



# **TERMS AND CONDITIONS AND RULES OF ARBITRATION AND APPEAL**

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Registered Office Address:  
18 Lichfield Road  
2391  
Woodford Green  
Essex IG8 9ST

Tel/Fax: +44 (0)208 506

E-mail: [info@ndfta.co.uk](mailto:info@ndfta.co.uk)  
[www.thenutassociation.org](http://www.thenutassociation.org)

Company Registration Number 00916580  
VAT Registration No: GB 683 5367 03

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# THE NUT AND DRIED FRUIT TRADE ASSOCIATION

## TERMS AND CONDITIONS

1<sup>ST</sup> NOVEMBER 2020

1. Where a seller, broker and/or agent, does not disclose the name of his principal on the face of a contract, he shall be responsible as a principal for the fulfilment of that contract.
2. Contracts wherever made or to be performed, and whatever the nationality or residence of the parties, shall be construed and governed by English Law.
3. Any dispute arising out of a contract subject to these terms and conditions, including any question of law arising in connection therewith, shall be referred to arbitration in London, or elsewhere if so agreed. Such arbitration to be carried out in accordance with Association Terms and Conditions and the Arbitration Act 1996, or any statutory modification or re-enactment thereof for the time being in force.

#### 4. **Non-Business Days**

Saturday, Sundays and all days observed in England and Wales as Bank or General Holidays, or any other day that the Association may declare to be a non-business day.

The business day shall be deemed to end at 16.00 hours UK time.

#### 5. **Weights**

Where the quantity or weight of goods contracted is qualified by the word "about", it shall be construed as meaning within five per cent (5%) of the contracted quantity and weight.

Where tenders or deliveries are within this tolerance, buyers may at their discretion accept the deficiency or excess at contract price or market price at the time of delivery whichever they choose. Sellers shall thus multiply the deficient/excess quantity by the difference between contract price and market price at the time of tender or delivery and deduct or add this sum, as appropriate, to their invoice(s) for the goods so tendered or delivered.

With regards to weights, if the contract is an instalment contract requiring delivery/shipment in separate time periods, then each instalment shall be considered as a separate contract.

Where tenders or deliveries are not within this tolerance, the buyer shall not reject the whole parcel but shall deal with the differences as follows:

- a) **Excess Weight/Quantity.** The buyer shall have the option of rejecting any excess weight/quantity over 5%, or he may accept such excess at the contract price or the market price ruling on the day of tendering or delivering, whichever is the lower.
- b) **Deficient Weight/Quantity.** Whenever the tender or delivery is deficient in excess of the 5% tolerance, the buyer may claim from the seller on such deficient weight/quantity the difference in price between the contract price and the market price ruling on the day of tendering or delivering.

In either case the buyer must give notice to the seller of his intention within 5 business days of receiving the shipping advice or documents. On ex store or delivered terms short delivered and torn/damaged/ullaged packages to be calculated at the average weight of the sound portion.

Any dispute as to the adjustment in prices to be settled by arbitration.

## 6. **Notices**

Where the terms of a contract under these rules require notice to be given, such notice shall be transmitted by any means of rapid written communication. All such notices shall be sent under reserve for errors in transmission. A notice received after 16.00 hours UK time shall be deemed to have been received on the following business day.

Notice from a broker shall be a valid notice under this contract.

## 7. **Circle Clause**

- a) Where a seller re-purchases from his buyer, or from any subsequent buyer, the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased and the provisions of the Default Clause shall not apply.
- b) If the goods are not declared or, having been declared, documents are not presented as a result of a circle having been established, invoices based on the mean contract quantity shall be settled between each buyer and his seller in the circle by payment by each buyer to his seller of the excess of the seller's invoice amount over the lowest invoice amount in the circle.
- c) Such settlement should be made not later than 14 consecutive days after the last day of the shipment/delivery period or, should the circle not be established before the expiry of this time, then settlement shall be made immediately.
- d) All sellers and buyers shall give every assistance to the establishment of the circle and when a circle shall have been established, same shall be binding on all parties to the circle. Should any party in the circle commit, prior to the due date for payment, any act comprehended to be within the general meaning of the terms "Bankrupt", or in the event of a claim under the Force Majeure Clause, this Circle Clause is not applicable.

**CONDITIONS OF SALE FOR CONTRACTS ON  
FAS, FOB, CFR, CIF TERMS OR SIMILAR BASIS**

a) **Insurance**

Where a contract is made on CIF terms, Marine insurance shall be affected against all risks (Institute Cargo Clause A) for the invoice amount plus a minimum of 10%. The insurance shall include War Risk at the rate ruling in London at the time of shipment, but any War Risk premium in excess of one half of one per cent (1/2%) to be for the account of buyers. The terms of the War Risk insurance shall be those governed by the Institute of London Underwriters.

b) **Shipment**

Immediate shipment shall mean shipment on the date of the contract or on any of the following 7 consecutive days. Prompt shipment shall mean shipment on the date of the contract or on any of the following 14 consecutive days.

c) **Force Majeure**

Sellers are not responsible for the delay or other contingencies caused by war, blockade, civil commotion, prohibition of exports, strikes, lockouts, floods or other cases of force majeure. Should sellers claim to avoid the contract under this clause on the ground that shipment has been prevented, if required by buyers they shall furnish a certificate to this effect from the British Consul or Lloyd's Agent or other competent authority at the port of shipment, which shall be taken as final.

d) **Payment**

Cash against documents upon presentation or by Letter of Credit. In the event that tendered goods arrive at the port of destination before buyers are in possession of shipping documents, buyers shall take delivery under indemnity, the cost of which shall be borne by sellers or, at buyer's option, recover the total costs of quay rent and container demurrage until such time that buyers receive the documents plus 3 further days for processing.

e) **Quality**

To be Fair Average Quality of the crop as may be determined by the trade from time to time. Where, in the opinion of the buyer, the quality is inferior to F.A.Q., he shall be entitled to claim an allowance; such allowance, if not settled amicably, to be decided by arbitration.

f) **Declaration of Shipment**

Sellers shall declare to the buyer the name of the vessel or vessels on which the goods have been shipped, together with the quantity shipped and the shipped on board Bill of Lading number and date, container number(s) and shippers load and stow per container no later than 15 consecutive days after the date of the shipped on board Bill of Lading (10 consecutive days for Mediterranean almonds, and hazelnuts). Thereafter all intermediate sellers must pass the declaration on with due despatch. A valid declaration once made cannot be withdrawn except by agreement with buyer(s).

**g) Default**

Should the seller not have declared fulfilment of the contract following the final date of shipment for which the contract allows in accordance with Clause (f) above, he shall then be in default and the buyer, after first giving notice to the seller in writing, shall be entitled to cancel the contract or to buy against the seller at the market price on the day of default, or proceed to arbitration for the purpose of establishing the price at which the goods in question shall be invoiced back to the seller and the seller shall make good to the buyer the loss, if any, thereby involved. Intermediary sellers will not be penalised if they have passed on the declaration with due despatch.

**h) Claims**

No liability of any kind attaches to sellers unless a claim is made in writing by the buyers within 21 consecutive days after arrival at final destination provided the container(s) have been removed from the quay within a reasonable time or 42 consecutive days for loss in weight claims.

Where a contract has been divided into two or more parcels, loss in weight claims shall be accepted for each separate parcel.

## **EX STORE AND DELIVERED CONTRACTS**

### **a) Goods Sold Subject to Inspection and Approval**

Where a contract is made for goods subject to buyer's approval after inspection, a time limit may be mutually agreed at the outset of the contract. If, at the expiry of the time limit, the buyer has not notified the seller of his approval or rejection of the goods, the seller shall have the option to cancel the contract or extend the time limit. Where no time limit is agreed at the outset of the contract, the seller, after allowing a reasonable time for the inspection to take place, may give notice to the buyer of his intention to apply a time limit. Such time limited to be of at least one business day's duration. Where a contract is made under this clause, the buyer shall not be entitled to reject the goods without inspection.

### **b) Insurance**

Unless previously removed from the place where lying, the goods shall be at the seller's risk in respect of fire hazard and/or any loss or damage, howsoever caused, until noon on the 14th consecutive day after date of contract for spot goods or, in the case of goods sold for forward delivery 14 consecutive days after the release of the goods or presentation of the delivery order. The contract shall not be cancelled for any parcel of goods or any portion of any parcel which shall be lost or damaged within the 14 consecutive days, and before the goods have been uplifted but in the event of loss or damage within the 14 days sellers shall make good any or all losses to the buyer either by replacing the lost goods or refunding the value thereof.

### **c) Payment**

Cash against invoice and delivery order or release of goods. Buyer has up to 14 consecutive days to call for delivery order or release after contract date on spot sales.

Buyer has 14 consecutive days rent-free after date of release on spot ex-store sales or from date of release of goods sold to arrive on ex-store terms.

### **d) Weights**

Official net or gross delivered weights to be accepted unless the parcel has been landed for more than 2 calendar months, when the buyer shall be entitled to claim re-weights any re-piling charge to be for the seller's account. When the parcel has been re-weighed within 2 calendar months, such re-weights to be accepted by buyers. Ullaged, damaged and sampled packages to be invoiced on the actual net or gross weights as shown on the official ex store or delivered weights or re-weights as the case may be. In all cases the buyer shall be entitled to a copy of the official warehouse weights or re-weights to be attached to the invoice.

### **e) Delivery**

For tenders of sales made on ex store or free delivered duty paid terms, it is seller's responsibility to ensure that goods have been customs cleared, are available and that duty payable has been paid.

For sales made ex-store, delivery must be affected in a Public Store unless otherwise agreed.

Where goods are sold for forward delivery, the first seller must tender no later than 4.00 p.m. on the last day of the delivery period. Unless there are extenuating circumstances, intermediary sellers must then pass on the declaration with due despatch.

For ex-store sales of 10 tonnes or less, delivery must be limited to 2 releases/delivery orders; each release/delivery order representing 1 rotation in 1 store. For each additional 5 tonnes (over 10), delivery must be limited to 1 release/delivery order, representing 1 rotation in 1 store.

f) **Claims**

All claims, other than loss in weight claims, should be made in writing within the prompt date or before removal from store. Where a contract either spot or for a specific delivery date or period, claims should be made in writing within 14 consecutive days after date of delivery order or release prior to removal from store or in the event that the buyer redelivers to a third party within a reasonable time, claims must be made within 14 days of delivery to the final destination.



## **ADDITIONAL TERMS RELATING TO BRAZIL NUTS IN SHELL AND BRAZIL NUT KERNELS**

All the terms and conditions of the Association are applicable to contracts concluded for Brazil nuts, but the following additional clauses also to apply:

### **DEHYDRATED BRAZIL NUTS IN SHELL**

#### **a) Soundness**

In the event of the average crack exceeding 10% bad and/or empty, the following allowance shall be made unless the buyer claims rejection; in which case, failing amicable settlement, the matter to be submitted to arbitration. Two per cent (2%) of the invoice value to be allowed for every 1% in excess of 10% bad and/or empty nuts.

#### **b) Count**

Extra Large	40/45 per lb
Large	45/50 per lb
Medium	55/65 per lb

These are maximum counts but other descriptions or counts should be bought and sold in agreement between buyer and seller.

In the event of a count inferior to that stipulated in the contract, buyers to have the option of claiming minimum allowance of 1% of invoice value for every unit in excess or, failing amicable settlement, the matter to be submitted to arbitration.

#### **c) Declaration of Shipment**

Name of vessel, Bill of Lading number and date, port of shipment and container number(s) with quantity per container to be declared prior to arrival of vessel.

#### **d) Payment**

FAS, FOB, CFR or CIF contracts - cash against documents on presentation.

Ex-store sales - cash against delivery order or release within 14 consecutive days.

### **NATIVE CRACKED BRAZIL NUT KERNELS**

#### **a) Quality**

To be Fair Average Quality of the season of the description called for. Description and counts are:

Large	90/110 per lb
Medium	110/130 per lb
Small	140/160 per lb
Midget	160/180 per lb
Tiny. . .	180/220 per lb
Chipped	
Broken	

## **RULES OF ARBITRATION AND APPEAL**

Any dispute arising out of a contract incorporating these Rules shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 and any statutory amendment, modification or re-enactment thereof for the time being in force, save insofar as such provisions are expressly modified by, or are inconsistent with, these Rules. The judicial seat of arbitration shall be, and is hereby designated pursuant to Section 3 of the Arbitration Act 1996, of England. Arbitrations shall be held in London or elsewhere (but without prejudice to the foregoing) if mutually agreed by the parties.

Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of the Association, is deemed to abide by these Rules and to agree with the Association to be liable to the Association for all fees and expenses incurred in connection with the arbitration or appeal, which said fees and expenses shall, upon notification by the Association under the provision of these Rules, be and become a debt due to the Association.

1. It shall be the duty of the Board of Directors of the Association to maintain a panel of suitably qualified members of the Trade to act as arbitrators in any claim or dispute that may arise out of a contract made under the Terms and Conditions of the Association. A list of such arbitrators shall at all times be made available by the Secretary. The list shall show which members of the panel are, by their active trading in specific nuts or kernels, considered by the Board of Directors to be qualified to arbitrate in claims or disputes involving the quality and/or condition of those nuts or kernels (Quality Arbitrations). In disputes or claims not involving quality and/or condition, all members of the panel shall be considered equally competent to act (Technical Arbitrations). Every submission to arbitration shall be deemed to contain an undertaking by all parties not to take any legal proceedings against the arbitrators or umpire, or against the Association or its Officers in respect of any matter arising in the arbitration.

### **2. Quality/Condition Claims**

In a dispute involving quality or condition of goods, the buyer, after first notifying the seller of his intention to proceed to arbitration, shall give to the seller the opportunity of inspecting the whole of the parcel in question before its removal from the store. Such opportunity to extend for a period of 7 consecutive days from the date of the buyer's notification. Removal of the goods from store shall not in itself invalidate a claim provided always that the identity of the parcel has been maintained. In all cases 2 independently drawn sealed samples of 2 kilos each for nut kernels, or 4 kilos each for nuts in shell, representing the average of the parcel shall be drawn by an independent cargo superintendent from at least 5% of the number of packages before any portion of the parcel is removed from the store. Samples are to be packed in sealed plain bags with an open outer showing the vessel, markings and date of sample, together with the description of the goods. In all disputes, pending a settlement, it shall be incumbent upon the buyer to take steps to protect the parcel in order that any deterioration in either the packing or the condition of the goods shall be kept to a minimum.

### 3. **Appointment of Arbitrators**

- a) Where a dispute concerns quality and/or condition of goods, the party claiming arbitration shall apply to the Secretary of the Association for the appointment of two arbitrators and an umpire. The Secretary shall notify the other party to the contract of such application and shall proceed to appoint the arbitrators and umpire, not being interested parties, from the panel. It shall be the duty of those so nominated to indicate to the Secretary their willingness to act or otherwise. The Secretary shall procure the independently drawn sealed samples and, if necessary, an inspection order.
  - b) In disputes other than those concerning quality, the party claiming arbitration shall nominate an arbitrator from the panel, after first ascertaining the willingness of the arbitrator to act, and shall notify the other party to the contract of the arbitrator's name. The other party shall in turn nominate an arbitrator from the panel; this nomination to be made within 14 consecutive days of the first party's notification. If the second party fails to nominate an arbitrator within this period, then the first arbitrator shall be empowered to act as sole arbitrator but he may allow the second party a further period not exceeding 14 days to appoint their arbitrator. Thereafter in the absence of an appointment the Association shall write to the second party to obtain their appointment of arbitrator and should that fail the one appointed arbitrator shall proceed with the arbitration. The claimant must despatch in writing to both arbitrators or the sole arbitrator and to the respondent any submissions within 14 consecutive days of the date of appointment of his arbitrator. The respondent must send to both arbitrators or the sole arbitrator and to the claimant his submissions within 14 consecutive days of the receipt of the claimant's submissions. When both arbitrators have been nominated and signified their willingness to act, the arbitration shall take place on the basis of documents only. In the event that neither party requests a hearing within 14 consecutive days of receipt of closing submissions, the arbitrator(s) shall proceed to determine the dispute on the basis of written submissions alone. In the event that either party requests a hearing within 14 days of receipt of final submissions, or the appointed arbitrators are unable to agree an award, an umpire will be appointed by the Association. An umpire shall be appointed prior to any oral hearing taking place. If oral evidence is to be submitted the arbitrators shall advise both parties of the time, date and place when such oral evidence shall be heard. The obtaining of samples, evidence, documents and information shall not constitute an unnecessary delay. An arbitration once begun cannot be withdrawn without the consent of both parties. The arbitrator(s) may, at their absolute discretion, extend the time limits mentioned in this paragraph if they think fit.
4. If either party to a quality dispute wishes to give evidence to the arbitrators in a written form, this evidence should be sent to the Secretary of the Association with a request that the evidence be passed to both arbitrators.

No party to arbitration may be represented by any member of the legal profession, nor may any member of the legal profession be present at any of the arbitration proceedings.

### 5. **Awards**

Awards made by arbitrator(s) shall be in writing on the Association's official award forms and shall give reasons for the award. The arbitrator(s), in addition to making the award, shall decide by which party the fees are to be paid. When either party has, prior to the arbitration, made a written offer to settle the dispute which the other party has rejected and subsequently arbitrators settle the dispute on terms which are not more favourable to the party who rejected the offer, then the fees may, at the arbitrator(s) discretion, be paid by the party who rejected the offer. In a dispute concerning quality and/or condition, where in the opinion of the arbitrators,

after giving due consideration to the “Fair Average Quality” of the crop concerned, the percentage of defective nuts or kernels is in excess to such an extent that the arbitrators consider that an allowance would not meet the case, they shall be entitled to award rejection.

6. An arbitration should take place and award be made within 35 consecutive days of the agreement of arbitrator(s) to act. If, in the opinion of the arbitrator(s), it is not practicable to make an award within this period then they may extend the time limit at their discretion.

## 7. **String Arbitrations**

In the event of a contract forming a part of a string of contracts which are, in all materials points, identical in terms except as to date and price, any arbitration for quality and/or condition shall be held as between the first seller and the last buyer in the string as though they were contracting parties. Any award so made shall, subject to the right of appeal as provided in these Rules, be binding on all intermediate contracting parties in the string and may be enforced by any intermediate party against his immediate contracting party as though a separate award had been made under each contract.

## 8. **Fees**

- a) **Arbitrators fees.** Fees shall be on a sliding scale based on the value of the parcel(s) in dispute as follows:-

<u>Fee</u>	<u>Value of Parcel(s)</u>
1%	up to £149,999 (subject to a minimum Arbitrators fee of £1,000)
0.5%	£150,000 - £299,999
0.25%	£300,000 upwards

For the purposes of calculating the fees, the value of the parcel(s) shall be arrived at without deduction of commission or discount. In the event that the value of the parcel(s) is expressed in a currency other than Sterling then a conversion to Sterling shall be made at the spot exchange on the day of the award at the discretion of the arbitrators.

The above fees shall be divided equally between the arbitrators. Where an umpire has acted in the arbitration, the fees shall be increased by fifty per cent (50%) and the umpire shall receive this additional fee.

- b) **Association Fees.** A fee of £500 shall be paid to the Association in connection with each arbitration by members.
- c) **Non-Member Fees.** Any party not being a member of the Association and being ultimately responsible for payment of the Association’s fee, shall pay a fee of £1,000 to the Association in place of paragraph b) above.
- d) **Travelling Expenses.** Where any arbitrator or umpire incurs travelling expenses in order to attend an arbitration, these expenses shall be reimbursed to the arbitrator or umpire by means of an additional fee which shall be levied against that party which the arbitrators have decided shall pay the arbitration fees.
- e) **Administration Expenses.** Where any arbitrator or umpire incurs

communication expenses, i.e. cable, telex, telephone or facsimile, these expenses may be claimed at the discretion of the arbitrators or umpire and shall be reimbursed to them by means of an additional fee which shall be levied against that party which the arbitrators have decided shall pay the arbitration fees.

- f) **All Parties** claiming arbitration shall pay the Association's fee prior to arbitration proceedings taking place.

## 9. Taking Up of Awards

As soon as possible after making an award, the arbitrators, and umpire, if called upon, shall sign the award and return it to the Secretary of the Association. The Secretary shall immediately inform the claimant that the award is available upon payment of the arbitrator(s) fees. When the fees have been received by the Association, then the award will be dated and sent to the claimant and a copy sent to the other party. Should the claimant fail to take up the award, then the Board of Directors of the Association may post in the Association Book and/or circularise the Association's members in any way thought fit, a notification to that effect, and the parties to the arbitration shall have deemed to have consented to the aforesaid action by the Board of Directors. In any case where the claimant has failed to take up the Award within what the Board of Directors considers to be a reasonable period of time, then the Respondent shall be entitled to do so. Until an award has been taken up, the contents of the award shall not be disclosed.

## 10. Appeals

Any party to an arbitration award shall have the right of appeal to the Board of Directors who shall then elect three of their number (or co-opt such persons as they deem qualified), not being interested parties, to form an Appeal Board. Any appeal to the Board of Directors shall be made within 28 consecutive days of the date of the arbitration award and must be accompanied by the amount awarded, a deposit of £500 together with an amount equal to the fees paid to the arbitrators and umpire if applicable; this latter amount to be equally divided among the members of the Appeal Board. The deposit of £500 shall be refunded to the party appealing if the appeal is allowed, otherwise to pass to the funds of the Association. Any party not being a member of the Association shall pay a further fee of £250 in addition to the foregoing, such additional fee to pass to the funds of the Association. Where the deposit paid by the appellant is returned to that party, a fee of £500 (or £750 if a non member) will be paid to the Association by the other party.

A party wishing to appeal against an arbitration award must submit his claim in writing, together with accompanying papers, to the respondent party and the Secretary of the Association within 7 consecutive days of his notifying the Secretary of his wish to appeal. The respondent must send his submission and/or counterclaim to the appellant and the Secretary of the Association within 14 consecutive days of the receipt of the appellant's submission.

The Appeal Board may not take into consideration any new evidence, written or oral, not included in this exchange of submissions.

## **11. Appeal Boards**

The Appeal Board shall have the power to confirm or vary an award and in either case shall give their reasons for so doing. They shall also have the power to alter or re-assess the fees to be paid. The Appeal Board shall have the power to call upon parties to the arbitration to give written or oral evidence to the Board. Neither party to the appeal shall be represented by a member of the legal profession unless, in the considered opinion of the Board, the appeal is of major importance or that serious questions of law are likely to arise, in which case both parties shall be afforded the same rights.

No appeal can be lodged unless the fees for the original arbitration have been received by the Association.

## **12. Arbitration and Appeal Decision**

Where a decision pursuant to an arbitration or appeal under these rules has been given, irrespective of whether any party to the arbitration or appeal is not a member of the Association, the successful party may notify all interested parties of the decision and award in its favour such notification to be at the entire discretion of the successful party. In addition, the name(s) of any or all defaulters to an arbitration award or appeal may be given by the Association to all its members, affiliated trade organisations or any third parties which the secretariat in its absolute discretion considers appropriate and all parties trading on the Association terms shall be deemed to have approved of such a course of action.

In the event of any new membership application from a company where non-fulfilment of an arbitration or appeal award has occurred, beyond 60 days of its issue, membership shall be refused or in the event of the company already being an existing member of the Association, this membership can be withdrawn with immediate effect.

## **VARIATION IN TERMS AND CONDITIONS**

The Selling Terms, Conditions of Sale and Arbitration Rules may be amended by a majority of three-quarters of the members present and entitled to vote at a General Meeting of the Association and copies of all amendments shall be sent to all members, with or without charge.

In the event of any matter arising which is not provided for in these Terms and Conditions, or any doubt arises as to the interpretation of the said Terms and Conditions, the same shall be determined by the Board of Directors whose decision shall be final.

All Arbitrations that were conducted under CENTA and/or TNA Terms and Conditions are now deemed to have been conducted under The Nut and Dried Fruit Trade Association Terms and Conditions as adopted at the TNA and NDFTA AGMs on the 16<sup>th</sup> October 2020.