



# Terms of Use for Intermediary Buyers (IB) and Buyers of Processed Coffee (BPC) (ToU IB and BPC)

As of 16 April 2021

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**Document title:** Terms of Use for Intermediary Buyers and Buyers of Processed Coffee

**Issue date:** 16 April 2021

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## 1. Scope of Application

- 1.1 These 4C Terms of Use for Intermediary Buyers and Buyers of Processed Coffee (ToU IB and BPC) regulate the use of the 4C System by the IB/BPC and the resulting rights and duties of the parties in order for the IB/BPC to claim the sustainable trading through the 4C commercial reporting system.
- 1.2 A glossary defining all relevant terms mentioned in this document is available on the 4C website.
- 1.3 In order to trade 4C certified coffee, IBs/BPCs must register in the 4C portal by providing the complete contact details of the legal registered company that will issue the sales invoices and the corresponding contact details. This is valid for all IBs/BPCs that are taking ownership of 4C certified coffee within the supply chain. In addition to the registration in the 4C portal, IBs/BPCs could apply to become 4C certified on a voluntary<sup>1</sup> basis in order to meet the requirements of specific Final Buyers (FB) or brand owners that require certification of the whole supply chain.
- 1.4 4C certified coffee within the context of this ToU also refers to processed coffee and ingredients out of 4C certified coffee as well as products containing 4C certified coffee and/or ingredients out of 4C certified coffee (e.g. roasted and ground, soluble, caffeine free, caffeine or products containing caffeine (drinks, energy bars, etc.))
- 1.5 The use of the services and of the 4C website and 4C portal shall exclusively be governed by the following ToU IB and BPC and the currently applicable versions of the 4C System documents (4C System Regulations, 4C Code of Conduct). In case of contradiction, the following order shall apply:
  - ToU IB and BPC
  - 4C System Regulations
  - 4C Code of Conduct(in their respective current versions).

The requirements as stated for IBs within the 4C System Regulations and 4C Code of Conduct applies not only to IBs, but also to BPCs, no matter if located upstream or downstream of the supply chain of Final Buyers.
- 1.6 Any deviating general terms and conditions of the IB/BPC are explicitly rejected.

## 2. Acceptance of the 4C Terms of Use for IBs and BPCs

- 2.1 The prerequisite for the IB/BPC to trade coffee as 4C certified and to use the 4C System is the acceptance of the 4C ToU IB and BPC.
- 2.2 By confirming the registration in the 4C portal as IB [\(link\)](#) or BPC [\(link\)](#), the IB/BPC accepts the 4C ToU IB and BPC. A prerequisite to trade coffee as 4C certified is the validation of the registration of the IB/BPC by 4C via the 4C portal. The IB/BPC must provide complete and accurate registration information (including contact details) in the

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<sup>1</sup> Voluntary in this sense means that 4C certification is not required for IBs/BPCs in order to trade coffee as 4C certified, but can be done on a voluntary basis if e.g. required by the brand owner

4C portal. Insofar as it is possible to directly and/or indirectly allocate it to a natural person, the information provided in the 4C portal during the 4C registration process is in part personal data which is subject to the provisions set out in Section 7.

- 2.3 In case of voluntary 4C certification, the conclusion of a contract with a Certification Body (CB) cooperating with 4C is required in addition to the acceptance of the ToU IB and BPC. Furthermore, the IB/BPC, in addition to the requirements stated in section 2.2, must accept the ToU IB and BPC each time when applying for an audit in the 4C portal. The procedure for application is specified in detail in the Chain of Custody Certification Step-by-Step document available on the 4C website [here](#). The validation of the application by 4C in the 4C portal is a prerequisite to receive a 4C certificate upon a successful audit.
- 2.4 In the event of incomplete and incomprehensible information provided in the 4C portal during the registration and/or application process or at a later stage, 4C may request that the information be corrected immediately by the IB/BPC. The request for correction does not constitute an acceptance of the IB's/BPC's registration and/or application by 4C.
- 2.5 4C shall be entitled to reject the IB's/BPCs registration and/or application without indicating any reasons. In case of voluntary 4C certification, 4C shall not be obliged to accept the application for 4C certification even though a contract between the IB/BPC and a CB exists.
- 2.6 The ToU IB and BPC may be downloaded via the 4C website or the 4C portal at any time.

### **3. Rights and Duties of the IB and BPC**

- 3.1 The IB shall be obliged to report to 4C, at least once a year, its volumes of 4C certified coffee sold, including the name of its customer and the 4C certificate number under which the 4C certified coffee was traded ("commercial reporting") as specified in the 4C System Regulations, chapter 9. The same applies for BPCs, which are obliged to report the volumes of 4C certified coffee sold throughout the calendar year. All sales transactions must be reported and can be reported at the time they are concluded or all at once. A purchase is reported through confirmation of a sale, which was input by the respective upstream supplier via the 4C portal. The deadline to conclude the annual reporting for any calendar year is 28<sup>th</sup> of February of the following calendar year. The reports shall be made electronically using the 4C portal. IBs/BPCs shall report true and accurate volumes of 4C certified coffee sold and purchased (in case of BPC). In the event the IB/BPC repeatedly violates its reporting obligations (with respect to time or correctness), 4C shall be entitled to suspend the IB/BPC from handling coffee as 4C certified, provided that 4C has sent a reminder in writing (email or post). 4C shall be entitled to demand compensation of all damages suffered due to the non-compliance by the IB(BPC). The reporting duty specified in this paragraph is mandatory for all IBs/BPCs, including those who have not chosen voluntarily to be 4C certified.
- 3.2 The commercial reporting has to be done in volumes (unit measure) of green coffee beans equivalent. In case BPCs handle further processed coffee beans (e.g. roasted

coffee) or ingredients out of coffee (e.g. caffeine), the respective conversion factor needs to be applied in order to report the corresponding volumes in green coffee beans, meaning the volumes of 4C certified green coffee beans required for the respective volume of processed coffee or ingredient out of coffee.

- 3.3 In order to allow a proper and complete commercial reporting via the 4C portal, companies operating within the 4C supply chain are responsible to ensure that all its suppliers and customers of 4C certified coffee are registered in the 4C portal. The IB/BPC is therefore obliged to inform all its suppliers and customers of 4C certified coffee to register in the 4C portal prior to trading coffee as 4C certified. Coffee traded by IBs/BPCs that are not registered within the 4C portal cannot be considered and claimed as 4C certified coffee.
- 3.4 In addition to any legal right 4C may have under applicable laws based on a violation of contractual obligations, 4C shall be entitled to exclude the IB/BPC from any communication on suppliers of 4C certified coffee and/or changes thereto until the IB/BPC has fully cured such violation.
- 3.5 IBs/BPCs shall withdraw any claim related to 4C certified coffee purchased, in case the IB/BPC is no longer registered within the 4C portal as a 4C System user, including on electronic and printed materials, packages or similar labels and communication materials. This obligation also applies when a particular batch of coffee has to be downgraded as conventional, due to e.g. major non-conformities were identified at a 4C certified coffee producer which supplied the IB/BPC.
- 3.6 The 4C logo use and claims requirements as specified in the 4C System Regulations, chapter 10, must be followed. In addition to that, any party (including IBs and BPCs) wanting to use the 4C logo and/or claims, explanatory statements about the 4C System as well as on-product and off-product claims, must receive written approval from 4C upon request prior to its use.
- 3.7 The IB/BPC shall be entitled to use the 4C System to apply for voluntary 4C certification if the ToU IB and BPC have been accepted by the IB/BPC in accordance to Section 2, if no suspension of the IB/BPC as specified in the 4C System Regulations, chapter 3.8 “Non-Conformities, Infringements and Sanctions”, exists, and if 4C has validated and accepted the IB’s/BPC’s application in accordance to Section 2.
- 3.8 The IB/BPC shall be obliged to comply with the 4C traceability and commercial reporting requirements as specified in the 4C System Regulations in their currently applicable versions and to avoid anything that might harm its compliance. 4C may adjust the 4C System Regulations at any time to ensure the integrity of the 4C System. Any changes in the 4C System Regulations relevant to the IB/BPC shall be announced to the IB/BPC by way of System Updates which will inform, if applicable, the period within which the changes have to be implemented. The valid version of the document at any point in time is always the version which is published on the 4C website.
- 3.9 In case of any change in contact information of the IB/BPC, the IB/BPC must notify 4C by post, by email or fax without any delay. Should no notification be made, 4C assumes that the information currently available in the 4C portal continues to be valid. The supply of accurate information shall also apply to the designated 4C contact person at the IB/BPC and the respective contact information (e.g. email address). This means, the

IB/BPC shall provide 4C with up-to-date contact details of at least one representative of the IB/BPC and is responsible to update this in the 4C portal as many times as necessary.

- 3.10 If requested by 4C, the IB/BPC shall be obliged to allow integrity assessments to be performed by 4C or independent auditors according to the 4C Integrity Program as specified in the 4C System Regulations, chapter 3.9 at any time.
- 3.11 In case of voluntary certification, the IB/BPC shall be obliged towards the CB/auditor and 4C to grant access to all facilities, whether they are owned, rented or outsourced, and documentation where coffee is handled, stored and traded.
- 3.12 In case of voluntary certification, the IB/BPC is obliged to inform 4C and the CB who issued the certificate immediately in writing about any potential non-conformities with regard to the 4C requirements.
- 3.13 The IB/BPC shall be obliged to comply with the applicable laws, ordinances, directives and ratified treaties of the country in which the IB/BPC is located. This means that the IB/BPC shall be obliged to have in place all applicable and valid permits or licenses to avoid any illegal activities, particularly to avoid corrupt practices, bribery and fraud. If the IB/BPC is legally convicted for violations of the law, this will be considered as an infringement of the ToU IB and BPC according to the principles specified under Section 8. The IB/BPC shall report to 4C in writing and without undue delay if the IB/BPC is legally convicted for violations of the law.

#### **4. Rights and Duties of 4C**

- 4.1 4C owns and operates the 4C System.
- 4.2 4C shall establish both a traceability system and a commercial data reporting system to collect and assess commercial data regarding 4C certified coffee. Further, 4C shall provide access to the 4C portal to IBs/BPCs and consolidated reports on their commercial reporting to IBs/BPCs on demand.
- 4.3 In case of voluntary certification, 4C does not perform any certification audits itself. The audits are exclusively conducted by independent CBs cooperating with 4C which are issuing the certificate. 4C therefore does not warrant for the issue of the certificate, as it depends on the certification decision made by the CB.
- 4.4 In case of voluntary certification, 4C monitors the compliance of 4C certificate holders with the 4C requirements for obtaining and maintaining a 4C certificate. Further, 4C shall update the list of valid 4C certificates and make it available to IBs/BPCs via the 4C website.

#### **5. No Set-Off**

The IB/BPC may only offset claims asserted by 4C against any counterclaims which are undisputed or have been recognised by declaratory judgment.

## **6. Property Rights and Reference Lists**

- 6.1 4C shall be entitled to list the IB's/BPC's company name and logo on the 4C website, 4C portal and to publish them in presentation and print media for providing factual information. 4C shall not be entitled to use the information in any other way. Section 7 shall apply.
- 6.2 The IB/BPC may use the 4C logo and claims after obtaining the prior, explicit and written consent of 4C. The requirements as specified in chapter 10 "4C Logo Use and Claims" of the 4C System Regulations need to be adhered to. The IB/BPC has sole responsibility for the integrity of its advertising. 4C does not provide assessments with regard to competition laws. The IB/BPC releases 4C from all claims by third parties against 4C resulting from this. The IB/BPC must ensure in particular that the advertising statements referring to 4C are clearly spatially separate from other statements made by the IB/BPC in the advert, that any statements made by 4C are not reworded by the claim producer in his own words, and that the advert is sufficiently legible.
- 6.3 The content made available by 4C on the 4C website, 4C portal, during trainings and webinars is subject to copyright protection. Therefore, the IB/BPC is not permitted to copy, process or distribute this content beyond the use granted by 4C on a case-by-case basis.
- 6.4 4C shall be entitled to publish press releases, articles, etc. referring to the use of the 4C System by the IB/BPC upon prior explicit written consent of the IB/BPC for each individual case.
- 6.5 In case of voluntary certification, the IB/BPC shall be entitled to publish press releases, articles, etc. referring to the IB's/BPC's use of the 4C System, as long as the IB/BPC holds a valid certificate as part of the 4C certification system at the date of publishing. Explicit approval from 4C prior to its publication is required.

## **7. Confidentiality, Data Protection, Publications of Third-Party Data/Information, Exemption**

- 7.1 4C collects, stores and uses personal data insofar as this is permitted by legal regulations or ordered by the legislator. 4C will treat personal data as confidential and according to the provisions of the applicable data protection law.
- 7.2 4C shall exclusively store and process the IB's/BPC's data for the purposes resulting from these ToU IB and BPC.
- 7.3 Subject to the stipulations above, any data collected, stored and used by 4C is not made publicly available or passed on by 4C to third parties. Such data will only be made publicly available by 4C or be passed on to third parties if the IB/BPC has given its explicit consent to the publication or passing on of this data, or if 4C is obliged to pass on this information by law or due to official or judicial conditions or orders. The consent of the IB/BPC has to be given in writing. If the IB/BPC provides personal data regarding third parties, e.g. by naming contact persons, it is responsible for the completeness and correctness of such data. The IB/BPC shall exempt 4C from any and all claims,

including claims for compensation, which are asserted against 4C by third parties due to a violation of their rights by the use, publication or transmission of their data.

- 7.4 Should the IB/BPC contact 4C (for example, by post, contact form or email), the information is stored for the purpose of processing the request and in the event of any follow-up questions arising to the extent allowed by the applicable laws.
- 7.5 4C takes technical and organisational security measures to protect data collected, including any personal data, against loss, manipulation or unauthorised third-party access. The technical procedures used in this context are developed further and improved according to the technological progress. 4C points out that it is not possible to guarantee comprehensive absolute protection.
- 7.6 In case of voluntary certification, 4C shall be entitled to make publicly available on the 4C website any certificates issued to the IB/BPC as valid, declared null and void or expired, including the content of the certificates. The same applies in case an IB/BPC has been suspended, indicating also the time of suspension. 4C is not obliged to consult the IB/BPC in advance, if 4C intends to change the status of the certificate of the IB/BPC and make this change publicly available on the 4C website. Information provided on a certificate usually comprises the name and address of the certified IB/BPC, the name and address of the CB, the date of issuance of the certificate and the validity period of the certificate.
- 7.7 In case of voluntary certification, should the IB/BPC hire different CBs for consecutive audits, 4C shall be entitled to forward to the new CB any and all data collected by 4C concerning the IB/BPC, in particular with regard to previous certifications and audits of other CBs and/or previous integrity assessments.

## **8. Infringements and Liability of the IB/BPC**

- 8.1 Any infringements of the 4C traceability and commercial reporting requirements as specified in the 4C System Regulations or duties from Sections 3.7 and 3.8 committed by the IB/BPC may lead to adverse effects on the integrity and/or recognition of the 4C System, and may trigger legal duties and actions by 4C, CB (in case of voluntary certification), and/or authorities. Infringements will be handled according to the rules specified in the 4C System Regulations, chapter 3.8 “Non-Conformities, Infringements and Sanctions”.
- 8.2 In the event of severe and critical infringements as specified in the 4C System Regulations chapter 3.8 “Non-Conformities, Infringements and Sanctions”, 4C shall be entitled to, in addition to the provision in Section 10.2 of these ToU IB and BPC, suspend the 4C registration of the IB/BPC in the 4C portal up to 60 months, having the consequence to no longer being able to participate in 4C certified coffee trading for this limited period of time.
- 8.3 In case of voluntary 4C certification, the CB shall be entitled to, in addition to the provision in Section 10.3 of these ToU IB and BPC, withdraw the certificate of the IB/BPC as outlined in the 4C System Regulations, chapter 3.8 “Non-Conformities, Infringements and Sanctions”. The IB/BPC must remove the certificate issued in PDF



format from any means of communication, whether digital (e.g. web pages, social media networks) or analogic (e.g. printed documents) without undue delay.

- 8.4 Any further consequences of an infringement based on legal regulations, official decisions or rules of a national or international system, or a voluntary commitment shall remain unaffected.
- 8.5 The IB/BPC is obliged to compensate 4C for any loss suffered due to any culpable infringements as specified in the 4C System Regulations and ToU IB and BPC. The IB/BPC must exempt 4C from any claims asserted against it by third parties due to culpable infringements or culpable violations of other contractual duties.
- 8.6 In the event of a culpable serious infringement as specified in the 4C System Regulations, chapter 3.8, 4C is entitled to claim a contractual penalty calculated at equitable discretion but limited to EUR 10,000.00 (in words: ten thousand). 4C has the right to claim for damages exceeding the contractual penalty. The contractual penalty is credited against the claim for damages.

## **9. Liability of 4C**

- 9.1 4C shall be liable for any damage it may cause, through its legal representatives, or its performing and vicarious agents on the basis of the culpable injury to life, body or health, according to the Product Liability Act (Produkthaftungsgesetz), as well as within the framework of an expressly assumed guarantee. Furthermore, the liability of 4C, its legal representatives, or its performing and/or vicarious agents shall be excluded, insofar as the damage is not caused by grossly negligent or intentional violations of duty of its legal representatives or officers.
- 9.2 In the event of any grossly negligent or intentional behaviour of the other performing agents, the liability shall be limited to cases of violation of the material contractual duties.
- 9.3 In the event of ordinary negligence, the liability shall be limited to any foreseeable damage typical for the contract which arises from the violation of material contractual duties.
- 9.4 4C shall reserve the right to plead contributory fault. In particular, the IB/BPC is obliged to back up the data according to the current state-of-the-art technology. In the event of loss of data, 4C is liable only for the expenditure that would have been necessary for the restoration of the data if the IB/BPC had made proper and regular backups.
- 9.5 Insofar as the liability of 4C is excluded or limited, this shall also apply to the personal liability of its representatives, performing and vicarious agents.

## **10. Duration of the Agreement based on the 4C Terms of Use for IBs and BPCs**

- 10.1 The acceptance of the ToU IB and BPC remains valid as long as the IB/BPC remains a registered 4C System user in the 4C portal. Registration is cancelled once communication of termination is received by 4C three months ahead of its termination.

The obligation of the IB/BPC to report its volumes of 4C certified coffee sales within the year the registration was terminated shall survive the termination date.

- 10.2 The IB's/BPC's right to use the 4C System terminates once 4C has suspended the registration of the IB/BPC within the 4C System due to reasons specified within the 4C System Regulations, chapter 3.8 "Non-Conformities, Infringements and Sanctions".
- 10.3 In case of voluntary certification, the CB may withdraw the certificate due to reasons specified in the 4C System Regulations chapter 3.8 and especially if
  - 10.3.1 The IB/BPC, grossly negligently or with intent, provides inaccurate or incomplete information to 4C or the CB;
  - 10.3.2 The CB receives notice that the IB/BPC was originally certified under 4C as a different legal entity, but with the same person(s) in charge, which did not become recertified to avoid the verification of compliance with the 4C requirements. For example, this includes a "new" company that is set up and certified to avoid a recertification audit including the verification of the conformity of coffee declared as 4C certified that were made during the previous period of certification;
  - 10.3.3 The CB receives notice that the IB/BPC was originally certified under 4C as a different legal entity, but with the same person(s) in charge, which was suspended from recertification and the "new" legal entity was set up and certified to circumvent the suspension from recertification by 4C;
  - 10.3.4 The IB/BPC is not able to fulfil the obligations under the current ToU IB and BPC and 4C System Regulations

## **11. Miscellaneous**

- 11.1 All documents mentioned in this ToU IB and BPC as well as the 4C Glossary are a binding part of the contract and can be found on the 4C website [here](#).
- 11.2 The law of the Federal Republic of Germany shall apply under exclusion of the UN Convention on Contracts for the International Sale of Good (CISG).
- 11.3 The place of jurisdiction for all disputes arising from the ToU IB and BPC shall be Cologne, Germany.