

RULES OF ARBITRATION AND APPEAL

Any dispute arising out of a contract incorporating these Rules of Arbitration and Appeal ("Rules") shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 and any statutory amendment, modification or re-enactment thereof for the time being in force, save insofar as such provisions are expressly modified by, or are inconsistent with, these Rules. The judicial seat of arbitration shall be and is hereby designated pursuant to Section 3 of the Arbitration Act 1996, to be England. Arbitrations shall be held in London or elsewhere (but without prejudice to the foregoing) if agreed by the parties.

Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of the Association, is deemed to be bound by these Rules and agrees to be jointly and severally liable to the Association for all fees and expenses incurred in connection with the arbitration or appeal, which said fees and expenses shall, upon notification by the Association under the provision of these Rules, be and become a debt due to the Association.

1. It shall be the duty of the Board of Directors of the Association to maintain a panel of what it considers to be suitably qualified past and present members of the dried fruit and/or nut trades to act as arbitrators in any claim or dispute that may arise out of a contract incorporating these Rules. A list of such arbitrators shall be maintained and made available upon enquiry to the Secretary of the Association.
2. The list shall state which members of the panel are, by their active trading in specific nuts, kernels and/or dried fruits, considered by the Board of Directors to be qualified to arbitrate claims and/or disputes involving the quality and/or condition of those nuts, kernels and/or dried fruits, i.e. Quality Arbitrations.
3. In disputes and/or claims not involving quality and/or condition, i.e. Technical Arbitrations, all members of the panel shall be considered equally competent to accept appointment.
4. **Quality/Condition Claims**
 - a) In a dispute involving quality or condition of goods, the buyer, after first notifying the seller of his intention to proceed to arbitration, shall give to the seller the opportunity of inspecting the whole of the parcel in question before its removal from the store. Such opportunity to extend for a period of seven (7) consecutive days from the date of the buyer's notification. Removal of the goods from store shall not in itself invalidate a claim provided always that the identity of the parcel has been maintained.
 - b) In all cases two (2) independently drawn sealed samples of two (2) kilos each for nut kernels, or four (4) kilos each for nuts in shell, or two (2) kilos each for dried fruits. The samples must be representative of the average of the parcel and shall be drawn by an independent cargo superintendent from at least 5% of the number of packages before any portion of the parcel is removed from the store.
 - c) Samples are to be packed in sealed plain bags with an open outer showing the vessel, markings and date of sample, together with the description of the goods.
 - d) In all disputes, pending resolution by arbitration or otherwise, it shall be incumbent upon the buyer to take steps to protect the parcel in order that any deterioration in either the packing or the condition of the goods shall be kept to a minimum.

5. Quality/Condition Arbitrations - Procedure

- a) Where a dispute concerns quality and/or condition of goods, the party claiming arbitration shall apply to the Secretary of the Association for the appointment of two arbitrators and an umpire. The Secretary shall notify the other party to the contract of such application and shall proceed to appoint the arbitrators and an umpire (the "Tribunal"), not being interested parties, from the panel. It shall be the duty of those so nominated to indicate to the Secretary their willingness to act or otherwise. The Secretary shall notify the parties of the appointment of the tribunal. The Secretary shall procure the independently drawn sealed samples and, if necessary, an inspection order.
- b) If the party claiming arbitration ("the Claimant") wishes to make written submissions in the reference and/or provide evidence to the tribunal, such submissions and/or evidence shall be served within fourteen (14) days of the Secretary's notification of the tribunal's appointment.
- c) If the respondent in the reference wishes to reply to the Claimant's submissions, such reply supported by evidence, if any, shall be dispatched within fourteen (14) days of receipt of the Claimant's written submissions. In the absence of such reply, the tribunal shall proceed to determine the issues in the arbitration without delay.
- d) For the avoidance of doubt, the tribunal has absolute discretion to vary these directions whether of its own motion, upon the application of a party or the agreement of the parties to the reference.

6 Technical Arbitrations - Procedure

- a) In disputes other than those concerning quality and/or condition, the party claiming arbitration shall nominate an arbitrator from the panel, after first ascertaining the willingness of the arbitrator to act and shall notify the Association and the other party to the contract ("the Respondent") of the arbitrator's name.
- b) The respondent in the reference shall in turn nominate an arbitrator from the panel; this nomination to be made within fourteen (14) consecutive days of the first party's notification. If the respondent fails to nominate an arbitrator within this period, then the first arbitrator may allow the respondent a further period not exceeding fourteen (14) days to appoint their arbitrator. Thereafter in the absence of an appointment the Association shall write to the respondent to invite their appointment of arbitrator. Should the respondent not appoint an arbitrator, then the Association shall make an appointment from the panel, on the Respondent's behalf, and shall notify the parties of the appointment.
- c) The party claiming arbitration shall dispatch to both arbitrators and to the respondent any written submissions with fourteen (14) days of the receipt of notification of the appointment of the respondent's arbitrator.
- d) If the respondent wishes to respond, such reply shall be served on the tribunal and the Claimant within fourteen (14) days of the receipt of the Claimant's submissions.
- e) For the avoidance of doubt, the tribunal has absolute discretion to vary these directions whether of its own motion, upon the application of a party or the agreement of the parties to the reference.
- f) In the event that neither party requests an oral hearing within fourteen (14)

consecutive days of receipt of closing submissions, the arbitrators shall proceed to determine the dispute on the basis of written submissions alone.

- g) Should the appointed arbitrators be unable to agree, they will inform the parties and an umpire will be appointed by the Association. An umpire shall be appointed prior to any oral hearing taking place.
- h) If there is to be an oral hearing, the place, date and time will be arranged by the Association. The Association shall give reasonable notice to both parties of the time, date and place of the hearing. The obtaining of samples, evidence, documents and information shall not constitute an unnecessary delay. An arbitration once begun cannot be withdrawn without the consent of both parties.
- i) At an oral hearing the parties may be represented by one of their employees or a representative from the trade.
- j) Absent the parties' agreement no party to an arbitration may be represented by any member of the legal profession whether employed or in private practice, nor may any member of the legal profession be present at any of the arbitration proceedings.
- k) Submissions must be signed by or on behalf of the parties to the reference, but signatories cannot be lawyers whether employed or engaged in private practice.
- l) The tribunal may impose a limit on the length of submissions. The tribunal may require the parties to provide more information and/or evidence.

7 Awards

- a) Awards made by the tribunal shall be in writing on the Association's official award forms. Awards shall be reasoned. The tribunal shall have absolute discretion as to which party should bear the costs of the arbitration and in what amount. In so doing, the tribunal may take into account any offers of settlement made prior to the publication of its award.
- b) In a dispute concerning quality and/or condition, where in the opinion of the tribunal, after giving due consideration to the "Fair Average Quality" of the crop concerned, the percentage of defective nuts, kernels and/or dried fruits is in excess to such an extent that the tribunal consider that an allowance would not represent adequate compensation, they shall be entitled to award rejection.
- c) An arbitration should take place and an award be made within thirty-five (35) consecutive days of the appointment of the second arbitrator or umpire, whichever is later. If, in the opinion of the tribunal, it is not practicable to make an award within this period then they may extend the time limit at their discretion.

8 String Arbitrations

In the event of a contract forming a part of a string of contracts which are, in all materials respects, identical in terms other than date and price, a single arbitration may, subject to written agreement of all parties in the string of contracts, be held as between the first seller and the last buyer in the string as though they were parties who had contracted with each other. Any award so made shall, subject to the right of appeal as provided in these Rules, be binding on all intermediate contracting 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.

9 Fees

- a) **Arbitrators fees.** Fees shall be on a sliding scale based on the value of the parcel(s) in dispute as follows:-

| <u>Fee</u> | <u>Value of Parcel(s)</u> |
|------------|---|
| 1% | up to £149,999 (subject to a minimum Arbitrators fee of £1,000) |
| 0.5% | £150,000 - £299,999 |
| 0.25% | £300,000 upwards |

For the purposes of calculating the fees, the value of the parcel(s) shall be arrived at without deduction of commission or discount. If the value of the parcel(s) is expressed in a currency other than Sterling then a conversion to Sterling shall be made at the spot exchange on the day of the award at the discretion of the arbitrators.

The above fees shall be divided equally between the arbitrators. Where an umpire has acted in the arbitration, the fees shall be increased by fifty per cent (50%) and the umpire shall receive this additional fee.

- b) **Association Fees.** A non-refundable fee of £500 shall be paid to the Association in connection with each arbitration by members.
- c) **Non-Member Fees.** Any party claiming arbitration not being a member of the Association, shall pay a non-refundable fee of £1,000 to the Association.
- d) **Travelling Expenses.** Where any arbitrator or umpire incurs travelling expenses in order to attend any meeting in relation to the arbitration, these expenses shall be reimbursed to the arbitrator or umpire by means of an additional fee which shall be levied against that party which the tribunal has decided shall pay the costs of the reference.
- e) **Administration Expenses.** Where any arbitrator or umpire incurs communication expenses, i.e. cable, telex, telephone or facsimile, these expenses may be claimed at the discretion of the arbitrators or umpire and shall be reimbursed to them by means of an additional fee which shall be levied against that party which the tribunal has decided shall pay the costs of the reference.
- f) **All Parties** claiming arbitration shall pay the Association's non-refundable deposit within fourteen (14) consecutive days of the appointment of the second arbitrator or umpire, whichever is later.
- g) The Association may require the parties to the reference to pay sums on account as security for the Association's and tribunal's fees. Pending payment of the security demanded the reference will be stayed. Should the security not be paid within 60 days of the Association's demand then the claim will be considered waived and abandoned.

10 Taking Up of Awards

As soon as possible after making an award, the arbitrators, and/or umpire, if called upon, shall sign the award and return it to the Secretary of the Association. The Secretary shall immediately notify the Claimant that the award is available upon

payment of the Association's and tribunal's fees. When the fees have been received by the Association, the award will be dated and sent to the Claimant and a copy sent to the respondent. Should the Claimant fail to take up the award, then the Board of Directors of the Association may post in the Association Book and/or circularise the Association's members in any way thought fit, a notification to that effect, and the parties to the arbitration shall have deemed to have consented to the aforesaid action by the Board of Directors. In any case where the Claimant has failed to take up an Award within twenty-one (21) days from notice of its availability, then the respondent shall be obliged to do so upon payment of the Association's and tribunal's fees. Until an award has been taken up, the contents of the award shall not be disclosed.

11 Appeals

- a) Any party to an arbitration award shall have the right of appeal to the Board of Directors who shall then elect three of their number (or co-opt such persons as they deem qualified), not being interested parties, to form an Appeal Board.
- b) The party wishing to appeal should provide the Secretary of the Association and the responding party with written notice of the appeal to the Board of Directors within 28 consecutive days of the date of the arbitration award. Such written notice must:
 - i) identify the parties to the appeal;
 - ii) identify the award being appealed; and
 - iii) be accompanied by a non-refundable deposit of £500 from a member or £750 from a non-member together with an amount equal to the fees paid to the arbitrators and umpire at first tier (if applicable); this latter amount to be equally divided among the members of the Appeal Board. Should the appellant be successful, the Association's Appeal fee and the Arbitrators' Appeal fees shall be reimbursed by the unsuccessful party to the appellant.
- c) A party wishing to appeal against an arbitration award must submit in writing, to the respondent and the Secretary of the Association within seven (7) consecutive days of their written notification of appeal, the grounds of appeal together with supporting evidence. The respondent must serve their submission in response on the appellant and the Secretary of the Association within fourteen (14) days of the receipt of the appellant's submission. The appellant may prepare and serve a submission in reply within fourteen (14) days of receipt of the respondent's submissions.
- d) The Appeal Board has absolute discretion whether to permit any new evidence or written or oral submissions, not included in sub-paragraph c above.
- e) Subject to payment of such fees, costs and expenses as the Appeal Board may determine, the appellant shall have the right, at any time before the Appeal Board makes an award, to withdraw its appeal by giving notice to the Secretary of the Association. The Secretary will then notify the respondent. In the event of withdrawal, the respondent shall continue to have the right of appeal against the award in accordance with these rules save that the time limit laid down at sub-paragraph 11(b) shall be twenty-eight (28) consecutive days from the day after the date of the Secretary of the Association's notice.

12 Appeal Boards

The Appeal Board shall have the power to confirm or vary an award and in either case shall give their reasons for so doing. They shall also have the power to alter or re-assess the fees to be paid. The Appeal Board shall have the power to call upon parties to the arbitration to give written or oral evidence to the Appeal Board. Neither party to the appeal shall be represented by a member of the legal profession whether employed by a party to the reference or in private practice unless, in the considered opinion of the Appeal Board, the appeal is of major importance or that serious questions of law are likely to arise, in which case both parties shall be afforded the same rights.

No appeal can be lodged unless the Association has received (i) the fees for the original arbitration and (ii) the deposit set out at 11 (b)(iii) in cleared funds.

13 Arbitration and Appeal Decisions

Where a decision pursuant to an arbitration or appeal under these rules has been given, irrespective of whether any party to the arbitration or appeal is a member of the Association, the successful party may notify all interested parties of the decision and award in its favour such notification to be at the entire discretion of the successful party. In addition, the name(s) of any or all defaulters to an arbitration award or appeal may be given by the Association to all its members, affiliated trade organisations or any third parties which the secretariat in its absolute discretion considers appropriate and all parties trading on the Association terms shall be deemed to have approved of such a course of action.

In the event of any new membership application from a company where non-fulfilment of an arbitration or appeal award has occurred, beyond 60 days of its issue, membership shall be refused or in the event of the company already being an existing member of the Association, this membership can be withdrawn with immediate effect.