

Spinners Committee

# GUIDELINES

FOR PURCHASING RAW COTTON / 1999

INTERNATIONAL TEXTILE MANUFACTURERS FEDERATION  
FÉDÉRATION INTERNATIONALE DES INDUSTRIES TEXTILES  
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## Introduction

For the cotton spinning industry, the importance of cost and performance of the basic raw material, cotton, cannot be over-emphasised. Delivery of the correct quantity of raw cotton, at the appropriate time, within the established specifications, and at the agreed price is essential. Therefore, there must be a clear, comprehensive written agreement between the buyer and the seller.

The starting point is that the agreement should be drawn up under the basic contract conditions of an internationally recognised Cotton Association. Recognised Cotton Associations represent the legislative body under which disputes may be settled by arbitration. However, a simple standard contract form of a recognised Association may not be sufficient to protect the interests of both parties in certain circumstances, or under specific requirements. The arbitrators have to take into consideration what is actually written in the contract, rather than what the contracting parties might have intended.

The commercial details of any contract are a matter for agreement between buyer and seller, and flexibility in contracting is important. Therefore, if the buyer and the seller wish to set aside or vary any of the trading Rules laid down by an Association, they are entirely free to do so. This freedom to specify the exact requirements carries with it an obligation not only to negotiate, but also to record what has been agreed in the contract. Anything that is set aside, varied, or added must be defined clearly in the contract.

This booklet is intended to offer guidance to all those concerned with buying and selling cotton by providing a set of guidelines for use during negotiation and when preparing cotton sales contracts. The guidelines are given in the form of basic points that should be considered and items that should be specified during negotiations and when drawing up the final contract.

The list is divided into two sections, one devoted to considerations of cotton Quality and the other concerned with Shipment and Delivery conditions. It is presented in two forms. First, a brief list is given without elaboration. This will serve as a quick and simple *aide memoire*. Next, each separate point is amplified in a discussion section.

## Introduction

Reference to these Guidelines will assist the user to ensure that, as far as possible, adequate specifications of the expected fibre quality and shipment performance are included in cotton sales contracts, so that there can be no misunderstandings at a later stage.

In brief, contracts must be:

- Clear  
A contract may be executed by someone who did not attend the negotiations.  
It may still be in dispute many years after it is agreed.  
The contract should state exactly what is intended on every material matter.
- Concise  
Do not use shorthand.  
Simplicity is invariably better than complication.  
Avoid legal terms unless both sides take legal advice about their meaning.

If the world's cotton spinners consistently utilise a more uniform practice in contracting cotton, as exemplified by these Guidelines, then in time the overall quality of cotton will improve, due to the systematic communication to the cotton producers of the exacting requirements of the modern textile industry.



## Contracting for Success

### Guidelines to be considered during the negotiations and in the contract

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or: - a detailed description of the cotton	
and: - stated in terms of:	
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## Contracting for Success



### Guidelines to be considered during the negotiations and in the contract

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## Technical Guidelines

**Origin and Growth** It is recommended that the intentions of buyer and seller should be made clear, by specifying precisely the origin and growth required. This is because there are many sub-growths within countries or regions. For example, CIS origin can cover Uzbekistan, Turkmenistan, Kazakhstan, Kyrgyzstan and Azerbaijan each with considerable differences in characteristics. The recommendation is to avoid the acronym CIS, unless the parties are prepared to receive, or deliver, any origin from the ex-Soviet Union block.

West Africa is another example of an origin covering various countries. Unless it is intended that cotton from any West African country is acceptable, then the country of origin should be individually specified.

The phrase *or similar origin* implies that the supplier could ship from any origin or growth in the world. If this is not acceptable, the buyer may prefer to limit the growths, or specify only one.

**Crop Year** If the crop year is important, due to the different characteristics from one season to another, then this should be stated in the contract.

**Fibre Quality** The recommendation is that fibre quality should be defined either:

- By reference to a seller's sample, which is subsequently sealed.
- By means of an objective specification of the relevant cotton characteristics.

In the first case the sample would normally be used to determine the *Grade*, whilst the *Staple Length* and *Micronaire* should be objectively specified, as well as *Strength* and *Length Uniformity* wherever possible. It is important to seal at least three samples of each type, and it is recommended to stipulate a deadline (30 days) for receiving such samples after finalising the business.



## Technical Guidelines



In the second case *Grade*, *Staple Length* and *Micronaire* would be obligatory characteristics to specify, whilst *Strength* and *Length Uniformity* would be recommended options.

Whatever method is chosen it is important that the characteristics are fully specified during the negotiations, and clearly stipulated in the contract, for example:

- Is the Grade based on the USDA Universal Standards or on HVI data?
- Is the Staple Length based on manual classification or HVI data?
- Is the Micronaire value stated as a range? Is it with or without a claim limit (CL or NCL)?
- Is the Strength denominated in g/tex and is it based on HVI readings or Stelometer? Is there a tolerance for claim limits?
- Is the Length Uniformity based on HVI readings?

Likewise, if the purchase contract includes parameters for neps, maturity index etc. the values must be clearly stated, including the method of measurement and whether they include a tolerance in the form of a claim limit.

Note that, if cotton is sold on "*USDA Green Card Final*", it implies that there can be no claim on the seller, or the producer, in the event that the buyer opines that the characteristics of the cotton fail to match the data on the relevant Green Card.

The percentage of arbitration samples to be drawn on arrival of the merchandise should be included in the contract. Association Rulebooks will normally lay down either 100% or 10% of the shipment depending on the growth, unless the buyer and seller decide otherwise. The recommendation is that 10% is sufficient due to the high cost of drawing and transporting samples. This recommendation is in line with today's high-speed gins and mechanical picking which ensures more even-running cotton. However, for origins based on hand picking 100% sampling is recommended.

### Percentage of Sampling



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### **Allowances for Quality Variation**

In the event that the cotton delivered fails to meet the quality contracted, the buyer will be due compensation. However, unless the buyer and seller agree otherwise, the value differences published by the Association under whose Rules the cotton is traded will apply. These value differences normally cover Grade, Staple Length and, in some cases, Strength. For Micro-naire most Association Rulebooks contain set allowances for US cotton and some Rulebooks cover other growths.

If nothing else is agreed, and in the event of a dispute for which no amicable settlement is possible, the arbitrators will use market evidence, together with the Association's value differences, to decide what allowance is due.

However, the buyer and seller may agree on their own set of allowances, as well as allowances for any deficiency in Strength and Length Uniformity, and any other specification including nep count, maturity index etc. The buyer may also agree with the supplier's allowances, which may reflect particular circumstances.

Agreeing on allowances in the contract implies that the means of measuring the parameters concerned must be specified. The measurement of all parameters such as Staple, Micronaire and especially Strength and Uniformity is best done by HVI, as opposed to other measuring devices, in the interest of cost, speed and accuracy. If disputes for grade and staple are to be decided by HVI, rather than manual examination, then this must be stated in the contract.

It is recommended that the basis of any such agreement should be compensatory rather than punitive, although some Association Rules do call for punitive damages. In some cases allowances may be on a sliding scale, to reflect the greater difficulty of dealing with a larger deficiency, as is the case with Micronaire.

### **Contamination**

The risk of contamination is a factor that must be addressed when deciding on the growth required. Some growths are clearly more susceptible to these problems than others. The biennial ITMF "Cotton Contamination Survey" will help to identify which cottons are most prone to contamination.

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It is recommended that to avoid any misinterpretation of the rules, the contract should contain a clause similar to the following:

*If contamination is detected at the spinning mill, an international controller selected by the two parties should verify the claim within two weeks after detection. In the event of no verification, all costs would be for buyer's account. In the event of verification, all costs, including the cost of cleaning the bales and loss in weight or at seller's option replacement of contaminated bales, as well as the loss of interest during the cleaning or replacement process, would be for seller's account.*

The risk of stickiness, caused by insects or plant sugars, is a factor that must be addressed when deciding on the growth required. Some growths are more susceptible to these problems than others. Buyers should discuss this with sellers when selecting the origin of the cotton. As stickiness is a contaminant, the recommendation is that the clause for contamination (see above) also applies to stickiness.

### **Stickiness**



## Contractual Guidelines

- Price and Payment** The price, normally denominated in US\$ cents per pound on international contracts, should be set down in the contract, as should the terms of delivery. For example FOB, C&F or CIF, together with the payment terms, and the deadline for opening the Letter of Credit if such conditions have been agreed.
- If the cotton is purchased FOB, the seller is responsible only until the cotton is loaded on board. FOB is normally understood to represent 'FOB stowed', but the stowage could be for the buyer's account. It is important to make sure that there is no doubt about the actual position.
- Shipment Period** The shipment date or delivery date must be specified. It is recommended to ensure that there is no doubt about whether the period stipulated refers to the shipment or the delivery of the cotton. If two months are stipulated, it should be made clear whether this means shipment in equal portions, or if it is the seller's option to ship any time during the period in question.
- Contracted Weight** It is recommended that the contracted amount be clearly stated. The weight of the cotton can be established in bales, tonnes, pounds, kilos, or even by container load.
- For sales by number of bales, the average weight of a bale must be specified. Bale weights vary from Pakistani bales of 170 kg (375 lb) to Egyptian bales of 330 kg (725 lb), although most bales fall within the range 180 to 225 kg.
- It is essential to specify clearly whether the contract weight is based on original gin weights, or certified shipping weights, or certified landed weights.
- Weight Tolerance** The weight at destination will seldom be exactly as specified. Any deviation should be judged according to the variation allowed in the appropriate Association Rulebook (typically 3%), or otherwise agreed with the supplier. If the term 'about' is used, ensure that the word is defined.
- Destination and Vessel** In the case of C&F or CIF contracts the destination should be specified and it should be stipulated that the seller loads the cotton on a Lloyd's Registered A1 vessel. The international

## Contractual Guidelines



cotton contract is based effectively on 'a transfer of documents evidencing shipment to the port described on the Bill of Lading, or truck receipt'. Therefore the cost of any re-shipment to the final destination would be for the *buyer's account* in the event that an unreliable carrier is stranded, or the merchandise is unloaded at another port. Also shipment on "overaged" vessels is not acceptable to insurance companies and the contract should be constructed accordingly.

Under C&F or CIF contracts freight can be designated as final, or it can be based on a formula with any cost variation at the time of shipment being for the buyer's account. Even when freight is final, a subsequent request for the delivery to be delayed may imply that the buyer is liable for any difference in the freight rate, in addition to any other carrying charges. The phrase *full liner terms*, implies all loading and discharge expenses are for the ship's account, including no demurrage. Other phrases, for example *charter party terms* or *liner terms in*, imply that the *receiver / buyer* will have to carry the cost of unloading and, depending on the conditions, may be liable for demurrage.

### **Freight is Final and Full Liner Terms**

It is recommended that the time period to be allowed for unloading the containers free from demurrage should be established during the negotiations, and this should be specified in the contract.

### **Time for Unloading Containers**

As transshipment could involve unforeseen delays, it is recommended that this be taken into account in the negotiations when planning for the arrival of the cotton.

### **Transshipment**

If shipment pertaining to a contracted month is made on two or more vessels, this could incur additional port charges and delays. Therefore, it is recommended that buyer's and seller's intentions for such circumstances are clearly defined in the contract.

### **Partial Shipments**

Many countries charge export and import duties. Make sure this responsibility is covered in the contract.

### **Import and Export Duties**



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**Insurance** Insurance is a specialised subject for which expert advice is required. The Rules of the Association under which the contract is drawn will have to be taken into account. The titleholder of the merchandise must ensure that he is fully covered at all times.

In this respect it is important to understand the position with regard to *country damage* insurance. Such damage could happen before shipment is made but, if the damage is found only on arrival, the difficulty will be in proving when the damage occurred. Under the rules of the major Associations, even if he is buying on FOB or similar terms, the buyer must cover country damage under his marine cargo and transit insurance to overcome this problem.

Even so, if there is any damage, which can be shown to be of a pre-shipment nature, then the seller must assume the responsibility. It is possible to reject this liability by excluding the relevant Association Rule in the contract. Such exclusion must be fully agreed since the insured would either have to assume this risk, or declare it to the insurance company.

Under the C&F contract it is the buyer's responsibility to insure the cargo. The buyer must ensure that the seller advises within 48 hours after the cargo has been loaded, in order to take out insurance cover, and a clause to this effect should be included in the contract. It is advisable that the insurance company is notified in advance of the forthcoming shipments.

**Variation of Standard Clauses** If it is the wish of the contracting parties to exclude or vary any of the standard clauses, or to introduce special clauses, then each change must be agreed by both parties. Most international contract forms contain space for such clauses.

**Procedures for Handling Delays** Failure of the buyer to open the Letter of Credit, or failure of the seller to ship on time are the most frequent causes of dispute and breakdown of relationships. Under existing cotton trading rules, if one party fails to open the Letter of Credit on time (buyer) or the cotton is not shipped on time (seller), the contract may be closed out and invoiced back at the expiry of the deadlines, or extended by mutual agreement.

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Under normal circumstances such a forced close out would be of no interest to either buyer or seller. Therefore, the contract should contain a clause to the effect that expenses (normally referred to as carrying charges) representing the financial cost of any delay - either late Letter of Credit or late shipment - should be applied to cover the period from the deadline until the Letter of Credit is opened or the cotton is shipped.

Association Rules do not allow contracts to be cancelled for these or any other reasons unless both parties agree otherwise, and the concept of invoicing back applies equally, irrespective of whether the market is rising or falling. If matters cannot be resolved amicably between the parties themselves, then arbitration would be necessary and would aim to:

- Put both parties back in the same financial position as each intended to occupy at the time the business was entered into, subject to any variation subsequently agreed upon by the parties, either in writing or by their conduct.
- Preclude one party from making a fortuitous profit at the expense of the other.
- Endeavour to ensure that the apparently injured party is adequately compensated.
- Take into account whether either party has condoned any delay during the performance of the contract.

Without the recommended additional clause, if the cotton is not shipped on time, or the buyer fails to open the Letter of Credit on time, then the buyer or seller must either inform the other party of the breach of obligations and invoice the cotton back immediately, or agree to an extension. A lack of action in this respect will be considered as condoning any delay.

It should be noted that *force majeure* is not an acceptable reason to cancel a contract made under the rules of any of the major Associations. If the contract is not performed, it must be invoiced back to the seller.

### Force Majeure

The contracting parties should review closely any clauses added onto contract forms (usually in fine print) especially if



## Contractual Guidelines

they concern *force majeure*. For example *force majeure* is not a recognised doctrine of English Law. Hence there is no definition in LCA Rules (which are, of course, subject to English Law). However, LCA Rule 239, which covers the closure of contracts says:

*If owing to any circumstances whatsoever, any contract has not or is not to be performed, it shall not be treated as cancelled, but shall be closed by being invoiced back to the seller in accordance with the Rules in force at the date of contract.*

### Trading Rules and Arbitration Procedures

A clear written contract, making reference to the Rules and Arbitration Procedures of an Association, is strongly recommended in order to avoid problems at a later stage. The purpose of an arbitration clause is to make sure that:

- In the event of a dispute, both parties have a right to arbitration under the Procedures of the Association under whose Rules the contract was negotiated.
- Any subsequent award can be enforced under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Association contracts contain legally approved forms of words that are intended to protect the rights of both sides. It is not good enough to use shorthand stipulations such as "Arbitration - Liverpool". It is recommended that the Association's form of words be used in all contracts, even if the Association's form is not used.

### Identification

Ensure that the name and address of the buyer and the seller are complete and correct.

### Contract between Principals

It is recommended that there should be an exchange of contracts between Principals i.e. between the true buyer and the true seller. Often the negotiations will take place between the buyer and an accredited agent of the seller (or vice versa). If the agent is shown as the Principal in the contract and a dispute ensues, then the dispute will be between the buyer (or seller) and the agent. The agent may have limited means and be unable to fulfil



## Contractual Guidelines



the demands of any settlement, but there would be no legal recourse to the true seller (or buyer).

It is recommended that *time limits* specified in the relevant Rulebook as regards sampling, weighing and quality claims are reviewed and adjusted if necessary. Failure to comply with the specified time limits can result in heavy losses.

### **Deadlines for Claims**