



BIJI KAKAO
TRADING

London, October 2019

TERMS & CONDITIONS

1) Definitions

- a) Biji Kakao Trading or the **“Seller”**: Biji Kakao Trading Ltd with its registered office at Kemp House, 160 City Road, London, EC1V 2NX, United Kingdom.
- b) The **“Client”**: Each natural person or legal entity that the Seller negotiates the formation of a contract with and/or forms a contract with.
- c) **“Contract”**: Any contract formed between the Seller and the Client, any change or supplement to it, as well as all legal acts to prepare and perform this contract.
- d) **“Goods”**: The goods that the Seller supplies the Client with under the Contract.

2) Validity

- a) All offers and Contracts are solely governed by these terms and conditions of supply and sale. Any other terms and conditions or any reference to them shall be rejected by the Seller.
- b) The Client expressly accepts the applicability of these terms and conditions by his mere mandate.

3) Quotations and Offers

- a) Unless agreed otherwise in writing, all offers made by Biji Kakao Trading are subject to final confirmation.
- b) Unless stated differently on the quotation all offers are valid for 1 month.

4) Quantity

The quantity to be tendered shall be that stated in the Contract. A tolerance of 1.5% in weight, more or less, on the basis of the previous weights shall be permitted.

The contract shall state whether a tender shall be made for cacao beans in original bags and/or big bags (FIBC). Should the Contract fail to specify either, a tender shall be made for cacao beans in original bags.

5) Delivery

Unless otherwise stated all orders are subject to delivery terms Ex Works (EXW/Incoterms 2013).

6) Delivery Period

- a) Unless otherwise stated the delivery period shall be immediate, i.e. within 14 calendar days counted from the date of tender.
- b) Prompt delivery means within 30 calendar days counted from the date of invoice.
- c) It is permitted to take partial delivery, any extra expenses resulting thereof are for account of the Client.
- d) During the contractual delivery period or up to 30 calendar days, the warehouse/shed rent is for account of the Seller. Cocoa beans stored thereafter shall be for the account of the Client.

7) Delivery Instructions

If the contract has been concluded on the condition FCA, FOB, CFR or CIF delivery instructions shall be given by the Client in sufficient time to enable the Seller to comply within the contractual delivery period.

Failing this, the Seller shall be entitled to complete delivery on an EXW basis.

8) Payment

- a) Unless agreed otherwise in writing, payment shall be made:
 - i) at the time stipulated, or
 - ii) within the contractual delivery period prior to release of the Goods by the Seller to the Client.



BIJI KAKAO
TRADING

- b) For cocoa beans sold on landed/warrant weights payment shall be effected for the invoice value.
 - c) For cocoa beans sold on reweights payment shall be effected for the provisional invoice value and final settlement shall be made on the basis of the reweights.
- 9) Risk and Retention of Title
- a) Ownership of the Goods is expressly not transferred to the Client until the Seller has received all that it is owed for the delivery, including interest and costs. The Seller may exercise this retention of title on all Goods.
 - b) Notwithstanding the other rights that the Seller is entitled to, the Seller is irrevocably authorized by the Client to take possession on first demand of the supplied Goods without any notice of default or judicial intervention, should the Client fail to fulfil his payment obligations to the Seller on time or at all.
- 10) Weights (cocoa beans in bags and big bags - FIBC)
- a) For cocoa beans sold on landed/warrant weights weighing and taring shall have taken place in conformity with local custom and the Goods shall be invoiced accordingly. In the absence of taring at the place of storage the original tare shall apply. However, should the cocoa beans have been last weighed more than 6 calendar months prior to the date of the tender the cocoa beans shall be reweighed and repiled at the Seller's expense during the contractual delivery period and invoiced accordingly.
 - b) For cocoa beans sold on reweights the Goods shall be provisionally invoiced on the basis of the previous weights, in which event the Seller shall provide a copy of the relevant weight note.
- 11) Reweighing and Taring Expenses
- a) For cocoa beans sold in store, reweights, the reweighing expenses are for the Client's account.
 - b) For cocoa beans sold EXW, FCA, FOB, CFR or CIF, reweights, the reweighing charges are for Seller's account.
 - c) If taring expenses are not included in the weighing expenses they are for account of the requesting party.
- 12) Supervision of Reweighing
- a) Each of the parties can require the reweighing and taring (if appropriate) to be supervised provided they give notice to the other party in due time and bear the costs thereof.
 - b) Where supervisors have been appointed, reweighing and taring (if appropriate) may be carried out if the supervisors, though informed in good time of the place and time of reweighing and taring, are not present. Such reweight and tare must then be accepted.
- 13) Reweight Note
- Either party shall forward to the other party a detailed reweight note as quickly as possible but not later than 7 calendar days from the date of reweighing, failing which the Seller shall be permitted to regard the provisional invoice weights as final.
- 14) Quality
- a) Quality shall be in accordance with the contract description.
 - b) All Goods contracted for shall be of sound merchantable quality unless otherwise stated in the Contract or shown to the contrary by the sale sample or samples.
- 15) Sale as per Sample
- a) Not later than the date of the Contract, the Client can require that, for their account, the Seller gives instructions for a representative sample of minimum 300 cocoa beans per tonne to be drawn by a qualified body and sent to them per courier within 2 working days at the place of storage.



BIJI KAKAO
TRADING

- b) Where the Client believes there is an appreciable difference in quality, not later than 2 working days after receipt of the sample at their place of business they may inform the Seller of same and advise them at the same time whether i) they wish to accept the Goods with or without an allowance or ii) discharge the Contract.

16) Samples

- a) As long as the Goods have not been delivered, the Seller is obliged to co-operate fully if the Client wish further samples to be drawn for their account.
- b) Samples for arbitration purposes shall be drawn and sealed by a qualified body not later than 7 days from the date of the Contract in conformity with local custom.
- c) Each of the parties can appoint supervisors in whose presence the samples shall be drawn and jointly sealed provided they give notice to the other party in due time and bear the costs thereof.
- d) Where supervisors have been appointed by one or both parties, sampling may be carried out if any of the supervisors, though informed in good time of the place and time of sampling, are not present. In such an event, the samples drawn and sealed by a qualified body (and if appropriate, jointly sealed by one of the supervisors) shall be accepted. Should the Client fail to inform the Seller's supervisors, they forfeit the right to any claim based on quality.

17) Claims

- a) Claims must be sent to the Seller in writing quickly but in any case no later than 6 days after delivery, this on penalty of forfeiture of all rights to claim. No claims of any kind shall suspend the Client's payment obligation.
- b) After finding any defect, the Client is obliged to stop using the Goods in question immediately and furthermore to do or refrain from doing all that is reasonably possible to prevent further damages.

18) Force majeure

- a) If Biji Kakao Trading is unable to fulfil its obligations to the Client due to a non-attributable breach (force majeure) then fulfilment of the obligations will be suspended for the duration of the state of force majeure.
- b) The Client is not entitled to any compensation in connection with force majeure, even if the Seller should derive some benefit from it.
- c) Force majeure is deemed to mean: any circumstances independent of the Seller's will that prevents the fulfilment of the Seller's obligations to the Client in full or in part or where the Seller cannot be reasonably expected to fulfil its obligations, irrespective of whether this circumstance could have been foreseen at the time the Agreement was entered into. Such circumstances shall in any case include: earthquakes and volcanic eruptions, strikes and lockouts, electric power supply problems, standstill or other problems affecting the Seller's production or its suppliers and/or its transportation, whether carried out by itself or by third parties.
- d) Biji Kakao Trading will inform the Client as quickly as possible of any current or imminent state of force majeure.

19) Liability

- a) In no case will Biji Kakao Trading accept any liability for consequential loss/damage, which shall be deemed to include losses due to delay, the Client's or his counterparties' trading losses and lost profits.
- b) Biji Kakao Trading shall reject any liability for Goods that have already been processed by or for the Client.



BIJI KAKAO
TRADING

20) Arbitration

- a) Any dispute which the parties are unable to resolve amicably shall be determined by arbitration at the London Court of International Arbitration's (the "LCIA").
- b) The laws of England and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof shall be the applicable procedural law.
- c) The formal decision to initiate arbitration proceedings shall be notified by one party to the other within the following time limits:
 - i) quality disputes: not later than 28 calendar days from the date the claim was formulated;
 - ii) other disputes: not later than 90 calendar days from the date one party formally notifies the other that the dispute apparently cannot be resolved amicably and arbitration proceedings shall be initiated.
- d) Where the rules of the arbitral body require that a step be taken to initiate the arbitration, including a formal application for arbitration to such arbitral body or the appointment of an arbitrator, such step must be taken within the above time limits.
- e) Each of the recipients of such notification may in turn bring it to the notice of its own members or otherwise publish the same.

In no circumstances shall any person or organisation be liable to any party to an arbitration in respect of the posting or notification of the name of a defaulting party under an arbitration award whether or not such award shall have been subsequently complied with.

By acceptance of the Contract and its arbitration clauses the parties are deemed to have agreed to this condition.

21) Jurisdiction

- a) The Contract shall be subject to English law both as to its formation and execution.
- b) The following shall not apply to this Contract:
 - i) the Uniform Law on Sales and the Uniform Law on Formation;
 - ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980;
 - iii) the United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980;
 - iv) the Contracts (Rights of Third Parties) Act 1999

22) Question of Time Limits and Working Days

- a) Where the question of time limits is raised, the first day is the day following the date of the Contract, tender, weighing, sampling, claims etc.
- b) Where an act has to be done by either of the parties on or before a specified calendar day and such day falls on a non-working day, such act must then be done on or before the following working day.

23) Notices

- a) Notices required to be given under the Contract shall be given only by one or more of the following methods:
 - i) E-mail, or
 - ii) any other method of written electronic communication provided that a record of the notice is capable of being preserved by both parties and printed by both parties and that such method of communication has been expressly agreed in writing.
- b) If there is a dispute as to whether or not a notice was given in accordance with this Article 23 such dispute shall be determined in all the circumstances of the case and on the balance of probabilities.