

RULES OF ARBITRATION AND APPEAL

Any dispute arising out of a contract incorporating these 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, of England. Arbitrations shall be held in London or elsewhere (but without prejudice to the foregoing) if mutually 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 abide by these Rules and to agree with the Association to be 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 suitably qualified members of the Trade to act as arbitrators in any claim or dispute that may arise out of a contract made under the Terms and Conditions of the Association. A list of such arbitrators shall at all times be made available by the Secretary. The list shall show which members of the panel are, by their active trading in specific nuts or kernels, considered by the Board of Directors to be qualified to arbitrate in claims or disputes involving the quality and/or condition of those nuts or kernels (Quality Arbitrations). In disputes or claims not involving quality and/or condition, all members of the panel shall be considered equally competent to act (Technical Arbitrations). Every submission to arbitration shall be deemed to contain an undertaking by all parties not to take any legal proceedings against the arbitrators or umpire, or against the Association or its Officers in respect of any matter arising in the arbitration.

2. Quality/Condition Claims

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 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. In all cases 2 independently drawn sealed samples of 2 kilos each for nut kernels, or 4 kilos each for nuts in shell, representing the average of the parcel 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. 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. In all disputes, pending a settlement, 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.

3. **Appointment of Arbitrators**

- 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 umpire, 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 procure the independently drawn sealed samples and, if necessary, an inspection order.
 - b) In disputes other than those concerning quality, 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 other party to the contract of the arbitrator's name. The other party shall in turn nominate an arbitrator from the panel; this nomination to be made within 14 consecutive days of the first party's notification. If the second party fails to nominate an arbitrator within this period, then the first arbitrator shall be empowered to act as sole arbitrator but he may allow the second party a further period not exceeding 14 days to appoint their arbitrator. Thereafter in the absence of an appointment the Association shall write to the second party to obtain their appointment of arbitrator and should that fail the one appointed arbitrator shall proceed with the arbitration. The claimant must despatch in writing to both arbitrators or the sole arbitrator and to the respondent any submissions within 14 consecutive days of the date of appointment of his arbitrator. The respondent must send to both arbitrators or the sole arbitrator and to the claimant his submissions within 14 consecutive days of the receipt of the claimant's submissions. When both arbitrators have been nominated and signified their willingness to act, the arbitration shall take place on the basis of documents only. In the event that neither party requests a hearing within 14 consecutive days of receipt of closing submissions, the arbitrator(s) shall proceed to determine the dispute on the basis of written submissions alone. In the event that either party requests a hearing within 14 days of receipt of final submissions, or the appointed arbitrators are unable to agree an award, an umpire will be appointed by the Association. An umpire shall be appointed prior to any oral hearing taking place. If oral evidence is to be submitted the arbitrators shall advise both parties of the time, date and place when such oral evidence shall be heard. 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. The arbitrator(s) may, at their absolute discretion, extend the time limits mentioned in this paragraph if they think fit.
4. If either party to a quality dispute wishes to give evidence to the arbitrators in a written form, this evidence should be sent to the Secretary of the Association with a request that the evidence be passed to both arbitrators.

No party to arbitration may be represented by any member of the legal profession, nor may any member of the legal profession be present at any of the arbitration proceedings.

5. **Awards**

Awards made by arbitrator(s) shall be in writing on the Association's official award forms and shall give reasons for the award. The arbitrator(s), in addition to making the award, shall decide by which party the fees are to be paid. When either party has, prior to the arbitration, made a written offer to settle the dispute which the other party has rejected and subsequently arbitrators settle the dispute on terms which are not more favourable to the party who rejected the offer, then the fees may, at the arbitrator(s) discretion, be paid by the party who rejected the offer. In a dispute concerning quality and/or condition, where in the opinion of the arbitrators,

after giving due consideration to the “Fair Average Quality” of the crop concerned, the percentage of defective nuts or kernels is in excess to such an extent that the arbitrators consider that an allowance would not meet the case, they shall be entitled to award rejection.

6. An arbitration should take place and award be made within 35 consecutive days of the agreement of arbitrator(s) to act. If, in the opinion of the arbitrator(s), it is not practicable to make an award within this period then they may extend the time limit at their discretion.

7. **String Arbitrations**

In the event of a contract forming a part of a string of contracts which are, in all materials points, identical in terms except as to date and price, any arbitration for quality and/or condition 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 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.

8. **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. In the event that 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 fee of £500 shall be paid to the Association in connection with each arbitration by members.
- c) **Non-Member Fees.** Any party not being a member of the Association and being ultimately responsible for payment of the Association’s fee, shall pay a fee of £1,000 to the Association in place of paragraph b) above.
- d) **Travelling Expenses.** Where any arbitrator or umpire incurs travelling expenses in order to attend an 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 arbitrators have decided shall pay the arbitration fees.
- 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 arbitrators have decided shall pay the arbitration fees.

- f) **All Parties** claiming arbitration shall pay the Association's fee prior to arbitration proceedings taking place.

9. Taking Up of Awards

As soon as possible after making an award, the arbitrators, and umpire, if called upon, shall sign the award and return it to the Secretary of the Association. The Secretary shall immediately inform the claimant that the award is available upon payment of the arbitrator(s) fees. When the fees have been received by the Association, then the award will be dated and sent to the claimant and a copy sent to the other party. 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 the Award within what the Board of Directors considers to be a reasonable period of time, then the Respondent shall be entitled to do so. Until an award has been taken up, the contents of the award shall not be disclosed.

10. Appeals

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. Any appeal to the Board of Directors shall be made within 28 consecutive days of the date of the arbitration award and must be accompanied by the amount awarded, a deposit of £500 together with an amount equal to the fees paid to the arbitrators and umpire if applicable; this latter amount to be equally divided among the members of the Appeal Board. The deposit of £500 shall be refunded to the party appealing if the appeal is allowed, otherwise to pass to the funds of the Association. Any party not being a member of the Association shall pay a further fee of £250 in addition to the foregoing, such additional fee to pass to the funds of the Association. Where the deposit paid by the appellant is returned to that party, a fee of £500 (or £750 if a non member) will be paid to the Association by the other party.

A party wishing to appeal against an arbitration award must submit his claim in writing, together with accompanying papers, to the respondent party and the Secretary of the Association within 7 consecutive days of his notifying the Secretary of his wish to appeal. The respondent must send his submission and/or counterclaim to the appellant and the Secretary of the Association within 14 consecutive days of the receipt of the appellant's submission.

The Appeal Board may not take into consideration any new evidence, written or oral, not included in this exchange of submissions.

11. 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 Board. Neither party to the appeal shall be represented by a member of the legal profession unless, in the considered opinion of the 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 fees for the original arbitration have been received by the Association.

12. Arbitration and Appeal Decision

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 not 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.