

# RULES OF ARBITRATION AND APPEAL

## PREAMBLE

Any dispute arising out of a contract or contracts subject to these Rules, including any questions of law arising in connection therewith, shall be exclusively referred to arbitration in London (or without prejudice to the juridical seat elsewhere if so 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. FOSFA is the only body which has the authority to administer an arbitration arising from or out of these Rules.

Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of the Federation, is deemed 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 or appeal) for all fees and expenses incurred in connection with the arbitration or appeal, which said fees and expenses shall, upon notification by the Federation under the provisions of Rules 2(d), 6(a), 6(b) and 9, be and become a debt due to the Federation.

## 1. 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 together with the name of its appointed arbitrator to the other party (the respondent) and to the Federation 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 on FOB, Ex-tank, Ex-mill and Ex-store terms. In cases where the sample shall or may be a determinant of the outcome of the case the claimant shall despatch a sealed sample/s to the office of the Federation, where such sample/s shall be held at the disposal of the arbitrators. Samples to be submitted to the Federation with due despatch.
- (b) The party claiming arbitration in respect of claims other than quality and/or condition shall despatch the notice of claim together with the name of its appointed arbitrator 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 delivery or delivery of the goods on FOB, Ex-tank, Ex-mill and Ex-store contract terms and not later than one year after the last day of the contractual delivery period on any other terms.
- (c) For claims under Rule 1(a) and 1(b) the other party shall nominate an arbitrator and notify the name to the claimant and to the Federation within 30 consecutive days from receipt of the notice of claim.
- (d) Claims for arbitration shall be made by any means of rapid written communication to the other party, with copy to the Federation. All notices shall be under reserve for errors in transmission. Notices shall be passed on with due despatch by intermediate Buyers and Sellers. Any notice 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 these Rules. A copy of the contract/s out of which the dispute arose is to be sent to the Federation.
- (e) 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 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.
- (f) The claimant shall 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 30 consecutive days after the lodging of the claim submissions in accordance with the provisions of Rule 4(a) and 4(b). No interest shall be payable on any deposit made by any party to an arbitration under the provisions of these Rules.



## 2. APPOINTMENT OF ARBITRATORS

- (a) Each party shall appoint an arbitrator who shall have accepted the appointment. However, the two parties may by agreement appoint a sole arbitrator who shall have accepted the appointment.
- (b) 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 the dispute.
- (c) If the claimant has notified the respondent and the Federation in accordance with Rule 1(a) or 1(b) and the respondent fails to appoint an arbitrator within the time specified, or in the event that an arbitrator refuses to act, becomes incapable of acting or ineligible to act, or delays unduly, and the party who made the appointment omits to appoint a substitute, then the other party may apply to the Federation in accordance with Rule 2(d) for the appointment of an arbitrator to act on behalf of the party who failed to appoint an arbitrator or substitute as the case may be.
- (d) The Federation on receiving an application to appoint under Rule 2(c) shall charge the appropriate fee fixed by the Council. The Federation will notify the party who has failed to make an appointment or a substitution of its arbitrator, as the case may be, that the Federation intends to make such an appointment unless that party makes its own appointment within 14 consecutive days of notice being dispatched to it by the Federation. In the absence of an appointment being notified to the Federation within the stipulated period the Federation shall make such an appointment.
- (e) In cases where each party appoints an arbitrator or where the Federation makes an official appointment under Rule 2(d), the Federation will appoint a third arbitrator who will act as the chair of the tribunal. Such appointment to be notified by the Federation to the parties after receipt of the name of the respondent's arbitrator, or at the same time as the official appointment of respondent's arbitrator is declared, as the case may be.
- (f) Failure to notify the Federation as required by Rule 1(a), 1(b), 1(c), 2(a) or 2(c) shall not in itself debar a claim for arbitration nor prevent an arbitration proceeding but shall be taken into account by arbitrators in exercising discretion under Rule 11(a).

## 3. LAPSE OF CLAIM

If neither the claimant nor the respondent submits any documentary evidence or submissions to the arbitrators with the copy to the other party within the period of one year from the date of claim, then the claim for arbitration shall be deemed to have lapsed on expiry of the said period of one year 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. Such renewal shall be for a period of one year from the date of the giving of notice of renewal when it shall lapse again 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/s shall in their absolute discretion otherwise determine upon such terms as they may think fit.

## 4. PROCEDURE FOR ARBITRATIONS

All submissions, interlocutory applications and related correspondence referred to under this Rule shall be dispatched within any of the specified time limits - one copy to each of the appointed arbitrators; one copy to the other party; one copy to the Federation.

- (a) **Claims under Rule 1(a)** (quality and/or condition):
  - (i) The party claiming arbitration shall despatch in writing its submission together with supporting documents within 30 consecutive days of the appointment of the respondent's arbitrator.
  - (ii) If the respondent wishes to reply to the claimant's submission, such reply together with supporting documents shall be dispatched in writing within 30 consecutive days of the receipt thereof. Failing receipt of such reply, the arbitrator/s shall proceed with the arbitration without delay.



- (b) **Claims under Rule 1(b)** (other than on quality and/or condition):
- (i) The party claiming arbitration shall despatch in writing its submission together with supporting documents.
  - (ii) If the respondent wishes to reply, such reply together with supporting documents shall be dispatched in writing without delay. Failing receipt of such reply, the arbitrator/s shall proceed with the arbitration without delay.
- (c) If one party has submitted any document to the arbitrator/s which has not been submitted to the other party, then the arbitrator/s shall ensure that a copy shall be supplied to that party.
- (d) The arbitrator/s shall have the power to request further information or documents from either of the parties, to hear oral submissions or evidence and to make 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/s, having given reasonable notice may make an Award if such requests have not been complied with.
- (e) The holding of a hearing shall be at the absolute discretion of the arbitrator/s and who shall decide on its procedural conduct. If after application and determined by the arbitrator/s to hold a hearing the arbitrator/s shall give reasonable notice to the parties of the date, time and place for the hearing and when any oral evidence or additional submissions may be heard. Each party may state its case orally and/or in writing and may appear either personally or their represented by a listed representative in the appropriate section of a Trading, Full Broker or Full Non-Trading member of the Federation and duly appointed in writing but may not have present or be represented by counsel, solicitor or any member of the legal profession wholly or principally engaged in private legal practice, unless, at the sole discretion of the Tribunal, the case is of special importance, and in such cases the other party shall have the same rights.
- (f) If the claimant has not paid the deposit within the period of 30 days as set out at Rule 1(f) above, then the proceedings will be stayed until payment is received. In the event that the required deposit is not paid within a further 14 consecutive days after expiry of the period of 30 days allowed under Rule 1(f) the arbitration claim will be deemed to be withdrawn unless, on application to the arbitrator/s from the claimant or respondent, the arbitrator/s exercise their absolute discretion to re-admit the claim for determination.
- (g) At any time following the appointment of a sole arbitrator or the third arbitrator in accordance with the provisions of Rule 2(a) and 2(e), the arbitrator/s at their absolute discretion may require the claimant and/or the respondent to lodge an additional deposit with the Federation on account of the fees, costs, and expenses of the arbitration before proceeding. If, after expiry of 14 consecutive days from notification to the claimant or respondent of the further required deposit, such deposit has not been paid, the proceedings will be stayed until payment is received. In the event that the required deposit is not paid within 28 consecutive days of the deposit notification, the arbitration claim will be deemed to be withdrawn unless, on application to the arbitrator/s from the claimant or respondent, the arbitrator/s exercise their absolute discretion to re-admit the claim for determination.
- (h) If any party to an arbitration considers that the arbitrator/s 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/s to explain the reasons for the delay, who shall provide to the Federation an explanation within 7 days. If the Federation is not satisfied with the arbitrators' explanation the Federation shall fix a 7-day period in which the arbitrator/s is to take the next step required to be done in proceeding with the arbitration. Should the arbitrator/s 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/s to resign their position as arbitrator in that particular arbitration. The arbitrator/s shall be deemed to have resigned their position 14 consecutive days after despatch of the Federation's written requirement unless otherwise decided by the Federation.
- An arbitrator who is called upon to resign their position as arbitrator under this provision shall not be entitled to receive any remuneration in respect of their services provided in the particular arbitration in question unless otherwise decided by the Federation. Where an arbitrator resigns their position under this provision then the party who appointed the arbitrator shall appoint another eligible arbitrator within 14 days of the notice being dispatched in accordance with the provisions of Rule 2. If that party does not so appoint then the Federation shall make such an appointment and shall charge the party the appropriate fee fixed by the Council from time to time being in force.
- 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/s may rule on their own jurisdiction.
- (b) If the arbitrator/s agree that they have jurisdiction, they may either:
  - (i) issue a preliminary Award on jurisdiction, from which no appeal shall lie to a Board of Appeal, or
  - (ii) proceed with the arbitration without delay and draw up an Award in accordance with Rules 6(a) and 6(b) on both jurisdiction and the merits, but no appeal shall lie to a Board of Appeal on the issue of jurisdiction.
- (c) If the arbitrator/s agree that they have no jurisdiction they shall draw up an Award in accordance with Rules 6(a) and 6(b). Such decision shall be final and binding upon the parties subject to any right of appeal to a board of appeal pursuant to Rule 7.

## **6. PROCEDURE FOR ARBITRATION AWARDS**

- (a) Awards, which shall incorporate the reasons therefor, shall be in writing on the prescribed form of the Federation and the arbitrator/s shall have the power to assess and award their 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/s to lodge the original and one copy with the Federation who shall give notice to the parties named in the Award that the Award is at their disposal upon payment of the balance of the fees and expenses of the arbitration within 42 days of such notice. The Federation shall first call upon the Claimant to pay the outstanding balance. If payment is not received within 21 days from such notice, the Federation will call upon the Respondent to pay the outstanding balance within 7 days. If no payment is received within 28 consecutive days from such notice, the Federation shall proceed as per Rule 11(c). If after 42 days, no payment is received, the parties shall forfeit their right to appeal against the Award under Rule 7. On receipt of payment, the Federation shall date the Award and despatch the original Award to the party who has paid and send a copy to the other party. Such date shall be deemed the date on which the Award was made. Until payment has been made, the contents of the Award shall under no circumstances be divulged.
- (c) Should the contract form part of a string of contracts which are in all material points identical in terms, except as to the date and price, then:
  - (i) In any arbitration for quality and/or condition, as mentioned in Rule 1(a), 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, subject to the right of appeal as provided in these Rules, be binding on all the intermediate parties in the string and may be enforced by any intermediate party against its immediate contracting party as though a separate award has 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 its contract and all relevant information to the arbitrator/s. A separate Award shall be made in respect of each contract.

## **7. PROCEDURE FOR CLAIMING APPEAL AND TIME LIMITS**

- (a) Save as provided in Rule 5(b), any party to an Award of arbitration shall have the right to appeal provided that payment of the fees and expenses of the arbitration was made to the Federation within 42 days of the date of declaration as per Rule 6(b) and that notice of appeal is received by the Federation not later than 12.00 hours London Time on the 28th consecutive day after the date of the Award, in accordance with Rule 6(b).
- (b) The appellant when giving notice of appeal to the Federation shall at the same time send a copy to the other principal to the contract and arrange to pay to the Federation a deposit as prescribed by the Council of the Federation on account of fees, costs and expenses of the appeal, which is to be received by the Federation not later than 7 consecutive days after receipt of the notice of appeal.
- (c) A party wishing to cross appeal the same award of arbitration shall serve due notice within 7 days of the other party's lodging of its notice of appeal and arrange to pay to the Federation a second deposit as prescribed by the Council of the Federation on account of fees, costs and expenses of the cross appeal, which is to be received by the Federation not later than 7 consecutive days after receipt of the notice of cross appeal.



- (d) If due to currency regulations payment of either deposit is not possible within the 7 day time limit an extension of 14 consecutive days shall be granted for the payment of the deposit provided that the appellant or respondent, as the case may be, has produced satisfactory evidence from a bank that the application for the transfer of the deposit has been made.
- (e) Every notice given to a party to any string Award shall be passed on with due despatch by that party and such passing on, provided it is done with due despatch shall be deemed to be in compliance with the procedure for claiming appeal.
- (f) The appellant shall, within 21 days of lodging the appeal, provide the Federation and the other party with an outline of the reasons for appeal. If a cross appeal is lodged the respondent shall, within 21 days of lodging its cross appeal, provide the Federation and the other party with an outline of the reasons for cross appeal.
- (g) Upon receipt of Appellants' outline reasons for Appeal, Respondents shall, within 21 days, serve to the Federation and to Appellants, a concise, reasoned statement of their Response, together with reasons for any cross-Appeal.
- (h) If any cross-Appeal is lodged, Appellants shall have 14 days to exercise a right of reply.
- (i) Should it not be possible to perform any of the foregoing acts within the time limits stipulated under Rule 7(a) to (h), application may be made to the Federation for an extension of the time limit, which extension may be granted at the absolute discretion of the Federation.

## **8. PROCEDURE FOR APPOINTMENT OF BOARDS OF APPEAL**

- (a) The appeal shall be determined by a Board of Appeal consisting of five members appropriately appointed by the Federation from the Appeal Panel. No member of the Panel who, or whose company or firm, has any direct or indirect interest in the transaction in dispute or who has acted as arbitrator in the case, nor any member of the same company or firm to which the arbitrator belongs, shall be entitled to be appointed a member of the Board of Appeal.
- (b) In the case of illness or death, or refusal, or incapacity, or inability to act, of any member appointed to serve on a Board of Appeal, the Federation shall appoint a substitute from the Appeal Panel.
- (c) In the event of appeals lodged by more than one party in relation to the same Award, the Federation may consolidate such appeals for hearing by the same Board of Appeal.
- (d)
  - (i) Any objection to any member of a Board of Appeal on the ground that a member of the Board of Appeal was not eligible to serve must be made in writing and established to the satisfaction of the Council of the Federation before the hearing of the case has commenced.
  - (ii) If such objection is made the Federation, in its absolute discretion, shall have the power to appoint a substitute member or members from the Appeal Panel up to the commencement of the hearing.
  - (iii) No Award of a Board of Appeal shall be questioned or invalidated on the ground of any irregularity in the appointment of the Board of Appeal or any of its members or on the ground that any member of the Board of Appeal was not eligible to serve.

## **9. PROCEDURE AT APPEALS**

- (a) Each party may state its case orally and/or in writing and may appear either personally or be represented by a listed representative in the appropriate section of a Trading, Full Broker or Full Non-Trading member of the Federation and duly appointed in writing, but shall not be represented by or have present at the hearing of such appeal, Counsel or Solicitor, or any member of the legal profession wholly or principally engaged in private legal practice, unless, at the sole discretion of the Board of Appeal, the case is of special importance, and in such cases the other party shall have the same rights.
- (b) Not later than 21 days before the date set down for the hearing of an Appeal, Appellants shall, after due co-operation with Respondents, deliver to the Federation six sets of an agreed common bundle of documents, including any legal authorities relied upon, which are being cited by either party.
- (c) The Board of Appeal shall issue a reasoned Award signed by the Chairman on behalf of the Board and counter signed by the Secretary to the Board of Appeal after confirmation that the majority agree the Award. The Federation shall give notice to the parties named in the Appeal Award that the Award is at their disposal upon payment of the balance of the fees and expenses of the Appeal within 42 days of such notice. The Federation shall first call upon the Appellant to pay the outstanding balance. If payment is not received within 21 days from such notice, the Federation will call upon the Respondent to pay the outstanding balance within 7 days. If no payment is received within 28 consecutive days from such





notice, the Federation shall proceed as per Rule 11(c). On receipt of payment, the Federation shall date the Award and despatch the original Award to the party who has paid and send a copy to the other party. Such date shall be deemed the date on which the Award was made. Until payment has been made, the contents of the Award shall under no circumstances be divulged. The Award of the Board of Appeal shall be final and binding. Appeal Awards shall be in writing on the prescribed form of the Federation and the Board of Appeal shall have the power to assess and award their 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.

- (d) In respect of any String Award made by a Board of Appeal such String Award shall be binding on the first Sellers, the last Buyers, and 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.
- (e) The Board of Appeal shall have the power to require from time to time a further deposit/s to be made by either party and shall award the payment of appeal fees, costs, and expenses of, and incidental to, the appeal. If an Award is remitted to a Board of Appeal by Order of the Court the Board shall have the power to require a deposit to be made by the party/ies that made application to the Court on account of the fees, costs, and expenses of any hearing by the Board of submissions by the parties or of any meeting of the Board occasioned by such remission. No interest shall be payable on any deposit made by any party to an appeal under the provisions either of this Rule or Rule 7. If, after expiry of 14 consecutive days from notification to either party of the further required deposit, such deposit has not been paid, the appeal proceedings will be stayed until payment is received. In the event that the required deposit is not paid within 28 consecutive days of the deposit notification, the appeal will be deemed to be withdrawn unless, on application to the Board from the either party, the Board exercise their absolute discretion to readmit the appeal for determination.
- (f) If the appellant, on receiving from the Board of Appeal notice of the date fixed for the hearing of the appeal, requests a postponement of more than 14 days or at the first or any subsequent hearing of the appeal requests an adjournment, then in such events the Board of Appeal may at their absolute discretion direct that as a condition of granting a postponement or an adjournment all or any part of the money required by the terms of the award of arbitration to be paid by either party to the other shall be deposited in a bank (either in England or abroad) as the Board of Appeal may direct. Such money shall be held by such bank in an account in the name of the Federation and otherwise in such terms as the Board of Appeal directs. The Board of Appeal shall, where such money has been deposited, in their Award direct how and to which of the parties the amount so held shall be paid out. Provided that, if in the opinion of the Board of Appeal after hearing the parties, the appellant shall have delayed unduly the proceedings of its appeal, it shall after due warning and if the Board of Appeal so decides, be deemed to have withdrawn its appeal in which case the money on deposit (with interest, if any, less tax) shall immediately become due and payable to the party or parties entitled thereto under the terms of the Award of Arbitration.

## 10. WITHDRAWAL OF APPEALS

- (a) An appellant shall have the right at any time before the hearing of the appeal to withdraw its appeal subject to payment of such fees, costs, and expenses, if any, as the Federation or the Board of Appeal may determine.
- (b) In the event of such withdrawal as aforesaid any other party to an Award of Arbitration shall have a right of appeal against that award to the Federation in accordance with the provisions of Rule 6 save that the time limit for giving notice of appeal laid down in Rule 7(a) shall be 12.00 hours London time on the 21st consecutive day after the date of the Federation's notice to that party of the aforesaid withdrawal and thereafter comply with Rule 7(c) as regards the second deposit.

## 11. GENERAL

- (a) In the event of non-compliance with any of the time provisions in the 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 arbitrators or Board of Appeal referred to in these Rules, as the case may be, shall, in their absolute discretion, otherwise determine. Either party has a right of appeal against the arbitrators' decision, in which case the Board of Appeal have the same rights as the arbitrators under this clause.
- (b) 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 reason of the provisions of the contract) is to be considered to be carrying on business. A copy shall be delivered to the Federation.



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- (c) If any of the parties to the dispute do not pay the fees, costs, and expenses of the Arbitration or Appeal when called upon to do so by the Federation, the Federation shall call upon either party to pay. If either party fail to pay, within 28 consecutive days, in accordance with 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 or appeal held under these Rules shall be deemed to have consented to the Council taking such action.
- (d) In the event of any party to an arbitration or appeal held under these Rules neglecting or refusing to carry out or abide by an Award of arbitrators or Board of Appeal 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 or appeal shall be deemed to have consented to the Council taking such action.

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