arbitration. It is determined by the arbitrators and is calculated in accordance with the scale communicated in response to a simple request filed with AFCOT. It is paid by the parties in equal shares, at the request of the chairman of the court of arbitration, within 20 days following signature of the assignment report mentioned in article 2.2.3.

In case of a failure by one of the parties to pay the advance, the other party must pay all of the defaulting party's participation. Failing that, the arbitration proceedings will be suspended until full payment of the advance.

The amount of the deposit shall be paid into the AFCOT account.

In case, during the proceedings, the court of arbitration considers the advance insufficient, it may require the parties to pay an additional advance.

The advance shall be settled in the arbitration award.

### **2.3 – Execution of the arbitration proceedings**

#### **2.3.1 – Period**

The arbitrators' assignment lasts for 6 months starting with the date of acceptance of his assignment by the third arbitrator as defined in article 2.1.2.

It may be extended for a maximum period of 6 months, either by agreement between the parties, or, at the request of one of them or of the court of arbitration, by the Presiding Judge of the Commercial Court of Le Havre.

#### **2.3.2 – Consideration of the briefs**

The court of arbitration considers the briefs and exhibits produced by the parties as soon as possible.

#### **2.3.3 – Hearing in the parties' presence**

The court of arbitration hears the parties in each other's presence, at the request of one of them or on its own initiative. It summons them to appear by any means



providing written proof of dispatch and receipt within a reasonable period of at least two weeks, and at an appropriate place as agreed on the assignment document.

The parties appear personally or through duly mandated representatives, assisted by an advisor if desired.

#### **2.3.4 – Absence of one of the parties**

In the absence of an excuse accepted by the court of arbitration at its sole discretion, the absence of one of the parties does not constitute an obstacle to holding the hearing in the parties' presence.

#### **2.3.5 – Evidence**

The court of arbitration is empowered to ask the parties to produce any additional evidence.

#### **2.3.6 – Closing arguments**

Once the court of arbitration considers itself sufficiently enlightened, the chairman closes the arguments.

### **2.4 – Award**

#### **2.4.1 – Period**

The award must be issued within 30 days following the conclusion of the arguments, subject to observance of the period of 6 months provided for in article 2.3.1.

#### **2.4.2 – Procedures regarding adoption of the award**

The deliberations are secret.  
The award is issued by a majority of the votes.

#### **2.4.3 – Content of the award**

The award must identify the parties to the proceedings. It mentions the following:

- the names of the arbitrators issuing it;
- the last names, given names or corporate names of the parties, as well as their domicile or registered office;
- if the case arises, the names of the advisors or of any persons having represented or assisted the parties.

The award must also include the following:

- A brief reminder of the facts
- A summary of the parties' applications and defences
- A reminder of the assignment of the court of arbitration
- A summary of the proceedings
- The solution reached to the dispute
- The grounds for the solution adopted
- The settlement of the arbitration expenses and the designation of the party or parties to pay the said expenses
- An indication of its date.

The arbitration award is issued in six originals. Each one is to be signed by all of the arbitrators.

#### **2.4.4 – Communication of the award**

The original award is served by the chairman of the court of arbitration on the parties as well as on AFCOT, within a reasonable time.  
Service of the award on AFCOT is aimed at developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any communication of the award by AFCOT for research purposes shall have to be in an anonymous form.

The parties to the arbitration proceedings bear joint and several liability for payment of the arbitration expenses.

#### **2.4.5 Execution of the award**

The arbitration award issued in accordance with the present rules is not subject to appeal. It is binding on the parties.  
The parties undertake to fulfil any sentence included in the verdict within a time limit of 10 business days.

Failing this, the most diligent party has the option of applying for exequatur of the award to the [Tribunal Judiciaire \(Court of Justice\)](#) in Le Havre with a view to its enforcement.

In the absence of execution of the award, the diligent party reserves the right to communicate the name of the said party to AFCOT, which will forward the name to the CICCA for purposes of entry in the "default list".

#### **2.5. Official versions of the AFCOT Compromissory Clause**

The English and French versions of this Arbitration Rules are official. These versions are published by AFCOT. In case of discrepancy between the different versions, the French version prevails.

#### **2.6. Execution of these Regulations**

This regulations took effect on [3<sup>rd</sup> June 2021](#) and applies to all contrats

**Rule 3-1 of the ECR [European Cotton Rules]  
Rules of Arbitration for claims not exceeding 100.000 euros  
compromissory clause**

**Art 1 - Arbitration clause**

Any dispute resulting from a contract governed by the RGE/ECR and that cannot be resolved amicably or by quality arbitration, will be settled through arbitration according to the prevailing version at the time of the introduction of the arbitration request, of the regulation of the Association Française Cotonnière (AFCOT), 157 boulevard de Strasbourg, 76600 Le Havre.

The sole arbitrator will give a ruling as an amiable compositeur (mediator) unless the parties agree that he should rule on the dispute in accordance with the rules of law. The arbitration will be subject to French law. The verdict will not be subject to appeal, except for cancellation as anticipated in the Code of Civil Procedure (Articles 1491 to 1493 and 1518 to 1521).

The provisions of rule 3 of appendix VI of the arbitration regulation that are not contrary to this regulation are also applicable.

**Art 2 - Dispute amount**

The disputes that will be settled in accordance with these rules are limited to disputes for which the amount of the main claim(s) is less than or equal to €100,000 (one hundred thousand euros), excluding costs, additional damages and interest, and arbitration costs.

**Art 3 - Appointment of the sole arbitrator**

**3-1** After receiving a request for arbitration made in compliance with Article 5, the parties shall appoint, by mutual agreement, a single arbitrator chosen, where applicable, from the list of arbitrators approved by the Executive Committee of AFCOT, within fifteen (15) days of receiving notice of the request for arbitration in accordance with Article 5-1 of the Rules. If necessary, this period may be extended by 15 days with the parties' agreement.

Upon accepting the mission, the sole arbitrator must without delay so notify both parties in writing.

The sole arbitrator must ensure that the parties are treated fairly, and that each party has the same rights. The sole arbitrator must carry out the procedure such as to resolve the dispute as quickly as possible.

**3-2** The arbitrator must be and remain totally independent of each of the parties.

Before accepting his mission, the arbitrator must indicate any circumstance that could affect his independence or impartiality. He must also bring to light any circumstance of a similar nature that could arise after the acceptance of his mission.

**3-3** Any information that could compromise the arbitrator's independence must be indicated to the AFCOT in writing, within an interval of 7 days after his appointment.

**3-4** If, upon receiving the observations from both parties, the sole arbitrator considers that the matter does not fall within the remit of the procedure for small disputes, or if the matter is too complex to be considered by a sole arbitrator, the latter must so inform the parties, that shall act in compliance with rule 3 of the arbitration regulation contained in appendix VI.

#### **Art 4 - Replacement of the sole arbitrator**

In case of resignation, death, impediment or challenge of the sole arbitrator, he will be replaced in compliance with the provisions that governed his appointment. The arbitration procedure will be suspended as of the death, impediment or challenge, and will resume upon notification of the appointment of the new arbitrator.

#### **Art 5 - Arbitration request**

**5-1** The party wishing to avail itself of the arbitration procedure (the applicant or the plaintiff) provides the opposing party and the AFCOT with a notification containing its arbitration request.

The request notably contains

- A complete identification of the parties: name, company name, postal and electronic address, telephone details.
- A brief presentation of the circumstances and nature of the dispute
- A copy of the arbitration agreement
- An assessment of the amount of the request, that must not exceed 100,000 euros

**5-2** The AFCOT can refuse the arbitration procedure initiation request of one of the parties involved in the dispute, in case of suspension or exclusion declared by the Association. The arbitration will also be refused if one of the parties is listed as not having honoured an arbitration ruling at the time of the contract signing.

**5-3** Should one of the parties refuse to participate or abstain during the arbitration or at any stage thereof, the arbitration precedes notwithstanding this refusal or abstention.

#### **Art 6 - Withdrawal of the arbitration request**

The plaintiff can withdraw its arbitration request after having submitted it. If the parties reach an amicable agreement after the arbitration request has been submitted, they can ask the sole arbitrator to issue a ruling that includes the content of their agreement.

The sole arbitrator then gives a ruling on the plaintiff's withdrawal of the arbitration request. The arbitrator will invoice all of its fees to the parties. The AFCOT's administrative costs will also be owed in their entirety.

If the sole arbitrator has not yet been appointed at the time of the withdrawal of the arbitration request, the two parties will inform the AFCOT of their agreement, thereby terminating the set-up of the tribunal.

#### **Art 7 - Amicable conciliation of the parties**

If requested by the parties or with their joint consent, the sole arbitrator can settle the dispute in the manner that he considers to be appropriate.

If the conciliation leads to an amicable settlement of the dispute, the parties can withdraw their arbitration requests and ask the sole arbitrator to draft a conciliation report or to issue a verdict that incorporates the terms of the amicable settlement between the parties.

The conciliation report must indicate the reasons for the request as well as the agreement reached by the parties. It is signed by the sole arbitrator before being sent to both parties. It takes effect once both parties have confirmed receipt thereof.

The arbitration procedure will therefore be abandoned.

All costs are due, including the AFCOT's administrative costs.

#### **Art 8 - Notification of the briefs**

Once the sole arbitrator has been appointed, the procedure begins with the applicant tendering a copy of the arbitration request and of the brief instituting proceedings, that must be provided to the defendant. The brief must be filed at the latest 7 days after the parties are informed of the name of the arbitrator, though late filing of this brief cannot be sanctioned by foreclosure.

The defendant has an interval of 15 days as of the notification of the brief instituting proceedings in which to provide the sole arbitrator and the applicant with its statement of defence, accompanied if relevant by a counterclaim.

In case of a counterclaim, the applicant has 15 days as of its receipt thereof in which to provide the sole arbitrator and the defendant with its response.

If the defendant fails to respond, the arbitration procedure nevertheless proceeds.

#### **Art 9 - Mission report**

Within 10 days of receiving the statement of defence (or the response in case of a counterclaim), the sole arbitrator provides the parties with the mission report, subject to payment of the deposit indicated in article 10.

The prepared report contains:

- the delimitation of the purpose of the mission in compliance with the introductory memorandum, the statement of defence, and if relevant, the response.
- The procedural calendar
- The procedural language
- The amount of the deposit in compliance with rule 10
- The arbitration time limit
- [The seat of the arbitration proceedings, in France. Failing an agreement between the parties, the seat shall be Le Havre. The court of arbitration may meet at any other venue it shall deem appropriate for its deliberations. Unless otherwise agreed by the parties, it may also meet at any other venue it shall deem appropriate for other purposes, including hearings. The award shall be deemed handed down at the seat of the arbitration proceedings.](#)

If necessary, the sole arbitrator will summon the parties or their representatives.

The mission report is signed by the parties and the sole arbitrator. In case of default by one of the parties, the mission report is signed by the sole arbitrator and by the non-defaulting party. The signing of the mission report establishes the parameters of the arbitration. Any new request is then inadmissible, subject to the

authorisation of the sole arbitrator. A copy of the report signed by the arbitrator and the parties, or by only one of them, is sent to the parties.

#### **Art 10 - Deposit**

The deposit indicated in article 9 is intended to cover the costs of the arbitration procedure, notably the payment of the sole arbitrator's fees and the AFCOT's administrative costs. It is determined by the sole arbitrator and calculated relative to the arbitration schedule provided by the AFCOT upon request.

Within 10 days following the signing of the mission report indicated in article 9, the deposit is paid in equal parts by the parties.

Should one of the parties fail to pay the provision, the other party will be required to pay the entire participation of the defaulting party.

Failing that, the arbitration procedure will be suspended until complete payment of the provision.

The deposit amount will be paid into the AFCOT's bank account.

The arbitration ruling will include the settlement of the arbitration costs and the designation of the party or parties responsible for these costs.

#### **Art 11 - Duration of the arbitrator's mission**

The sole arbitrator's mission is for 4 months as of the date of his acceptance thereof. It can be extended for a maximum period of 2 months, either by agreement of the parties or at the request of one of them or of the sole arbitrator, by the president of the Commercial Court of Le Havre.

#### **Art 12 - Examination of the briefs**

The sole arbitrator examines the briefs and submissions produced by the parties as quickly as possible. If he considers it necessary, the sole arbitrator can conduct a hearing of both parties at the request of one of them, or on his own initiative. He then summons them using any means providing written proof of dispatch and receipt, within a reasonable time limit.

The sole arbitrator has the power to ask the parties to produce any additional elements of proof.

The parties appear in person, or via a duly mandated representative, possibly assisted by their counsel.

#### **Art 13 - Declaration of a lack of jurisdiction**

If the sole arbitrator decides that he lacks jurisdiction, he must then determine his fees, that cannot exceed the amounts indicated in the published AFCOT schedule of costs and fees. The AFCOT's administrative costs will be owed in their entirety.

### **The Verdict**

#### **Art 14 - Time limit**

The verdict must be issued within 15 days of the closing date of the debates, subject to observing the 4-month time limit indicated in article 11.

#### **Art 15 - Content of the verdict**

The verdict must identify the parties to the proceedings. It includes:

- A brief review of the facts
- A summary of the requests of the parties
- A reminder of the tribunal's mission
- A summary of the procedure
- The solution resolving the dispute
- The justification of the adopted solution
- The settlement of the arbitration costs and the designation of the party or parties responsible for these costs
- The indication of its date

The arbitration ruling is drafted in four copies. The original is signed by the sole arbitrator.

#### **Art 16 - Communication of the verdict**

Within a reasonable time, the sole arbitrator submits the original verdict to the parties and to the AFCOT.

The verdict is provided to the AFCOT for the purposes of establishing a compendium of arbitration case law. The AFCOT undertakes to respect the confidentiality of the procedure and of the verdict. Any communication of the verdict by the AFCOT for research purposes must be in an anonymous manner.

#### **Art 17 - Execution of the verdict**

The arbitration ruling rendered in compliance with this regulation is not subject to appeal. It will be binding on all parties.

The parties undertake to fulfil any sentence included in the verdict within a time limit of 10 business days.

Otherwise, the first party to act is entitled to initiate exequatur procedures for the verdict through the [Tribunal Judiciaire \(Court of Justice\)](#) in Le Havre in order to obtain its compulsory enforcement.

In case of non-execution of the verdict, the non-defaulting party reserves the right to ask the AFCOT to send the name of the defaulting party to the CICCA in order for it to be included in the 'Default list'.

#### **Art 18 - Official versions**

The French and English versions of this arbitration regulation published by the AFCOT are both official. In case of discrepancy between the different versions, the French version prevails.

#### **Art 19 - Execution of this regulation**

This regulation took effect on [3<sup>rd</sup> June 2021](#) and applies to all arbitration requests received as of that date.

#### **Art 20 - Costs and fees**

The AFCOT's administrative costs and the fees of the sole arbitrator are available on our Internet site and from the secretariat.

#### **Rule 4- Dispute on quality of cotton (manual classing)**

Any dispute regarding quality, such as can be appraised, exclusive of the use of any mechanical device, shall be settled according to the arbitration procedure determined by this article.

The Arbitrators called upon to settle such disputes shall be appointed as conciliators ("*amiables compositeurs*") possessing the most extensive powers.

##### 1 - General provisions

Disputes shall be submitted in the first instance to an "Arbitration Committee". The decision of said Committee may be appealed to an "Appeal Committee" whose award will be final and not subject to appeal.

Each Arbitration Committee and each Appeal Committee shall be composed of two arbitrators.

Arbitrators in the first instance shall be appointed by the parties to the dispute from the list drawn up and approved by the Board of Directors of the AFCOT; this list is valid for one year and it may be renewed at the end of each period of appointment.

Appeal arbitrators are appointed by the AFCOT from the list of approved arbitrators or not.

If one of the disputing parties creates obstacles to implement the constitution of the Arbitration Committee, the AFCOT, upon simple request of the most diligent party shall appoint the second arbitrator. AFCOT has the possibility of appointing an arbitrator chosen in or outside of the list of approved arbitrators.

In the case that both parties do not appoint their Arbitrators, AFCOT will appoint them itself.

Should the arbitrators of the first instance not be able to reach agreement on the award to be made, a third arbitrator will be appointed whose assignment will be to make a final choice of award. The first two arbitrators shall be responsible for appointing the third arbitrator. If the two arbitrators could not come to an agreement to appoint a third arbitrator, the AFCOT will do it.

An arbitrator who has already intervened in first instance shall not be acceptable for appointment in appeal arbitration on the same lot.

Both first-instance and appeal arbitrators shall not be acceptable for appointment if they or the Company for which they work or the Company they represent are not party to the dispute they have to arbitrate.

Cotton shall be examined:

- In the first instance or in appeal, in any place approved by the parties.  
In case an agreement cannot be reached on the place, the arbitration will be effected in the premises designated by AFCOT.

Each party will accept as final and without recourse the decisions of the Arbitrators at appeal.

##### 2 – Scale of differences

As often as circumstances require, the "Committee of Differences" ("*Commission des Ecarts*") shall convene in order to set out a scale of differences between the qualities.



This Committee shall be composed of a maximum of 15 regular members appointed by the Board of Directors of the AFCOT.

In the case of a tied vote, the President has a casting vote.

The President may invite personalities who are not Members of the Committee, in an advisory capacity.

Minutes will be made of the Committee's meetings. Members of the Committee are appointed for three years; they are eligible for re-appointment.

### 3 – Arbitration and Appeal

Arbitration and Appeal shall be performed on the basis of the standards and official types and allowances shall be determined by the scale of differences, set out by the Committee of Differences, in force.

- In the case of CIF and CFR contracts, the value difference that will apply will be the difference on the date of arrival of cotton

- In the case of FOB contracts, the value difference that will apply will be the difference on the date of bill of lading or other document of title.

- In all other cases, the value difference that will apply will be the difference on the day the buyer receives title to the cotton.

Cottons whose origin does not appear in the scale of differences fixed by AFCOT' Committee of Value Differences, the arbitration and appeal shall be performed on the basis of informations collected by AFCOT' Committee of Value Differences, at the request of the buyer.

### 4 – Arbitration fees and expenses

The scale of Arbitration fees and expenses shall be fixed by AFCOT Board of Directors.

Arbitration fees and expenses in the first instance shall be borne half by the buyer and half by the seller, regardless of the result of the arbitration.

Appeal fees and expenses shall be borne by the applicant.

The cost of drawing, supervision of drawing and dispatch of samples shall be born:

- By the party whose final offer for amicable settlement is furthest from the quality arbitration award

Or

- By the buyer, if the quality award is less than the seller's final offer for amicable settlement.

Or

- Shared in equal proportion if neither party has made a written offer amicable settlement

### 5 – Organisation of arbitration

Samples for the purposes of arbitration must be submitted in rolls. Samples are submitted to the arbitrators. Samples must weigh about 150 grams.

If necessary, sub-samples required for Micronaire Arbitration shall be drawn from these samples.

Cotton must be sampled 10% unless otherwise agreed. Sampling will be on the basis of 10% random representative from each mark, truck, or container, defined on the seller's commercial invoice or packing list.

Arbitration samples must be drawn, marked and sealed. The buyer and seller (or their representatives) must supervise these operations.

Requests for Arbitration must be addressed to AFCOT. They shall show the names of the delivering party and of the receiver, the number of bales to be arbitrated, the origin and the designation of the quality on which arbitration shall be performed and specify, if necessary, whether a Micronaire clause is included in the contract.

Requests for Appeals shall be submitted to the secretariat of the AFCOT. They shall show, in addition to the information required on the arbitration request, the date mentioned on the notification of the first Instance decision.

Arbitration and Appeal requests shall be signed or stamped by the applicants or their representatives and be:

- either signed by the other party,
- or accompanied by the copy of this request to the other party.

Appeal requests must be submitted to the Secretariat of the AFCOT within eight full business days from the date mentioned on the notification of the arbitration award.

Notifications of Appeal awards, if they are mailed, are sent at the risk of the recipient.

As regards Arbitration of cotton sold on private type, a type sample weighing at least 200 grams sealed and approved by both parties, must be submitted to the Arbitrators.

The results of the Arbitration, in first Instance as well as in Appeal, are drawn up and signed by the Arbitrators, then handed to the AFCOT. After verification and registration of these results, the AFCOT will set up the awards and will notify them to the parties.

The AFCOT will invoice to the parties the Arbitration fees from which will be deducted the fees of the Arbitrators based upon the price list published by the AFCOT.

As regards any dispute relating to quality where the contract includes a Micronaire clause, such a clause shall be specified in the request for Arbitration and Appeal.

### **Rule 4.1 Dispute on quality of cotton (Instrument classing)**

- 1) Any dispute regarding quality, such as it can be appraised with the use of an instrument, shall be settled according to the arbitration procedure determined by the present rules. Those rules also apply for dispute on Micronaire and strength.
  
- 2) Samples for arbitration must be drawn, sealed and marked in the presence of both the buyer and seller and/or their respective representatives.
  
- 3) Unless otherwise agreed between the two parties, High Volume Instrument or classification shall be carried out in laboratories which take part to the CSITC program (Commercial Standardisation of Instrument Testing for Cotton) in accordance with the approved practices and procedures approved in the latest version of the Universal Standard Agreement signed between the American Ministry of Agriculture and international signatories.  
In the event the parties cannot an agreement on the laboratory, it will be designated by the claimant.  
Test reports will be issued and signed and/or stamped by the laboratory's authorised personnel and sent to both parties and AFCOT.
  
- 4) If sealed samples have already been taken for manual arbitration, as per article 4 of appendix VI, the same samples can be used for the tests provided they have been resealed in the presence of the arbitrators.
  
- 5) Test will be made on one sample for each bale. At least two tests shall be made on each sampl.The average result of the tests shall be the test result.
  
- 6) For instrument testing, claims and/or arbitrations may only be made on individual bales with their original marks, specified by the party applying for instrument testing.
  
- 7) Deleted on July 25<sup>th</sup> 2018
  
- 8) For micronaire, unless the parties agree otherwise, the usual control limit of 0.3 will apply
  
- 9) For strength, unless the parties agree otherwise, the usual control limit of 3.0 grams/tex or 3000 psi will apply.
  
- 10) Time limit regarding complaints for quality (ECR Art 058) differences also apply for Micronaire and strength.
  
- 11) Arbitration shall be determined by the scale of differences established by the Committee of Differences of AFCOT. Cottons whose origins does not appear in the scale of differences fixed by AFCOT's Committee of Value Differences, the arbitration shall be performed on the basis of informations collected by AFCOT's Committee of Value Differences, at the request of the buyer.  
- In the case of CIF and CFR contracts, the value difference that will apply will be the difference on the date of arrival of cotton  
  
- In the case of FOB contracts, the value difference that will apply will be the difference on the date of bill of lading or other document of title.  
  
- In all other cases, the value difference that will apply will be the difference on the day the buyer receives title to the cotton.

**12)** In the event the parties cannot reach agreement on the allowances to be applied, they can ask the secretarial of AFCOT to pass on the dispute to the Committee of Differences of AFCOT.

The members of the Committee of Differences of AFCOT shall not be acceptable for appointment if they, or the company for which they work, or they represent, are party to the dispute.

The dispute will be treated in an anonymous way. The decision of the Committee of Differences will be final.

**13)** Cotton must be sampled 10% unless otherwise agreed. Sampling will be on the basis of 10% random representative samples from each mark, truck, or container defined on the seller's commercial invoice or packing list

For the party whose final written offer for amicable settlement is furthest from the quality arbitration award; or

Or

For the buyer if the quality award is less than the seller's final offer for amicable settlement

Or

Shared in equal proportions if neither party has made a written offer for amicable settlement

**14)** Whichever party asks for the tests must pay the laboratory the whole cost.

But, if the buyer pays, the seller must repay the cost of testing every bale which does not come within the control limit set out in the contract or, where the control limit is not stated in the contract, within the UCL specified in article 8 and 9

### **Rule 5- Confidentiality of arbitration**

**1) Non-performance of an arbitration award: deletion.**

According to Art. 9 of our statuts, in the event of the non-performance of an award the name of the defaulting party shall appear in a list of parties in default, subsequent to exclusion by AFCOT from all of its activities and events.

Removal from the list of parties in default shall occur at the request of the plaintiff.

**2) Confidentiality of the Arbitration and the eventual distribution of the list of parties in default.** The parties to the arbitration and the arbitrators are bound by the confidentiality of the arbitration.

However, in the event of non-performance of the award the party opposed to the defaulting party in respect of the award handed down may request AFCOT to waive the confidentiality of the names of the parties and to distribute them to its members as well as to the member Associations of the CICC.