

SMALL CLAIMS SINGLE TIER RULES OF ARBITRATION

Any dispute arising out of a contract that is subject to FOSFA Rules of Arbitration and Appeal may, by mutual agreement in writing between the parties, be adjudicated by a sole arbitrator under the FOSFA Small Claims Single Tier Rules of Arbitration. By such agreement the parties irrevocably waive their rights under the FOSFA Rules of Arbitration and Appeal. The FOSFA Small Claims Single Tier Rules of Arbitration as hereunder shall be the sole Rules applying to the dispute.

Any dispute arising out of a contract or contracts subject to these Rules, including any questions of law arising in connection therewith, shall be referred to arbitration in London (or without prejudice to the juridical seat elsewhere if agreed) in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

The juridical seat of the arbitration shall be, and is hereby designated pursuant to Section 3 of the Arbitration Act 1996 as, England. Each party engaging in an arbitration pursuant to these Rules, whether or not a Member of the Federation, is deemed therefore to abide by these Rules and to agree with the Federation to be liable to the Federation (jointly and severally with the other parties to the arbitration) for all fees and expenses incurred in connection with the arbitration, which said fees and expenses shall, upon notification by the Federation under the provisions of Rule 6(b), be and become a debt due to the Federation.

1. APPOINTMENT OF ARBITRATOR

- (a) The parties may by agreement appoint an arbitrator who shall have accepted the appointment. The parties shall advise the Federation promptly of the name of the appointed arbitrator, together with a copy of the contract/s out of which the dispute arose.
- (b) If the parties fail to agree on the appointment of an arbitrator, they shall notify the Federation which shall appoint an arbitrator. Any such application shall be accompanied by a copy of the notice of claim for arbitration together with a copy of the contract/s out of which the dispute arose.
- (c) The Award of the arbitrator appointed under 1(a) or (b) above shall be final and binding on all parties.
- (d) Only Trading, Full Broker and Full Non-Trading Members or their nominated representative/s to the Federation shall have the right to act as arbitrators subject to retirement at age 75, if still active in the trade, or two years after retirement, whichever comes first. No person wholly or principally engaged in private legal practice shall be eligible to act as an arbitrator. No person shall be eligible to act who, or whose company or firm, has any direct or indirect interest in the transaction in dispute.
- (e) In the event that the appointed arbitrator refuses to act, becomes incapable of acting or ineligible to act or delays unduly, then either party may apply to the Federation for the appointment of a substitute arbitrator.

2. PROCEDURE FOR CLAIMING ARBITRATION AND TIME LIMITS

- (a) The party claiming arbitration (the claimant) in respect of claims for quality and/or condition shall despatch the notice of claim to the other party (the respondent) not later than 90 consecutive days from completion of discharge of the goods on CIF, CIP, C&F and similar contract terms, or not later than 90 consecutive days from the date of completion of delivery of the goods on FOB, Ex-tank, Ex-mill and Ex-store contract terms and shall at the same time notify the Federation and despatch where appropriate sealed sample/s to the office of the Federation, where such sample/s shall be held at the disposal of the arbitrator. The parties shall either nominate an arbitrator and notify such name to the Federation or instruct the Federation to appoint an arbitrator within 14 consecutive days from date of the notice of claim.
- (b) The party claiming arbitration in respect of claims other than quality and/or condition shall dispatch the notice of claim to the other party and to the Federation not later than one year after the expiry of the contract period of shipment or of the date of completion of final discharge of the goods whichever period shall last expire on CIF, CIP, C&F and similar contract terms; not later than one year after the expiry of the contract period of shipment on FOB, Ex-tank, Ex-mill, Ex-store contract terms and not later than one year after the last day of the contractual delivery period on any other terms. The parties shall nominate an arbitrator and notify such name to the Federation or instruct the Federation to appoint an arbitrator within 30 consecutive days from date of the notice of claim.



- (c) Claims for arbitration shall be made by any means of rapid written communication. All notices shall be under reserve for errors in transmission. Notices shall be passed on with due despatch by intermediate Buyers and Sellers. Any notices received after 16.00 hours on a business day shall be deemed to have been received on the following business day. Notice from a broker shall be a valid notice under this contract.
- (d) Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday in the country where the party required to do the act or give the notice resides or carries on business or in the country where the act has to be done or the notice has to be received or on any day which the Federation shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 16.00 hours Mondays to Fridays inclusive.
- (e) The claimant shall arrange to pay to the Federation a deposit as prescribed by the Council of the Federation on account of the fees, costs and expenses of the arbitration, which is to be received by the Federation not later than 14 consecutive days after the lodging of submissions as set out in Rule 4(a) and 4(b).
- (f) Failure to notify the Federation as required by Rules 1(a), 1(b), 2(a) or 2(b) shall not in itself debar a claim for arbitration nor prevent an arbitration proceeding but shall be taken into account by the arbitrator in exercising discretion under Rule 7(a).

3. LAPSE OF CLAIM

If neither the claimant nor the respondent submits any documentary evidence or submissions to the appointed arbitrator with a copy to the other party within the period of six months from the date of appointment of the arbitrator, then the claim to arbitration shall be deemed to have lapsed on expiry of the said period of six months unless before that date the claim is renewed by a further claim for arbitration to be made by either party notifying the other before the expiry date. Any such renewal shall be for a period of six months from the date of the giving of notice of renewal when it shall lapse again unless renewed in the like manner as the first renewal or unless by then documentary evidence or submissions have been submitted by either the claimant or the respondent. In the event of failure to renew a claim as provided in this Rule such claim shall be deemed to have been withdrawn and abandoned unless the arbitrator shall in his/her absolute discretion otherwise determine upon such terms as he/she may think fit.

4. PROCEDURE FOR ARBITRATIONS

All submissions, interlocutory instructions and related correspondence referred to under this Rule shall be despatched within the specified time limits - one copy to the arbitrator: one copy to the other party and one copy to the Federation.

- (a) **Claims under Rule 2(a)** (quality and/or condition):
 - i. The parties shall provide the arbitrator with one common bundle of documents mutually agreed between the parties together with the claimant's and respondent's submissions within 30 consecutive days of the claim for arbitration.
 - ii. If the claimant wishes to reply to the respondent's submission, such reply shall be despatched in writing within 14 consecutive days of the receipt thereof. Failing receipt of such reply, the arbitrator shall proceed with the arbitration without delay. The award of the arbitrator shall be despatched to the Federation for processing timely but within 30 consecutive days from the date of the closure of submissions.
- (b) **Claims under 2(b)** (other than on quality and/or condition):
 - i. The parties shall provide the arbitrator with one common bundle of documents mutually agreed between the parties together with the claimant's and respondent's submissions without delay.
 - ii. If the claimant wishes to reply to respondent's submission, such reply shall be despatched in writing without delay. Failing receipt of such reply, the arbitrator shall proceed with the arbitration.
- (c) If no common bundle can be agreed under Rule 4(a)(i) and 4(b)(i) above each party shall submit to the arbitrator, the documents upon which they wish to rely.
- (d) The arbitrator shall have discretion to set down a timetable and/or to extend the time limits under Rule 4(a).
- (e) The arbitrator shall have the power to request further information or documents from either of the parties, to hear oral submissions or evidence and to give directions relating to the conduct of the arbitration. The parties shall be entitled to a reasonable period within which to comply with any such request but the arbitrator, having given reasonable notice, may make an award if such requests have not been complied with.
- (f) If either party has expressed a wish to present oral evidence, the arbitrator shall give reasonable notice to the parties of the date, time and place when any oral evidence may be heard and both parties to the arbitration or their authorised



representatives may attend any such hearing but may not have present or be represented by counsel, solicitor or any member of the legal profession wholly or principally engaged in legal practice.

- (g) The arbitrator at his/her absolute discretion may require the claimant to lodge an additional deposit with the Federation on account of the fees, costs and expenses of the arbitration. If after the expiration of 14 consecutive days after the notification to the claimant of the additional deposit required the claimant not having paid such deposit, the arbitration shall be stayed until such time as the deposit is paid. In the event that the deposit is not paid within 28 consecutive days the arbitration shall be deemed to be permanently stayed unless the arbitrator in the exercise of his/her absolute discretion decides to continue the arbitration.
- (h) If any party to an arbitration considers that the arbitrator is failing to exercise all reasonable despatch in entering on or proceeding with the arbitration then that party may notify the Federation accordingly in writing with full details. Upon receipt of such notice the Federation shall call upon the arbitrator to explain the reasons for the delay. The arbitrator must furnish the Federation with such an explanation within 7 days of the Federation's request for such an explanation. If the Federation is not satisfied with the arbitrator's explanation the Federation shall fix a 7 day period in which the arbitrator is to take the next step required to be done in proceeding with the arbitration. Should the arbitrator fail to respond to the Federation's request for an explanation or fail to take the next step required to be done in proceeding with the arbitration within the 7-day period, then the Federation shall have the right to require the arbitrator to resign his position as arbitrator in that particular arbitration. The arbitrator shall be deemed to have resigned his/her position 14 consecutive days after despatch to him/her of the Federation's written requirement that he resigns his/her appointment unless otherwise decided by the Federation.

An arbitrator who is called upon to resign his/her position as arbitrator under this provision shall not be entitled to receive any remuneration in respect of his/her services provided in the particular arbitration in question unless otherwise decided by the Federation.

Where an arbitrator resigns his/her position under this provision then the parties shall appoint a substitute arbitrator within 14 days of the notice being despatched in accordance with the provisions of Rule 1 hereof. If the parties do not so appoint, then the Federation shall make such an appointment.

In circumstances where an arbitrator is removed from an arbitration by the Federation as provided for above, the Federation may, by a decision of the Council, also suspend or remove that person's right to act as an arbitrator and to serve on the Appeal Panel.

5. JURISDICTION

- (a) The arbitrator may rule on his/her own jurisdiction as to whether there is a valid arbitration agreement.
- (b) If the arbitrator decides that he/she does have jurisdiction, he/she shall proceed with the arbitration without delay.
- (c) If the arbitrator decides that he/she has no jurisdiction he/she shall draw up an award in accordance with Rules 6(a) and 6(b).

6. PROCEDURE FOR ARBITRATION AWARDS

- (a) Awards shall be in writing and shall be issued on the prescribed Federation Form. Awards shall contain the reasons for the decisions made by the arbitrator, who shall have the power to assess and award fees and award by whom these and other fees and expenses of the arbitration shall be paid. The Federation's fees shall be those in force as prescribed by the Council of the Federation.
- (b) When an award has been signed, it shall be the duty of the arbitrator to lodge the original and one copy with the Federation who shall date them and give notice to the parties named in the award that the award is at their disposal upon payment of any balance of the fees and expenses of the arbitration. Such payment must be received by the Federation within 42 days of the date of the award. On receipt of payment, the Federation shall immediately send the original award to the party who has paid and send a copy to the other party. Under no circumstances may the arbitrator disclose the contents of, or decisions within, the award.
- (c) Should the contract form part of a string of contracts which are in all material points identical in terms, except as to date and price, then:
 - i. In any arbitration for quality and/or condition, as mentioned in Rule 2(a) above, the arbitration shall be held as between the first seller and the last buyer in the string as though they were contracting parties. Any award so made (in these Rules called the string award) shall be binding on all the intermediate parties in the string and may be enforced by any intermediate party against his immediate contracting party as though a separate award had been made under each contract.

- ii. In other cases, arbitration shall only be held as between the first seller and the last buyer in a string as though they were contracting parties if all parties in the string agree in writing and provided each intermediate party shall have submitted his contract and all relevant information to the arbitrator.

A separate award shall be made in respect of each contract.

7. GENERAL

- (a) In the event of non-compliance with any of the time provisions in these above Rules, and of such non-compliance being raised by the respondents as a defence, claims shall be deemed to be waived and absolutely barred unless the arbitrator referred to in these Rules in his/her absolute discretion, otherwise determine.
- (b) The Award of Arbitration is not open to appeal and is deemed final and binding on the parties.
- (c) Any notice may be delivered personally or left at the place where the party to whom it is to be delivered is carrying on business or (by reasons of the provisions of the contract) is to be considered to be carrying on business. A copy shall be delivered to the Federation.
- (d) If an Arbitration Award is not taken up by any of the parties to the dispute within 28 consecutive days after the date of the Award, the Federation shall call upon the claimant and the respondent to take up the Award. If the claimant or the respondent fails to take up the Award, the Council of the Federation may post on the Federation's notice board and/or circularise to members in any way thought fit a notification to that effect. The parties to any such arbitration held under these Rules shall be deemed to have consented to the Council taking such action.
- (e) In the event of any party to an arbitration held under these Rules neglecting or refusing to carry out or abide by an Award of the arbitrator made under these Rules, the Council of the Federation may post on the Federation's notice board and/or circularise to members in any way thought fit a notification to that effect. The parties to any such arbitration shall be deemed to have consented to the Council taking such action.

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