

THE (NAIROBI) COFFEE (EXCHANGE TRADING) RULES, 2024.

PART I - PRELIMINARY

1. These Trading Rules may be cited as the Nairobi Coffee Exchange Limited (NCE) Trading Rules, 2024.

- (1) These rules set out herein together with the appendices constitute the NCE Trading Rules as defined in the Memorandum of Association and Articles and Associations of NCE pursuant to and in accordance to Article (v) of its Memorandum of Association and Articles and Association.
- (2) All terms used in these Trading Rules shall have the same meaning as in the Articles of Association and Memorandum of Association, Crops (Coffee) (General Regulations 2019, The Capital Market Act (Cap 485A), The Capital Markets (Coffee Exchange) Regulations 2020 and shall apply mutatis mutandis.
- (3) If any inconsistency is revealed between the Memorandum of Association and Articles of Association and either of the cited Regulations and these NCE Trading Rules, the provisions of the said Memorandum and Articles of Association shall prevail for all intents and purposes.
- (4) The rules are in line with:
 - (a) The Crops (Coffee) General Regulations, 2019 issued by the Cabinet Secretary for Agriculture and Livestock Development, in consultation with the Agriculture and Food Authority and the County Governments in exercise of the powers conferred by section 40 of the Crops Act, 2013;
 - (b) The Capital Markets (Coffee Exchange) Regulations, 2020 issued by the Cabinet Secretary for the National Treasury in exercise of the powers conferred by Section 12 (1) of the Capital Markets Act in consultation with the Capital Markets Authority.

PART 2 - DEFINITIONS

2. In these rules, unless the context otherwise requires—

“Association” means a registered group comprised of smallholder growers, co-operative societies, societies, estates, unions, millers, traders or roasters, which has been licensed by the relevant licensing authority;

“Auction” means the auction system under which clean coffee is offered for sale at the Exchange and includes the place at which, or a facility by means of which, whether electronic or otherwise, offers or invitations to sell, buy or Exchange coffee contracts regularly on a centralised basis;

“Auction Levy” means such fee per sixty-kilogram bag of coffee or other less volume of coffee sold at a coffee exchange, payable by millers, roasters and buyers;

“Authority” means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act, 2013 and/or the Capital Markets Authority established under section 5 of the Act, as the case may be;

“Bid” means an offer to pay a particular amount of money for a given lot of clean coffee being offered for sale at the Exchange;

“Board” means the Board of Directors of Nairobi Coffee Exchange Ltd established under Memorandum of Association and Articles of Association Part III section 3;

“Broker” means any person or company, cleared by the Coffee Exchange and licensed by the Capital Markets Authority who may be appointed by a grower or an association of growers to sell their coffee on their behalf through the Exchange;

“Buying Sample” means 750 grams of the representative sample or such other sample weight as may be determined by the Exchange, for every lot of clean coffee traded at the Nairobi Coffee Exchange and handed over to a buyer upon purchase of coffee for verification;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters pertaining to Agriculture;

“Capital Markets Authority” means the Authority for the time being responsible for supervising, licensing and monitoring the activities of the capital markets and commodity markets.

“Central Registry” means a centralized database maintained by the Exchange relating to coffee sales, coffee samples and sweepings. Records maintained include sales catalogues, coffee warrants, coffee samples issuance and payments, database of coffee buyers, coffee sellers, coffee sellers service providers, direct settlement records, trading participants’ registers among others.

“Certified Coffees” means coffee produced under tenets of a registered certification scheme bearing a certification mark;

“Chief Executive Officer” means such person as shall be appointed by the Board to be the Chief Executive Officer of the Exchange and who shall also be the Secretary to the Board; and shall adhere to Rule 12 of the Capital Markets (Coffee Exchange) Regulations, 2020

“Clean Coffee” means coffee bean or dried seed of the coffee plant separated from non-food tissues of the coffee fruit where the silver skin is reduced to the maximum possible extent;

“Clearing And Settlement” means the procedure by which a clearing house acts as an intermediary between a buyer and seller for Exchange traded transactions in order to reconcile orders between transacting parties and ensure the physical or financial settlement of the transaction;

“Clearing House” means a financial institution responsible for clearing and settling trading accounts, clearing trades, collecting and maintaining margin monies, regulating delivery, and reporting trading data, and includes a domestic commercial bank or other financial institution approved by the Capital Markets Authority and appointed by the Nairobi Coffee Exchange to establish and operate a direct system for settlement and payment of coffee proceeds to growers;

“Coffee business” means operating a nursery, growing, pulping, milling, warehousing, marketing, trading, roasting and packaging of coffee;

“Coffee Buyer” means an incorporated company licensed by the Agriculture and Food Authority to buy clean coffee at the Exchange for export, local sale or value addition or to import clean coffee for secondary processing in Kenya;

“Coffee Certification” means a system that distinguishes a coffee product as being sustainably grown on the basis of economic viability, environmental conservation, social responsibility and ensures traceability;

“Coffee Directorate” means the directorate for the time being responsible for coffee established pursuant to section 11(4) of the Agriculture and Food Authority Act, 2013;

“Coffee Miller” means a person licensed by the respective county government under the Crops (Coffee) (General) Regulations, 2019 to conduct the business of coffee milling;

“Coffee” means the plant botanically known as *Coffea* species (L.) and includes the fruit, whether on the plant or detached therefrom, the seed in form of either mbuni, parchment coffee, clean coffee, roasted beans or ground coffee;

“Co-operative Society” means a society registered under the provisions of the Co-operative Societies Act and licensed under the Coffee General Regulations;

“Coffee Inspector” means an inspector appointed under the Crops (Coffee) (General), 2019 Regulations and, where applicable, includes a county inspector;

“Coffee Sales Proceeds” means monetary consideration received at the direct settlement system in Exchange for clean coffee sold at the auction or, where applicable, through direct sales;

“Coffee Standards” means the Kenya Coffee Standards issued by the Kenya Bureau of Standards Agriculture and Food Authority.

“Coffee Warrant” means an instrument prepared by the warehouseman and presented to the Nairobi Coffee Exchange of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the clean coffee to which it relates;

“Coffee Year” means a period of twelve months beginning on the 1st October of one year and ending on the 30th September of the following year;

“Collateral Manager” means a person qualified under the Crops (Coffee) (General) Regulations, 2019 and appointed by the warehouseman or any other person who has an interest in coffee stored in a warehouse with the intention of monitoring or taking custody of the coffee;

“Commodity” means clean coffee;

“Confirmed Bid” means a bid price accepted by a grower for a particular lot of coffee offered at the Exchange;

“Co-operative society” means a co-operative society registered under the Co-operative Societies Act and licensed for purposes of these Rules;

“County Government” shall have the meaning assigned to it under Article 176 of the Constitution of Kenya 2010;

“Cupping Centre” means a coffee quality analysis laboratory;

“Digitization” means the conversion of current manual processes into automated and computerised processes; or paper documents into digital formats;

“Direct Settlement System” means a banking facility provided by commercial banks regulated by the Central Bank of Kenya for clearing and settlement of coffee sales proceeds;

“Display Sample” means a small quantity of coffee, drawn out of a coffee lot to be a representative of that lot of coffee for purposes of display, testing, quality analysis, archiving, marketing or other legal purpose;

“Electronic Warehouse Receipt” means an authorised, verifiable and transferable warehouse receipt that has been generated, sent, received or stored by electronic, optical or similar means, conferring legal title to the depositor for commodities received in a licensed warehouse accredited by the Agriculture Food Authority;

“Estate” means an area of land or group of parcels of land under coffee not being less than five acres in size in aggregate or land under coffee which has an average annual production of not less than twenty thousand kilograms of cherry over a period of three years;

“Exchange” means the Nairobi Coffee Exchange established under rule 4 of these Rules and includes the Board of the Exchange;

“Grower Miller” means a grower licensed under the Crops (Coffee) (General), 2019 Regulations, who mills own parchment or mbuni or its members’ coffee and includes a co-operative society, unions, association, estate or any other legal entity comprised of growers;

“Grower” means any person who cultivates coffee in Kenya and may for purposes of licensing under the Crops (Coffee) (General) Regulations, 2019, includes co-operative societies, unions, associations and estates;

“Hulling” means removal of the outer skin of dry parchment or mbuni coffee;

“Licensing Authority” means Capital Markets Authority, Agriculture And Food Authority, or the County Government as the case may be;

“Liquorer” means a person certified and licensed by the licensing authority to offer the services of coffee quality analysis;

“Liquoring” means analysis of clean coffee to determine the attributes and quality of coffee for purposes of trade;

“Lot” means a saleable quantity of coffee specified in the sales catalogue ready for bidding ;

“Milling Statement” means a statement prepared by a miller after the completion of the milling process;

“Milling” means mechanical hulling or de-husking of parchment or mbuni coffee and includes the polishing and grading of the clean coffee;

“Net Warrant Weight” means the net weight of coffee at the point of sale per lot after allowing for all required samples;

“No Bid” means a lot that has not attracted any bids at the auction;

“Offer Sample” means a 250 gram of the representative sample of any coffee lot presented to a buyer or a roaster prior to the auction for quality analysis;

“Out-Turn Number” means an identifying number issued by a miller in respect of coffee delivered to a mill for purposes of traceability;

“Out-Turn Statement” means a statement prepared by a miller upon sale of coffee;

“Principal Officer” means an officer, by whatever name called, identified by the Trading Participant to the Exchange in writing as the person who is primarily responsible for the management of the day to day affairs of the Trading Participant;

“Prompt Date” means a date specified in the sales catalogue and shall not be more than five (5) working days from the date of the sale on which coffee sales proceeds are to be received by the grower from the buyer through the clearing house;

“Reference Sample” means 250 grams of the representative sample for every lot of coffee sold at the Exchange and archived by the Exchange for a period of at least six months from the date of sale, for verification in case of a dispute;

“Representative Sample” means a sample not exceeding nine kilograms or as may be determined by the Exchange delivered by a miller or an appointed broker to the Exchange sample room, which is representative of a lot of coffee being offered at the auction;

“Reserve Price” means the price set as the minimum price before the auction by a Broker or a miller or a Grower Miller in consultation with the grower;

“Roaster” means a person licensed by the respective county government to buy clean coffee under the Crops (Coffee) (General) Regulations, 2019 for value addition for local sale;

“Sales Catalogue” means a standard document prescribed by the Exchange and prepared by a miller, Grower Miller or appointed broker in consultation with the Exchange and grower for sale of clean coffee at the Exchange;

“Sale” means the offering of clean coffee for sale at the exchange, but does not include sale of cherry, mbuni or parchment coffee;

“Sample Deposit Fee” means an amount of money payable in advance to the Exchange, by buyers or roasters as security for collecting offer samples at the Exchange, this being such an amount as may be determined by the Exchange from time to time;

“Sample Fee” means the price payable to the Exchange by a buyer or a roaster for the offer sample collected at the sample room, based on the average price of coffee traded at the Exchange in the month that the sample was collected;

“Sample Room” means the physical space provided by the Exchange for reception, display and distribution of coffee samples;

“Sampler” means an individual employee or agent of a Master Sampler, or Comparison Sampler who samples coffee.

“Secondary Processing” means parchment de-husking, polishing, grading and may include roasting, grinding and packaging of clean coffee beans;

“Service Provider” means a person who may have contractual dealings with the growers and shall include cooperative societies, brokers, millers, warehousemen, transporters commercial banks and financers;

“Settlement Account” means an account held by or on behalf of a grower in the direct settlement system into which the coffee sales proceeds are paid;

“Settlement bank” means a bank as defined under section 2 of the Banking Act, approved by the Authority to facilitate the maintenance of a segregated account and to establish and operate a direct system for settlement and payment of coffee sales proceeds to growers

“Settlement” means the fulfilment of the obligation arising from a transaction including payment to the seller and transfer of title to the buyer;

“Sweepings” means the entire balance of coffee samples in the Exchange sample room and spillages collected from millers’ milling activities including reference samples for sale at the exchange and the proceeds paid to growers on pro-rata basis;

“System Failure” means equipment breakdown or the breakdown, interruption, suspension, termination or failure or defect in any system (hardware or software), including but not limited to any trading system, or service rendered by or on behalf of the Exchange;

“Trading Floor” means the physical space or electronic platform managed by the exchange where the persons licensed to trade in coffee converge for purposes of coffee trading;

“Trading Participant’s Representative” means a representative of any person licensed by the Capital Market Authority, who is in the employment of the licensed person and who plays a critical role in that company, and includes a buyer, director, general manager, analyst, or any other person employed by the licensee who plays a critical role;

“Trading Participant” means a coffee buyer, broker, local roaster or miller licensed under either the Crops (Coffee) (General) Regulations, 2019 or the Capital Markets Coffee Exchange Regulations 2020 and admitted as a Trading Participant of the Exchange;

“Trading Session” means the hours during which trade may be entered into and matched through the auction system as specified in these rules;

“Transaction File” means the Exchange’s file containing all the executed sell orders of the coffee traded through the auction system

“Transaction” means the matching and execution of a buy and a sell order.

“Warehouse” means any building, structure or other protected enclosure duly licensed by the relevant authority to be used for the storage or conditioning of coffee for the purposes of trading at the Exchange and is specifically designed to guarantee quantity, quality and safety of the coffee

“Warehouseman” means a person who possesses skills for the management of a licensed warehouse and duly licensed by the Agriculture and Food Authority to engage in the business of operating a warehouse for receiving, storing, shipping or handling coffee for the purposes of trading at the Exchange;

“Warehouse Inspector” means a person empowered by the relevant authority to inspect warehouses and coffee kept therein to ensure that the warehouse operator complies with the law and the conditions of the operator’s licence;

“Warehouse Receipt” means a receipt issued by a licensed warehouseman in respect of coffee stored in a licensed warehouse for the purposes of trading at the Exchange, certifying that the specified coffee is of the stated quantity and quality and is located at the specified location, and includes an electronic warehouse receipt.

PART 3 - THE EXCHANGE

1. The Nairobi Coffee Exchange Limited (NCE) was incorporated as a body corporate limited by guarantee in August 2019 having its registered offices at Nairobi within the Republic of Kenya.

The objects for which the Company is established are enumerated in the Memorandum and Articles of Association of the NCE.

2. Subject to the Memorandum of Association and Articles of Association, the following firms or companies or organization may be eligible for admission as Members of the NCE:
 - (a) Grower Member;
 - (b) Buyer Member;
 - (c) Broker Member;
 - (d) Warehouse Operator Member;
 - (e) Coffee Roaster Member.
 - (f) Associate Member
3. The Exchange shall be governed by a Board of Directors established under Memorandum of Association and Articles of Association Part III section 3 and appointed in line with the provisions of the Capital Markets Authority Act Cap 485(A) Part II Clause 10
4. Subject to the Crops Act No 16 of 2013, The Capital Markets Act Cap 485A, The Capital Markets (coffee Exchange) regulations, 2020, The Crops (Coffee) (General) Regulations, 2019 and NCE Memorandum and Articles of Association, the Board of Directors shall be responsible for the overall leadership, governance and strategic direction of the Nairobi Coffee Exchange.
5. The board shall execute its mandate through Board Committees established as per the Capital Markets (commodity markets) regulations, 2020 Part II clause 13 of the Capital Markets Authority Act Cap 485(A).
6. A person shall be considered fit and proper for appointment to the Board of Directors of the Exchange if the proposed person meet the fit and proper requirements as prescribed under section 24A of the Capital Markets Authority Act Cap 485(A) and as provided in the First Schedule of these Rules.

Conduct of Business and affairs of the Board of Directors

7. The conduct and regulation of the business and affairs of the Board of Directors shall be as set out in the Second Schedule under these Rules
8. There is established a Board of Directors to be known as the Nairobi Coffee Exchange Board of Directors mandated to oversee the operations of the Exchange.
9. (1) Interested and eligible persons under rule 2 (a) (b) and (c) shall be nominated by their respective registered associations.
 - (1) Where there is more than one association in any category, the nominee from the association commanding the largest volume of coffee sold through the Exchange for the immediately preceding three years in that respective category shall be nominated.
 - (2) An association eligible to nominate a representative under Rule 2(a), (b) and (c) shall enlist with the Board for a period of at least twelve months before the nomination date.
 - (3) The registered association to be enlisted with the Board shall have the following requirements:
 - (a) a physical principal office;
 - (b) current audited accounts;
 - (c) registration documents;
 - (d) a membership register with national representation;
 - (e) any other requirement that may be prescribed by the Board from time to time.
- (4) The Authority shall by notice in writing require the enlisted associations to nominate their representatives to the Board of Directors three months prior to the end of the term of the sitting Board of Directors.
10. (1) The members of the Board of Directors shall elect a Chairperson and Vice Chairperson from amongst the members appointed under Rule 2 (a) and (b).
 - (2) The Chairperson and the Vice-Chairperson shall not be from the same member category.
 - (3) The position of the Chairperson shall alternate every three years between the said categories 2 (a) and (b).

11. The members of the Board of Directors other than the ex-officio members shall hold office for a term of three years and shall be eligible for re-appointment for a further final term of three years.

12. A person shall cease to be a member of the Board of Directors, if that person—

- (a) resigns from office by notice in writing to the chairperson of the Committee;
- (b) is absent from three consecutive meetings without the permission of the Board of Directors
- (c) is incapacitated by physical or mental illness;
- (d) ceases to represent the interest in respect of which he or she was nominated;
- (e) is otherwise unable or unfit to discharge the functions of his or her office;
- (f) ceases to be a director, an employee or a duly nominated official of the company or society that nominated him or her;
- (g) “Commits an offence under the Capital Markets Act and the Coffee General Regulations.”;
- (h) is convicted of an offence punishable by imprisonment for at least six months;
- (i) conducts himself or herself in a manner deemed by the Authority to be inconsistent with the business of the Exchange;
- (j) is adjudged bankrupt or if the nominating organization is placed under receivership; or
- (k) dies;

13. (1) The Board of Directors shall employ, on such terms and conditions as it may from time to time determine, such officers and staff as it may consider necessary for the proper and efficient administration of the work of the Exchange.

(2) The Board of Directors may hire or otherwise engage, on such terms and conditions as it may determine, agents to carry out any of its functions.

14. There shall be a Chief Executive Officer of the Exchange who shall be competitively recruited by the Board of Directors.

15. The Chief Executive Officer shall be head of management with responsibility of making the day-to-day decisions on the running of the Exchange.

16. There shall be clear demarcation of roles and responsibilities of the board, Chief Executive Officer and the committees of the board.

17. (1) The Chief Executive Officer shall be—

- (a) accountable to the Board of Directors;
- (b) responsible for the day-to-day management of the affairs of the Exchange;
- (c) responsible for managing the operations of the sample room; and
- (d) responsible for the security, storage, dissemination and archiving of data generated by the Exchange.

(2) The Chief Executive Officer shall be the Secretary to the Board of Directors.

18. (1) The Board of Directors may by resolution delegate any of the powers conferred on it by these Rules to any of its members, officers or staff or to any committee, whether constituted wholly of members of the Board or jointly with members of anybody established and having responsibilities similar to those of the Exchange.

(2) The Board of Directors may constitute the following standing committees:

- (a) marketing, standards quality and Mediation committee;
- (b) staff finance, and contracts committee;
- (c) Information Technology and advisory committee.

19. (1) No member of the Board of Directors shall be personally liable for any act of commission or omission of the Board of Directors done in good faith and without negligence in the course of the operations of the Exchange.

(2) Notwithstanding sub-rule (1), Members of the Board of Directors shall exercise due prudence and diligence and shall be held jointly and severally responsible for any losses incurred due to any act of commission or omission by them and which is contrary to the Act, Regulations or the rules of the Exchange.

PART 4—COFFEE SAMPLING

Central sample room.

20. (1) The Exchange shall maintain a central sample room where samples of various coffee lots to be offered for sale shall be held for distribution to buyers and roasters, and for display and archiving

(2) The Exchange shall maintain an on-line portal in which information on coffee samples, quality and quantity of coffee on offer at the Exchange will be accessible to intending buyers and interested persons.

Sample deposit

21. (1) Every buyer and roaster operating at the Exchange shall be required to deposit such amount of money as determined by the Exchange from time to time, as security for collecting offer samples at the exchange.

(2) The Exchange shall operate a coffee sample deposit account in a bank to be determined by the exchange in which all the sample deposits paid by buyers and roasters shall be deposited.

(3) No interest shall accrue to the benefit of the buyers or roasters in respect of the sample deposit

(4) Interest earned or accruing from such deposits shall form part of the earnings of the Exchange and provided further, that the only permitted drawings from this account shall be—

- (a) sample fees netted off against samples collected by buyers and roasters;
- (b) refunds to buyers and roasters ceasing to trade;
- (c) such interest earned or accruing from the sample deposit account.
- (d) sample deposit forfeited by buyers and roasters defaulting in payment of sample fees.

(5) A buyers or roaster who fail to pay the raised sample fees invoices within the due dates shall be suspended by the Exchange from further collection of samples until such top ups are made.

(6) Any refunds under paragraph (3)(b) shall be made after a three-months' notice without interest and net of any indebtedness by the buyer or roaster to the Exchange.

Offer sample

22. An offer sample of two hundred and fifty grams or such other amount as may be determined from time to time by the Exchange per lot of coffee presented for sale at the Exchange shall be availed by the Exchange to licensed buyers and roasters prior to the auction.

Sample fee

23. Every buyer or roaster shall within fourteen days of receipt of an invoice from the Exchange pay a sample fee in respect of all the selling samples collected.

Recovery of sample fee

24. A buyer or roaster shall be given a fourteen days' notice to pay the outstanding sample fee and in default thereof, the fees shall be recovered from the sample deposit provided that all buyers and roasters shall maintain a minimum sample deposit balance of an amount to be determined by the Exchange.

Deduction and remission of sample fee

25. The Exchange shall deduct the sample fee invoiced from the forfeited sample deposit.

Representative samples.

26. (1) An appointed broker shall deliver to the sample room representative samples of nine (9) kilograms per lot of coffee being offered for sale at the Exchange, or such other quantity as may be determined from time to time by the Board and in accordance with the prevailing sampling procedures.

(2) The samples delivered by the appointed brokers to the sample room shall be in accordance with the procedures as set out by the Exchange from time to time.

Procedure:

- i. Coffee shall be sampled by the warehouseman spiking each sampled bag to ensure that the sample is representative of the entire coffee lot

- ii. The warehouseman shall be responsible for the correctness of the quality of the sample since they are in custody of the coffee delivered from the mills in anticipation for a sale.
- iii. The warehouseman shall provide a record to the Exchange of the warrant and the instruction from the broker for presentation of the samples to the Exchange for coffee to be sold for each lot.

Reference sample

27. (1) A reference sample of two hundred and fifty grams of coffee shall be drawn from the representative sample from each lot and retained by the Exchange for archival storage, for at least six months from the date of the sale for verification in case of a dispute:

(2) Notwithstanding paragraph (1), where a dispute exceeds six months, an analysis of the sample shall be done by an expert and the quality report submitted to the Exchange.

Buying sample

28. A buying sample of seven hundred and fifty grams of coffee shall be drawn from each lot of coffee purchased at the auction to be availed to the buyer or roaster who has purchased the lot for verification.

Display sample

29. A display sample of two hundred and fifty grams shall be drawn for display in the sample room.

Sample records

30. The Exchange shall maintain records relating to—

- (a) receipt of coffee samples from the brokers;
- (b) distribution of coffee samples to buyers, roasters and the Exchange; and
- (c) release of sweepings to the brokers on a lot prorated basis for sale.

Sale of sweepings to benefit growers

31. Proceeds of sale for sweepings shall be remitted to growers through the direct settlement system provider on a prorated basis and shall have unique codes.

Submission of sample returns

32. (1) A broker shall submit Bi-annual and Annual returns to the Exchange, the Capital Markets Authority and the Coffee Directorate on remission of monies received from samples and sweepings to the growers.

(2) The Exchange shall make weekly, monthly, biannual and annual auction returns to the Capital Markets Authority.

(3) The Exchange shall prepare monthly reports on its performance and forward the same to the Capital Markets Authority, buyers, roasters, millers, growers or growers' representatives and other interested parties.

PART 5—TRADING AT THE AUCTION FLOOR

Participation at the trading floor

33. (1) Only licensed broker under The Capital Markets (Coffee Exchange) Regulations, 2020 and other relevant laws shall participate on the trading floor of the Nairobi Coffee Exchange.

(2) The participants on the trading floor shall be required to pay to the Exchange the applicable annual registration fee and Auction Levy.

Holding of auctions at the Exchange

34. (1) The Exchange shall, in consultation with the appointed brokers, set the volumes, lot sizes, dates and times for holding of coffee auctions.

(2) Notwithstanding paragraph (1) provided that no suspension or cancellation of any auction shall be done without notification to the Capital Markets Authority.

Sales catalogue

35. (1) A sales catalogue shall be prepared by the appointed broker or an appointed broker in accordance with the Third Schedule and in a digital format prescribed by the Nairobi Coffee Exchange

(2) The Exchange shall, in consultation with the appointed brokers determine the order of the sales catalogues for every sale and the Exchange shall ensure that reasonable access to the auction is given to all persons licensed to trade under the Crops (Coffee) (General) Regulations, 2019.

(3) A draft of the sales catalogue of each broker shall be made available to buyers and roasters in accordance with the prevailing procedures of the Exchange.

(4) The final sales catalogue shall be made available to the Exchange by the broker in accordance with the prevailing procedures of the Exchange.

Disclosure of bulked coffee

36. A broker shall disclose to the broker and the Exchange, details of all bulked coffees and justify its basis.

Conditions of auction sales

37. Trading at the auction shall be in US Dollars or any other currency as may be determined by the Exchange with the approval of the Capital Markets Authority.

Process of trading at the Exchange

38. (1) The process of trading at the Exchange shall be in accordance with these Rules and shall comprise the following –

(a) a miller shall deposit clean and graded coffee at a designated licensed warehouse, and where the clean coffee is a bulk, the respective coffee growers and the proportions of their coffee will be stated in writing;

(b) the coffee shall meet defined quality standards for trading at the Exchange as prescribed in the Crops (Coffee) (General) Regulations Act 2019;

(c) the warehouseman shall issue a coffee warrant as set out in the Fourth Schedule or transferable warehouse receipts as the case may be, stating the quantity and quality of the coffee deposited and ensure traceability of the coffee;

(d) the warehouseman shall guarantee delivery of the coffee described in the coffee warrant or warehouse receipt as the case may be, and in the event of loss or failure of delivery, the warehouseman shall be liable;

(e) a coffee warrant or warehouse receipt as the case may be, issued shall be transferred to a new holder who is entitled to take delivery of the coffee upon presentation of the coffee warrant or warehouse receipt at the warehouse;

(f) when the owner of coffee deposited in a warehouse decides to trade and is acting through a broker, the owner shall contact the broker and give authority to sell;

(g) for purposes of sale, the broker shall input the details of the coffee warrant or warehouse receipt into the central registry of the Exchange;

(h) the collateral manager, where applicable, shall confirm that the warehouse receipt as the case may be, is valid by inspecting and auditing underlying commodities in warehouse;

(i) upon verification, details in the central registry shall be confirmed into the central order book ready for trading;

(j) once the sale of coffee is complete, successful bidders shall be invoiced by the broker and payments of the proceeds shall be effected through direct settlement system net of contract and any statutory charges;

(k) upon confirmation of payment by the direct settlement system provider and endorsement by the Exchange, title to coffee shall be transferred to the buyer or roaster by changing ownership details in the coffee warrant or warehouse receipt, as the case may be, at the central registry; and

(l) New owners will thereafter be at liberty to take delivery of the coffee.

(2) The broker in consultation with the grower shall set the reserve price for each lot in the sales catalogue and shall register the same with the Exchange

(3) The Exchange shall not disclose the reserve price to a buyer, roaster or any other party whatsoever provided such reserve prices shall be disclosed to the Capital Markets Authority when requested.

(4) A bid shall be a confirmed bid where the highest bid for any lot is equal to or higher than the reserve price.

(5) Where the bid has not been confirmed, the broker shall disclose the reserve price at the trading floor.

(6) Where the disclosure of the reserve price does not attract any competitive offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction.

(7) A "No-Bid" lot shall be re-offered for sale at a subsequent auction.

(8) All trading in coffee shall be concluded at the trading floor on the same day.

(9) Certified coffees shall be declared by a broker in the sales catalogues and sold in accordance with Guidelines for the Sale of Certified Coffees as provided by the Exchange.

(10) If in the course of bidding there is an erroneous entry into the auctioning electronic system or if there is an error in the said system, the auction shall be stopped and the relevant lot shall be re-offered manually at the same auction.

Withdrawal of a lot.

39. (1) A broker may, by written communication to the Exchange, made at least three working days prior to the date of sale, withdraw a lot that was destined for sale and such written communication shall also state the reasons for withdrawal.

(2) The Exchange shall communicate the withdrawal in writing to all buyers and roasters at least two working days prior to the date of sale.

(3) Samples of lots withdrawn shall not be compensated

Prompt date

40. (1) The prompt date shall be specified on the sales catalogue and shall be not more than five working days following the date of the sale.

(2) All coffees shall be paid for within the prompt date against invoice presented by the broker.

PART 6—SETTLEMENT OF COFFEE SALES PROCEEDS

Direct settlement system

41. (1) A direct settlement system shall be established by a licensed commercial bank competitively selected by the Exchange subject to approval from the Capital Markets Authority and managed by that Exchange.

(2) The requirements for the operation of the direct settlement system shall be as set out in the Fifth Schedule.

(3) Once auction is complete, successful bidders shall be invoiced by the Broker and payments of the proceeds shall be effected to the grower through direct settlement system net of contract and statutory charges;

(4) A coffee grower or the grower's authorized representatives, shall after the commencement of these Rules, supply through the Exchange, all the necessary particulars of the grower in the format prescribed in the Crops (Coffee) (General) Regulations 2019 to the appointed commercial bank providing the direct settlement system to the grower, for purposes of initiating the settlement system.

(5) The grower or the grower's authorized representatives shall, through the coffee Exchange, lodge with the commercial bank providing the direct settlement system, any relevant contracts of service for which payment will be due from the grower, and any other document showing outstanding liabilities payable by the grower, for purposes of settlement through the system.

(6) The grower or the grower's authorized representatives shall ensure that the information provided under paragraphs (4) and (5) above is correct and relevant and they shall be liable for any loss or other consequences resulting from any incorrect information given to the commercial bank, through the Exchange, providing the settlement system.

(7) The Exchange shall indemnify the grower's authorized representatives in the event that it provides incorrect information different from the one submitted by grower's authorized representatives for onward transmission to the commercial bank providing the settlement system.

(8) The broker shall generate invoices for coffee sold at the Exchange and send a copy to the buyer or roaster and the Exchange shall send the transaction file to the direct settlement system provider to validate the information supplied by the broker.

(9) The commercial bank operating the direct settlement system and the Exchange shall maintain records of all trade transactions.

(10) The commercial bank in which the direct settlement system is housed shall make the operations of the direct settlement system electronically accessible to interested parties or their authorized representatives.

(11) The commercial bank operating the direct settlement system shall prepare monthly and annual reports on its operations for submission to the Exchange and the Exchange shall make the reports accessible to interested parties.

(12) For purposes of payment by the direct settlement system, a service provider shall supply authenticated documents in support of any claim not later than three months of that service provided that such claims are supported with prior agreements between the growers and such service providers and lodged with the direct settlement service provider through the coffee Exchange.

(13) The commercial bank operating the direct settlement system shall be responsible for provision of clearing, delivery and settlement services of proceeds from coffee traded at the Exchange.

(14) The operations of the direct settlement system shall be in accordance with laws relating to banking and finance and any laws governing the Exchange.

(15) The commercial bank operating the direct settlement system shall be responsible for—

- (a) settling trading accounts;
- (b) collecting and maintaining margin monies;
- (c) reporting trading data;
- (d) maintaining a database for trading activities;
- (e) receiving millers' invoices for processing; and
- (f) authenticating the brokers' invoices against the transaction file.

(16) The direct settlement system of payment of coffee proceeds shall be put in place by the Exchange by establishing and managing a settlement account where all coffee buyers will deposit the coffee sales proceeds and shall settle the growers and their obligations in accordance to these rules.

Settlement of bank charges

42. (1) Any bank charges incurred by the buyer or roaster upon making payment shall be settled by the buyer or roaster, grower or Broker

(2) A buyer or roaster who will not have settled his payments in full by the prompt date shall be considered a defaulter.

(3) In the event of default by a buyer or roaster to pay by the prompt date, the direct settlement bank shall immediately issue a notification of the outstanding payments and the interest rates chargeable to the defaulter with a copy to the broker and to the Exchange and the buyer or roaster shall be automatically suspended from participating on the trading floor until the buyer or roaster pays the outstanding amounts in full and the interest.

(4) The interest on the outstanding payments shall accrue effective from the day following the prompt date at the prevailing commercial bank lending rate at the settlement bank in USD.

(5) If the defaulter does not pay the outstanding amounts together with interest thereon within five working days from the prompt date, the defaulter shall be liable to pay a penalty and the coffee shall be reoffered for sale at a subsequent auction. The penalty regime shall be set by the Exchange using a risk-based assessment mechanism.

(6) In the event that after reselling the coffee, any shortfall in value from the original bid occurs, the broker shall notify the Capital Markets Authority and the Exchange of the shortfall, all accrued interest and any other related expenses and losses for the purpose of recovery of the entire amounts from the defaulter or their performance bond. In the event the performance bond does not cover

the entire amount the defaulter shall be liable to pay the shortfall. The performance bond will be determined by the exchange on an exposure risk-based assessment

(7) A buyer or roaster who fails to pay any outstanding obligations to the Exchange or to a grower shall be suspended by the Exchange with notice to the Capital Markets Authority and any other relevant authority.

(8) The Exchange shall lift a suspension upon settlement of outstanding obligations.

(9) The Exchange shall report any buyer, miller or roaster who has defaulted more than twice within a period of six months, to the relevant authority for suspension or cancellation of the license.

(10) Defaulters shall be listed during every auction that they continue to be in default until such a time as they pay the entire amounts in default. If a buyer, miller or roaster default more than once within the same coffee year, the defaulter shall be listed at the Exchange for one year.

Resolution of disputes

43. (1) Where a dispute arises in regard to coffee quality, a claim may be brought within sixty days of sale.

2. The claim shall be based on samples drawn and sealed by a licensed certified warehouse in the original storage location.

3. In the event of a quality difference between the offer and buying samples, and the actual coffee lot, the buyer or roaster shall make an immediate claim to the miller or appointed broker within three working days and reference may be made to the reference samples.

4. Where the actual coffee lot does not conform to the buying sample, the parties may, by mutual consent, negotiate a settlement which may include compensation for opportunity cost of funds involved payable by the person who is responsible for the coffee quality difference.

5. The parties shall be at liberty by mutual consent to agree to a settlement that may also include sorting, bulking, price adjustment or refund.

6. Incorrect information on the packaging material used for a specific lot or sub-standard bags - torn, ripped or dirty bags- shall give the right to a buyer or roaster to charge the warehouseman, miller for all the costs of re-bagging. The warehouseman shall be responsible for ensuring the coffee's warranted shall be properly packaged in standard bags and properly labelled.

7. In the event that the dispute remains unresolved, it shall be referred to the exchange or the licensing authority.

8. In the event that an aggrieved party is dissatisfied with the decision of the exchange or the licensing authority, the party shall have the right of appeal to the Capital Markets Tribunal established under the Capital Markets Act.

Dispute relating to coffee weight loss

44. (1) A licensed warehouseman shall be responsible for any weight loss which shall be the difference between the weight indicated in the coffee warrant or the warehouse receipt as the case may be, and the weight indicated in the weight note provided to the buyer or roaster at the time of release of coffee.

(2) The weight loss claim will be limited to a period of thirty days from the date of the sale and shall be presented by the buyer or roaster to a licensed warehouseman except when such a claim on weight loss is within the acceptable tolerance levels as determined by the Exchange from time to time. The warehouseman shall remain liable for any coffee that is lost through pilferage once coffee is in their custody.

(3) Where the disputing parties fail to reach an amicable settlement, the dispute shall be referred to the Exchange.

(4) In the event that an aggrieved party is dissatisfied with the decision of the Exchange, the party shall refer the matter to the Capital Markets Authority for resolution, failing which the Capital Markets Authority shall put in motion the arbitration process.

PART 7- GENERAL PROVISIONS

Assumption of risk.

45. Prior to payment of the purchase price by the buyer, the property in the coffee shall remain in the grower and it shall be upon the warehouseman to ensure that the coffee is insured at all times prior to receipt of payment and release of the coffee.

Accounts and Audit.

46. (1) The Exchange shall cause proper books of accounts to be kept with respect to—

- (a) all sums received and expended by the Exchange and matters in respect to which the receipt and expenditure took place;
- (b) all sales and purchase of goods by the Exchange; and
- (c) the assets and liabilities of the Exchange.

(2) The Exchange shall prepare an annual report containing audited financial statements within six months of the close of the financial year.

(3) A complete set of financial statements includes the following components—

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement; and
- (e) accounting policies and explanatory notes.

(3) All funds of the Exchange shall be used solely for purposes of running the operations of the Exchange as determined by the Board.

(4) Officers authorized by the Board of Directors shall be signatories to the Exchange account(s).

(5) A full financial audit of the operations of the Exchange shall be conducted on an annual basis by an independent auditing firm recommended by the Board of Directors and in consultation with the Board not later than four months after the end of every fiscal year. The result of such audit shall be made available to the Board and the Exchange promptly, but not later than one month after the audit.

Operating capital of an exchange.

47. The Exchange shall comply with the minimum operating capital requirements covering twelve months of its operating costs.

Appeal

48. (1) Any person aggrieved by any decision of the Chief Executive Officer of the Exchange may appeal to the Nairobi Coffee Exchange Dispute Resolution Committee in accordance with the Memorandum and Articles of Association.

(2) In the event that an aggrieved party is dissatisfied with the decision as per sub-regulation (1) above, the party shall refer the matter to the Capital Markets Authority for resolution, failing which the Capital Markets Authority shall put in motion the arbitration process.

(3) Where an applicant is dissatisfied with the decision of the Capital Markets Authority in sub regulation (1), the applicant may seek judicial recourse within thirty days of the decision.

Declaration of stocks.

49. (1) All licensed buyers, roasters and millers shall be required to declare held stocks to the Exchange to facilitate scheduling of coffee auctions.

(2) Coffee offered and sold at the Exchange shall not be re-offered at any other Exchange.

Certificate of purchase.

50. (1) The Exchange shall, after every sale of coffee, issue to the purchaser a certificate of purchase in such form, and containing such details of the coffee purchased, as the Authority may prescribe.

(2) A person shall not alter any certificate or other document issued or prepared for the purposes of these Regulations.

(3) A licensed buyer or other person exporting any coffee shall, within fourteen days of the export of that coffee, submit to the Exchange a copy of the relevant certificate of origin or certificate of re-export, as the case may be, stamped by the Commissioner of Customs and Excise, together with a non-negotiable bill of lading relating to the coffee.

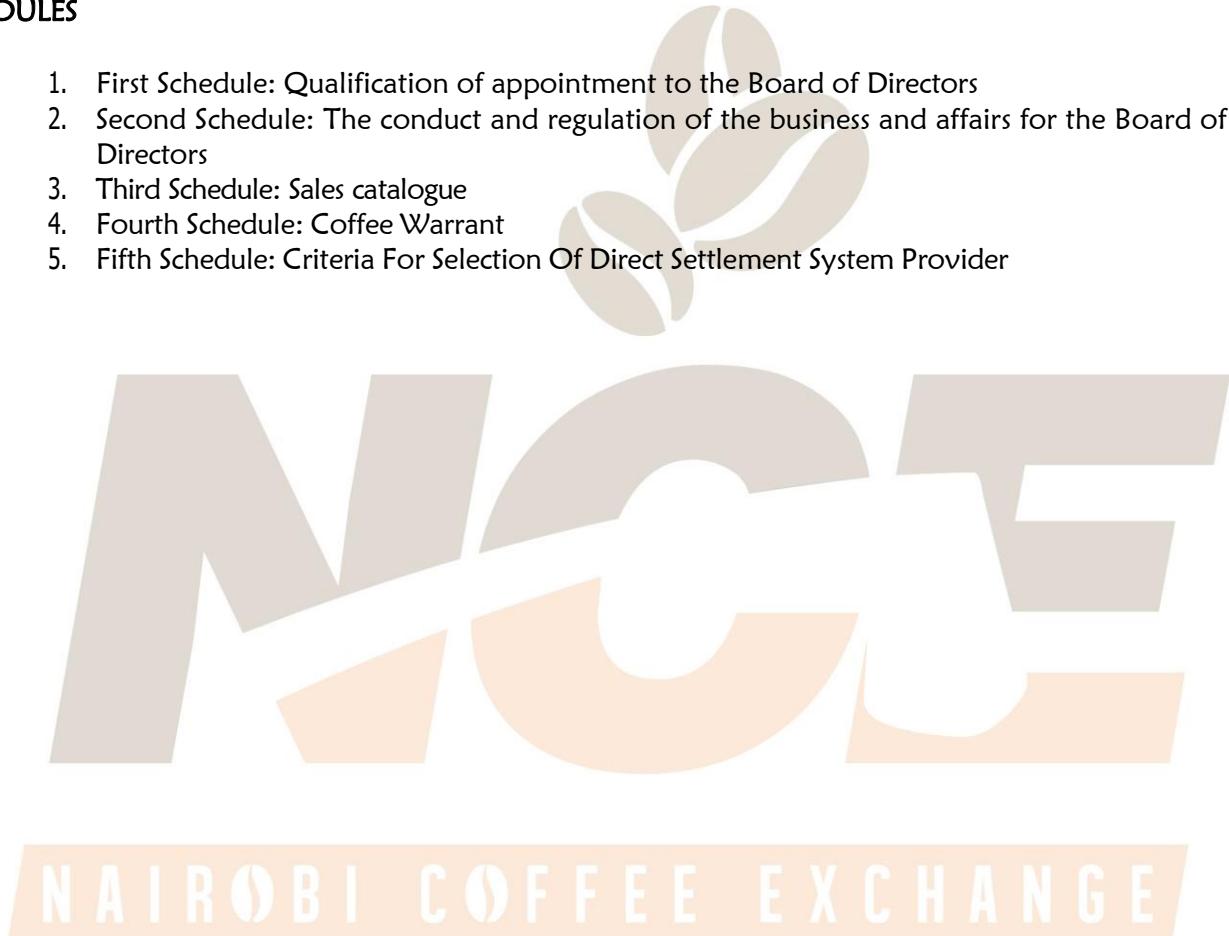
Exemptions.

51. Nothing in these Rules shall apply to the export or dispatch of any coffee when the coffee concerned—

- (a) consists only of a sample or a parcel not exceeding twenty kilograms in weight; or
- (b) is fully ground or processed coffee for consumption on ships, aero planes or other international carriers.

SCHEDULES

1. First Schedule: Qualification of appointment to the Board of Directors
2. Second Schedule: The conduct and regulation of the business and affairs for the Board of Directors
3. Third Schedule: Sales catalogue
4. Fourth Schedule: Coffee Warrant
5. Fifth Schedule: Criteria For Selection Of Direct Settlement System Provider



FIRST SCHEDULE

QUALIFICATION OF APPOINTMENT TO THE BOARD OF DIRECTORS

1. The Exchange shall provide names of the proposed Directors to the Capital Markets Authority for approval where such proposed Directors have met the fit and proper requirements as prescribed under section 24A of the Capital Markets Authority Act Cap 485(A)—

- (a) financial status or solvency of the person;
- (b) educational or other qualifications or experience of the person, having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) status of any other licence or approval granted to the person by any financial sector regulator;
- (d) ability of the person to carry on the regulated activity competently, honestly and fairly; and
- (e) reputation, character, financial integrity and reliability –
 - i. in the case of a natural person, of that individual; or
 - ii. in the case of a company, of the company, its chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company.

2. Without prejudice to the generality of subsection (1), the Exchange may, in considering whether a person is fit and proper—

- (a) take into account whether the person –

- i. has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities;
- ii. was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
- iii. has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
- iv. has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
- v. has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;

NAIROBI COFFEE EXCHANGE

SECOND SCHEDULE

CONDUCT OF MEETINGS OF THE BOARD OF DIRECTORS

1. The Chairman shall convene and chair all meetings of the Board of Directors.
2. In the absence of the Chairman from any meeting, the vice chairman shall convene and chair the meeting.
3. In the absence of the Chairman and the Vice Chairman from any meeting, a chairman for that meeting shall be chosen by the members from among those present.
4. The quorum for conduct of the business of the Board of Directors shall be six members including the Chairman or the person presiding;
6. The chairman of a meeting shall have a deliberative vote, and, in case of equality of votes, also a casting vote.
7. The Board of Directors shall meet at least once in every three months.
8. The chairman, or, in his absence the vice-chairman, may, in his discretion, at any time convene a special meeting of the Board and shall upon receipt of a written request signed by not less than three members of the Board, convene a special meeting of the Board of Directors within two weeks after such request.
9. If the chairman or the vice-chairman declines to convene a special meeting of the Board of Directors, within a period of two weeks, upon written and signed request of any three members of the committee, the three members may convene such meeting within a period of one week.
10. The Board shall, determine, from time to time, any sitting allowance or any other allowance payable to any Member.
11. The minutes of each meeting shall be kept by the Chief Executive Officer who shall double as the Secretary to the Board, and shall be confirmed by the Board of Directors and signed by the Chairman or the person presiding at the next succeeding meeting.



THIRD SCHEDULE

SALES CATALOGUE

1. The sales catalogue shall be prepared by an appointed broker in consultation with a commercial miller or a grower miller, in accordance with the Coffee General Regulations and these Capital Markets Coffee Exchange Regulations, and forwarded to the Exchange.

2. The details to be included in the sales catalogue shall include-

- (a) The name of the grower;
- (b) The name of the miller;
- (c) Name of broker, if any;
- (d) Sale number;
- (e) Day, date and time of the auction;
- (f) The place of the auction shall be at the exchange;
- (g) Total number of bags of coffee to be offered for sale;
- (h) Name of the warehouse where the coffee is stored;
- (i) The prompt date being the date on or before which proceeds are payable to the direct settlement system provider managed by the exchange;
- (j) Terms and conditions of sale;
- (k) The date on which rent charges in respect of purchased coffee shall be due from the buyers to warehousemen at which the coffee is stored;
- (l) The net weights as per warehouse weights (and unless otherwise stated coffee shall be packed in bags of 60 kg net, tare weight 1.1 Kgs but bids shall be on the basis of 50 Kgs), the bags used shall conform to the international coffee packaging standards;
- (m) Lot numbers arranged serially per miller or appointed broker for all coffee offered for sale;
- (n) The out-turn Number shown against each lot number and the registered distinguishing mark of the miller or grower miller (whether Bulk, E/Bulk, P/Bulk, T/Bulk; Spillage, or sweepings) and out-turn Number arising from operations of the commercial miller, grower miller or appointed broker;
- (o) Grade of the coffee;
- (p) Number of bags in the lot (a saleable lot shall not be less than ten bags);
- (q) Net weight of coffee in kilograms respectively;
- (r) Adequate space for inserting big prices by buyers.

3. The sales catalogue shall be prepared weekly or as frequently as the Authority may determine in consultation with a grower or his agent.

4. The saleable lots in the special auction dedicated to local roasters may comprise less than ten bags.

Below is a Sample excel template for sales catalogue

(name of broker or logo)											
(sale no and season)											
THE NAIROBI COFFEE EXCHANGE ON BEHALF OF (name of broker) Will offer by auction											
On Tuesday (date of sale) eg 15th august, 2023. At 9.00 am at The Exchange Hall Wakulima House Nairobi, Kenya											
no of 60 kgs bags in (no.of lots)											
Lying at (warehouse within nairobi indicate) Milled at (name of mill) is marked as (initials of mill)											
T O	TT O	C O	AB O	PB O	E O	AA O	MISC O				
Page 1											
Terms and Conditions of Sale											
1. Sales are subject to the rules and regulations of the Nairobi Coffee Exchange. 2. Coffee is packed in Single Sisal or Jute bags of 60kg Nett, Tare 1.1kgs and 0.9kgs respectively 3. Proceeds payable to _____ On or before prompt date or as may be instructed on behalf of (broker) 4. Rent and charges are for the account of buyers. Rent commences on Tuesday (date of 7 days after sale) 5. Net weights per warehouse warrant weights 6. FLO Fair-trade lot is eligible as FLO if the buyer has been registered with FLO-Cert and the lot Operator is sold on to another FLO Registered in compliance with FLO standards. 7. Rain Forest Alliance is eligible if the buyer has been registered as Rain Forest- Cert and the lot sold to The certification mark shall be indicated against another registered operator. 8. Premium on Certified coffee (CAFÉ,4C,RFA,FLO) shall be paid as per the Certified coffees guidelines											
PROMPT DATE TUESDAY (indicate date)											
Details of broker											
LOT	MARKS	GRADE	BAGS	POCKETS	WEIGHT	SALE NO	SEASON	CERTIFICATION	AGENT CODE	PRICE	BUYER

FOURTH SCHEDULE

COFFEE WARRANT

NAME OF WAREHOUSEMAN

Entered by.....on the account of the lot of coffee DULY
Deliverable to..... or assigns by endorsement hereon.

Coffee season and out-turn no.	Mark and code	Grade	Number of bags	Net weight of pockets (kgs)	Total net weight (kgs)

This Coffee is lying at..... warehouse awaiting instruction and collection.
This warrant is valid only if signed by any two of category A or any one of category A and one of category B signing jointly

Category A

Chief Finance Officer

Head of supply Chain

Head of Middle Office

NAME OF WAREHOUSE.....

-SIGNATURES-

Rent Commences:

Rates:

Warehouse handling:

..... Storage:

.....
Warrant fee:

Category B

Finance Manager

Legal Manager-Regional Co Secretary

Sea Exports Manager

CONDITIONS

1. A warrant is issued in respect of each consignment.
2. All deficiencies or losses on or damage to goods must whenever possible be notified in writing to..... ("the Company") prior to removal of the goods from the Company premises so as to afford an opportunity for checking by the Company, and in all cases where such notification is not possible, such deficiencies, losses or damage must be notified to the Company in writing within two days of the removal from the premises of the Company of the goods concerned if this condition be not complied with, the Company will in no case accept liabilities whatsoever for such deficiencies, losses or damages however caused.
3. Every warrant is transferable by endorsement and entitles the person named herein, or the last endorsee therefore named in the endorsement, to the goods specified therein, and the goods so specified shall for all purposes be deemed to be his property.
4. Upon lodging a warrant duly endorsed, the person there under entitled to the goods may transfer or obtain possession of the goods subject to the payment of all charges.
5. The contents of one warrant may be divided into others for smaller quantities at the will of the person entitled to the goods subject to the payment of all appropriate charges.
6. If a warrant is lost, written notice must at once be given to the Company. In such a case, before delivery of goods can be made, the loss of the warrant must be advertised in the Official Gazette and a copy of such publication containing the advertisement together with a guarantee signed by the applicant and countersigned by a bank approved by the Company to identify the Company against losses, claims, or damages, must be lodged with the Company in no circumstances will duplicate warrants be issued.
7. The Company takes all reasonable measures to protect goods against loss or damage but does not accept liabilities for-
 - (a) Loss or damage, arising otherwise than through the Company's negligence
 - (b) Loss, damage or deficiency cause by or contributed to any of the following causes; Whether such loss, damage or deficiency be also in part caused by or contributed to by a neglect, wrongful act or default of the Company, its servant or agents or other persons for whose acts the Company might apart from this clause be liable:
 - (i) Vermin;

- (ii) Frail, unsuitable, insufficient or defective packing;
- (iii) Strikes, combinations or lock-outs of any person in the employ of the Company or in the service of others;
- (iv) Improper, insufficient, indistinct or erroneous marking or addressing of goods or packages;
- (v) Fire;
- (vi) Civil commotion;
- (vii) Earthquake
- (viii) Loss of weight or damage in consequence of atmospheric conditions of humidity due to heat, damp or drought, or howsoever caused.

8. This warrant, if referring to coffee bulked-:

(a) The Company accepts no financial liability under any circumstances for the even mix of the bulk, but undertakes to re-bulk free of charge provide that:

- (i) The person first entitled under the warrant shall lodge the claim within seven days of receiving the warrant; and
- (ii) The person first entitled under warrant shall satisfy the Company that rebulking is necessary or advisable, the Company being prepared to accept the advice of an Arbitrator.

(b) The Company guarantees that the component coffees of the bulk are exactly those instructed by mark and quantity.

(c) The Company does not accept liability in respect of any divergence of the bulk from the expected resultant quality by reason of a variation in quality of one or more components of the bulk. The bonus of proof of the use of coffee other than the stipulated components shall rest upon the instructing dealer and in the event of such proof the Company agrees to submit to the normal quality arbitration under the Arbitration Regulations of the Kenya Coffee Traders Association as shall be amended from time to time.

9. This warrant is subject to the condition that the Company shall have a general as well as a particular lien on the goods specified therein in respect of any monies owing to the Company by the person first or subsequently entitled under the warrant.

10. The acceptance of this warrant in the first place and subsequent presentation of this Warrant implies implicit acceptance of the conditions enumerated above.

Deliver to-----on payment of all charges

Signed-----Date-----20-----

Deliver to-----on payment of all charges

Signed-----Date-----20-----

Deliver to-----on payment of all charges

Signed-----Date-----20-----

FIFTH SCHEDULE

PART A —CRITERIA FOR SELECTION OF DIRECT SETTLEMENT SYSTEM PROVIDER

1. Request for expression of interest by the exchange.
2. Licensed commercial Banks.
3. Past experience in the management of centralized processing and settlement system for commodities.
4. Demonstrate capacity to expedite settlement and direct payment of coffee proceeds to coffee growers and service providers
5. Demonstrate the network to reach out to all coffee growing and other areas.
6. Demonstrate an ICT infrastructure for information gathering, processing, dissemination and archiving.
7. Past experience in handling proceeds of agricultural commodities.
8. Demonstrate understanding and willingness to comply with government regulations.
9. Be approved by the Authority.
10. Be connected to the national payments system.

PART B —REQUIREMENTS FOR COMMENCEMENT OF DIRECT SETTLEMENT SYSTEM ARRANGEMENTS AND OPERATIONS

1. The Authority may, on application made to it by the exchange, approve in writing the commencement of the direct settlement system operations if it is satisfied that the direct settlement system provider has adequate systems and safeguards for the issuance and transference of coffee warrants or Electronic Warehouse Receipts as the case may be and to prevent manipulation of records and transactions and it complies with the requirements specified in these Rules and other relevant law.
2. In considering an application made under paragraph 1 above, the Authority shall take into account all matters which are relevant for the efficient and orderly functioning of the direct settlement system and in particular whether the—
 - (a) The mode of operation of the direct settlement system has been approved by the Exchange;
 - (b) The systems provider has systems to open and maintain separate accounts in the name of each coffee grower whose coffee is traded;
 - (c) Any changes in Depositors' account are supported by electronic instructions or any other mode of instructions received from the Clearing House and the designated Warehouses;
 - (d) The direct settlement system has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its internal accounting controls and systems;
 - (e) The direct settlement system provider has a system to reconcile records of every depositor on a daily basis;
 - (f) Automatic data processing systems of the direct settlement system are protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data;
 - (g) Network through which electronic means of communications are established between the Direct Settlement System provider, the Clearing House, licensed Warehouses is secure against unauthorized entry or access;
 - (h) The direct settlement system provider has established standard transmission and encryption formats for electronic communications of data between the direct settlement system, the Clearing House, the exchange, licensed Warehouses;
 - (i) The direct settlement system provider has established adequate procedures and facilities to ensure that its records are protected against loss or destruction and arrangements have been made for maintaining back up facilities at a location different from that of the direct settlement system;
 - (j) Physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and access to the electronic data communication network connecting the direct settlement system, the Clearing House, licensed Warehouses is controlled, monitored and recorded;

(k) The direct settlement system has an operations manual explaining all aspects of its functioning, including the interface and method of transmission of information between the direct settlement system provider, the Clearing House, the Exchange, licensed Warehouses;

(l) The direct settlement system has, either through the Exchange or otherwise, made adequate arrangements including insurance for indemnifying the Depositors for any loss that may be caused to such Depositors by the wrongful act, negligence or default of the direct settlement system provider or any of its employee and agents

(m) The direct settlement system provider has a mechanism in place to ensure that the interest of Depositors are adequately protected and to register the transfer of coffee warrants or Electronic Warehouse Receipts as the case may be, in the name of the transferee only after the system provider is satisfied that payment for such transfer has been made;

(n) The direct settlement system provider has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards; and

(o) The direct settlement system provider has adequate mechanisms to ensure that the integrity of the automatic data processing systems is maintained at all times and all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place.

PART C— RECORDS TO BE MAINTAINED BY A COFFEE EXCHANGE AND INFORMATION SHARING ARRANGEMENTS WITH A DIRECT SETTLEMENT SYSTEM PROVIDER

1. The exchange shall maintain and avail to the direct settlement system provider the following records and documents relating to coffee sold at a coffee exchange—

(a) records of every coffee warrant or warehouse receipt received, or created and the Delivery Notices issued and any cancellations thereof;

(b) names of transferors, transferees, and the dates of transfer of the coffee warrant or warehouse receipts as the case may be;

(c) records of requests received from and sent to the designated warehouses and clearing house; and

(d) details of the buyers or roasters.

2. The coffee exchange shall, when required to do so, disclose to the Authority the place where the records and documents are maintained.

3. The coffee exchange shall preserve records and documents for a minimum period of 10 (ten) years.

4. External monitoring, review, evaluation of systems/controls and reports to the Authority.

The Exchange shall cause an inspection of its controls, systems, procedures and safeguards to be carried out annually and forward a copy of the report to the Authority.

5. Inspection.

1. The Authority may undertake inspection of the books of accounts, records, documents and infrastructure, systems and procedures, or may investigate the affairs of a Coffee Exchange in relation to the direct settlement system provider, the Clearing House or Designated Warehouses, for any of the following purposes—

(a) to ensure that the books of account are being maintained by the Exchange and its members in the manner specified in these Regulations;

(b) to look into the complaints received from millers, buyers and roasters;

(c) to ascertain whether the systems, procedures and safeguards being followed by the Exchange, the direct settlement system provider, Clearing House and Designated Warehouses, or their agents are adequate to enable the direct settlement system to carry out its purpose; and

(d) to ensure that the affairs of the Exchange in relation to the direct settlement system provider are being conducted in a manner which are in the interest of the coffee growers, millers, buyers, roasters and the public.

2. The Authority shall give the Exchange and its members, as the case may be, not less than 10 (ten) days' notice before ordering or conducting an inspection or investigation.

3. Notwithstanding anything contained in paragraph 2 of this Article, where the Authority is satisfied that in the interest of growers, millers, buyers and roasters no such notice should be given, it may, by an order in writing direct that such inspection be taken up without such notice.

PART D —APPLICATION BY A COMMERCIAL BANK FOR SELECTION BY THE EXCHANGE TO PROVIDE DIRECT SETTLEMENT FUNCTIONS FOR COFFEE SALES PROCEEDS

1. A Bank shall submit an application to the exchange with the approval of the Authority for appointment as a direct settlement system provider for receipt and disbursement of coffee proceeds, which must include in the application a showing that it complies with the requirements and conditions set forth by the exchange and also demonstrate that it will continue to comply with the said requirements.

2. Application Procedure for selection as a direct settlement system provider:

The Bank shall make an application for appointment through a selection process established by the exchange (and further approval by the Authority) which must include the following—

(a) the particulars of the applicant's proposed affiliation with the exchange; The particulars include:

- (i) Name and Registered Address/Physical Location/Head Office of the bank;
- (ii) Names of the Board of Directors of the bank;
- (iii) Copy of the banking/regulator license and confirmation of current licensing status;
- (iv) Number of branches including their location;
- (v) Credit rating of the bank;
- (vi) Names and Designation of key contact personnel of the bank;
- (vii) Details of the banks Auditors;
- (viii) Undertaking to comply with the rules of the Exchange and applicable regulations;
- (ix) Commitment to pay exchange membership fee;
- (x) Evidence of adequate risk management framework;
- (xi) KYC (know your customer)/AML (anti-money laundering) management processes;
- (xii) Plans to deploy ICT systems to support the exchange; and
- (xiii) Evidence of technical staff capacity to run Direct Settlement System.

(b) a representation by the Bank that it will operate in accordance with the definition of a direct settlement system relating to settlement of coffee transactions at the exchange as set out by the exchange;

(c) a demonstration of how the Bank is able to satisfy each of the requirements for a direct settlement system specified under these Rules;

(d) any agreements entered into or to be entered into with the exchange or otherwise, that will enable the Bank to comply with the requirements specified under these Rules. The agreements must identify the services that the Bank will provide as a direct settlement system provider. If a submitted agreement is a draft, the application must include evidence that will demonstrate that such services will be provided as soon as exchange operations require;

(e) descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply with the requirements specified in these Rules ; and

(f) where the applicant with sufficient particularity identifies information in the application it deems confidential, a request for confidential treatment and with evidence to support such request.

3. Except as provided for under these Rules, the Exchange shall consider the application for recognition as a Bank within 7 (seven) working days of the filing of the application. The Exchange may in consultation with the Authority approve or deny an application or if deemed appropriate, select the applicant Bank subject to conditions to be specified. If the Exchange notifies the applicant Bank the application is incomplete and specifies the deficiencies in the application, the process date will be stayed until the application is resubmitted in a complete form.

4. The Exchange may grant temporary appointment to the Bank on an expedited basis to give room for the bank to meet full criteria. The temporary appointment under this sub-rule may be subject to conditions and an expiry date as the Exchange may stipulate.

5. An applicant Bank shall apply for permanent selection status when conditions of its selection are met and before the expiry of the temporary selection

6. If the Exchange denies an application by a Bank, it shall specify the grounds for the denial. In the event of a refusal to select a Bank, any person that has made an application for selection shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

7. The Exchange in consultation with the Authority is authorised to suspend for a period not to exceed 30 days or to revoke the selection of a Bank on a showing that—

(a) The Bank is not enforcing or has not enforced its operations, standards, procedures and rules made a condition of its selection as a direct settlement system provider.

(b) The Bank, or any director, officer, agent, or employee of such Bank, is violating or has violated any of the provisions of these Rules or any of the directives, or orders of the Exchange or the Authority.

8. In the event of a denial of selection or suspension or revocation in accordance with these Rules, any person that has made an application for selection as a direct settlement system provider whose selection has been suspended or revoked shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

9. The testimony and evidence taken or submitted before the Exchange or the Authority, duly filed as per these Rules as part of the record, shall be considered by the High Court as evidence in the case.

10. The High Court may affirm or set aside the order of the Authority and the Exchange or may direct it to modify its order. However, no such order of the Authority shall be modified or set aside by the High Court unless it is shown by the applicant Bank that the order of the Authority is unsupported by the weight of the evidence or was issued without the appropriate notice and a reasonable opportunity for a hearing.

11. An application may be withdrawn by filing with the exchange such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the exchange or the Authority based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

12. If an applicant Bank or financial institution proposes to make—

(a) any amendment to its constitution which has an impact on its function as a provider of a direct settlement system;

(b) any business rules that have an impact on its function as a direct settlement system provider ; or

(c) any amendments to its existing business rules having impact on its function as a direct settlement system provider, the Bank shall, as soon as practicable, give a

written notice to the exchange.

12. The notice shall—

(a) set out the text of the proposed amendment;

(b) state the date on which the amendment are proposed to be put into force; and

(c) contain an explanation of the purpose of the proposed amendment.

14. The exchange shall, within 30 (thirty) days or such longer period as may be agreed between the exchange and the Bank after the receipt, notify the Bank in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.

15. Where the exchange does not approve any proposed amendment or business rule, the notice to the Bank shall identify or specify it.

16. In addition to the power conferred upon the exchange, the exchange may in consultation with the Authority and by notice in writing to the Bank, amend the Bank's constitution or any of its business rules relating to the clearing and settlement system for payment of coffee proceeds.

17. A notice by the exchange to the Bank—

(a) may contain provisions as to the manner in which the amendments made by the exchange shall take effect; and

(b) shall state when the amendments shall take effect, specifying a period for the Bank to make a response.

18. A Bank shall comply with a notice given to it under these Rules once the stipulated period expires.

19. Where it is shown that a Bank, any director, officer, agent, or employee of a Bank has failed to comply with, observe, enforce or give effect to these Rules and conditions of its selection, or that the Bank, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of these Rules or any of the orders of the exchange, the exchange may take one or more of the following actions—

(a) direct the Bank to suspend the business of such Bank as it relates to the exchange. A direction under this Rule shall only be after a written notice, specifying the grounds for the action, served upon the Board or the CEO of the Bank not less than 7 (seven) working days before such proposed action and a hearing on the record;

(b) require the Bank, any director, officer, agent, or employee of the Bank to act in a particular manner to enforce or comply with, as the case may be, with these Regulations or other directives of the Authority;

(c) reprimand the Bank or individual concerned; and

(d) require the Bank, director, officer, agent or employee concerned to take such steps as the Authority may direct to remedy or mitigate the effect of such breach.

20. The Authority shall give the Bank, director, officer, agent or employee thereof, notice of not less than fifteen working days, of its intention to take any of the actions under these Rules and the notice shall specify the grounds for the action taken.

21. A recognized Bank may terminate its recognition by filing such a request with the exchange. Termination of selection shall not affect any action taken or to be taken by the exchange based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

22. A Bank shall (through the exchange) receive from growers or the growers' authorized representatives all the relevant particulars of the growers and the growers' service providers, maintain these records and submit the same to the exchange and the Authority regularly as follows—

(a) The Bank shall submit a report to the exchange showing transactions matched and approved for settlement by it; and

(b) Each selected Bank which receives funds belonging to growers, shall monthly submit to the exchange a report showing separately for each grower or service provider, the dates when such funds were received, the identity of the depositor, the dates such funds were debited, withdrawn or disposed of otherwise, together with the facts and circumstances of such debit, withdrawal or disposition, including the authorization thereof.

23. The Bank shall prepare and avail to the grower through the exchange, a comprehensive sales statement to account for each coffee lot sold through the exchange and paid for through the Bank.

NAIROBI COFFEE EXCHANGE