



# ***Expedited Arbitration Procedure Rules No. 126***

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**GAFTA**  
**THE GRAIN AND FEED TRADE ASSOCIATION**  
**9 LINCOLN'S INN FIELDS, LONDON WC2A 3BP**  
post@gafta.com  
www.gafta.com

## **EXPEDITED ARBITRATION PROCEDURE RULES NO. 126**

*Any dispute arising out of a contract/s or arbitration agreement/s, which incorporates or refers to these Rules, shall exclusively be referred to Gafta arbitration. Gafta is the only body which has the authority to administer an arbitration arising from or out of its Rules. The Arbitrator will proceed to determine all issues, in accordance with the following provisions: -*

### **1. PRELIMINARY**

- 1.1 The provisions of the Arbitration Act 1996, and of any statutory amendment, modification or re-enactment thereof for the time being in force, shall apply to every arbitration under these Rules save insofar as such provisions are expressly modified by, or are inconsistent with, these Rules.
- 1.2 The juridical seat of the arbitration shall be, and is hereby designated pursuant to section 3 of the Arbitration Act 1996 as England.
- 1.3 There is no right of appeal to either Gafta or to the courts from this award which shall be final and binding and the parties hereby waive any such right of appeal or legal recourse insofar as any such waiver may be validly made.

### **2. PROCEDURE AND TIME LIMITS FOR CLAIMING ARBITRATION**

The Claimants shall serve on the Respondents a notice stating their intention to refer a dispute to arbitration, such notice to be served within the following time limits.

#### **2.1 When Samples are to be Examined by the Arbitrator**

- (a) In respect of disputes arising out of the "Rye Terms" clause not later than the 10th consecutive day after the date of completion of final discharge.
- (b) In other cases where samples are to be examined by the Arbitrator, not later than the 21<sup>st</sup> consecutive day after completion of loading or of delivery or of discharge or of unstuffing of the container, as the case may be.

#### **2.2 Other Disputes**

In respect of all other disputes relating to the sale of goods: -

- (a) arising out of CIF, CIP, C & F, C&F and similar shipment contract terms, not later than one year after (i) the expiry of the contract period of shipment, including extension if any, or (ii) the date of completion of final discharge of the ship at port of destination, whichever period shall last expire,
  - (b) arising out of FOB terms, not later than one year after (i) the date of the last bill of lading or (ii) the expiry of the contract period for presentation of the vessel, including extension if any, whichever period shall first expire,
  - (c) on any other terms, not later than one year after the last day of the contractual delivery, collection or arrival period, as the case may be.
- 2.3 No award by the Arbitrator shall be questioned or set aside on the ground that the claim was not made within the time limits stipulated in this Rule if the Respondents to the claim did not raise the matter in their submissions, so as to enable the Arbitrator to consider whether or not to exercise the discretion vested in him by Rule 9.

### **3. APPOINTMENT OF THE ARBITRATOR**

- 3.1 The dispute shall be heard and determined by the Arbitrator appointed either by agreement of the parties or by Gafta.

- 3.2 If there is no agreement on the identity of the Arbitrator within a period of 14 days from the request of either party, then either party may apply to Gafta for an Arbitrator to be appointed.
- 3.3 Applications to Gafta for the appointment of an Arbitrator shall be accompanied by: -
- (a) prima facie evidence that the parties have entered into a contract subject to these Rules,
  - (b) copies of the notices (i) stating their intention to refer a dispute to arbitration and (ii) stating that an application will be made to Gafta for the appointment of an Arbitrator,
  - (c) the appropriate fee ruling at the date of application,
- 3.4 Upon an application being made to Gafta under Rule 3.3 for the appointment of an Arbitrator, Gafta will make the appointment and will give notice of the name of the Arbitrator appointed to the parties.
- 3.5 An Arbitrator appointed under these Rules shall be a Gafta Qualified Arbitrator and shall not be interested in the transaction nor directly interested as a member of a company or firm named as a party to the arbitration, nor financially retained by any such company or firm, nor a member of nor financially retained by any company or firm financially associated with any party to the arbitration.
- 3.6 An appointment of an Arbitrator under these Rules shall be valid and effective for all purposes provided that he has signified his acceptance of the appointment to the parties, or to Gafta, as the case may be, at any time prior to the discharge of any arbitral function.
- 3.7
- (a) If an Arbitrator dies, refuses to act, resigns, or becomes incapable of acting, and/or refuses to stand down in circumstances where, in Gafta's reasonable opinion, it would be appropriate for him to do so, or if he fails to proceed with the arbitration, or is found to be ineligible, or his authority is revoked by Gafta pursuant to the Gafta Rules and Regulations and Code of Conduct for Qualified Arbitrators, the parties, or Gafta as the case may be, may appoint a substitute arbitrator.
  - (b) If the parties fail, contrary to (a) above, to appoint a substitute Arbitrator and to give notice thereof within 7 consecutive days of learning of the Arbitrator's death, refusal to act, resignation, incapacity, failure to proceed, finding of ineligibility or revocation of authority, as the case may be, Gafta shall, upon the application of either party, have the power to appoint a substitute Arbitrator.

#### **4. ARBITRATION PROCEDURE**

- 4.1 The Claimants shall deposit with Gafta such sum as Gafta considers appropriate on account of the costs, fees and expenses of the arbitration. If the deposit is not received by Gafta by 12 noon on the 30th consecutive day after the date on which it was called for, the application shall be deemed to be waived and barred.
- 4.2 Not later than 7 business days from receipt of the notice of the appointment of the Arbitrator, the Claimants shall submit a clear and concise statement of their case and supporting documents to Gafta and to the Respondents.
- 4.3 Not later than 7 business days from receipt of the Claimants' statement and documents, the Respondents shall submit a clear and concise statement of their case and supporting documents to Gafta and to the Claimants.
- 4.4 The Claimants have 7 business days from receipt of the Respondents' case to respond in writing to the Respondents and to Gafta on any new points which may have been raised.
- 4.5 The Arbitrator has absolute discretion to vary the timetable and Gafta will notify the Parties accordingly.
- 4.6 If, at any time during the course of the arbitration, the Arbitrator considers that the case before him is one that contains more complicated issues than he, in his absolute discretion, believes fall within the scope of these Rules, he will proceed with the arbitration, but will notify Gafta of the fact. Gafta may then re-assess the costs and fees laid down for the arbitration and notify the Parties accordingly.

- 4.7 The Arbitrator may grant an oral hearing if requested by a party to do so, on such terms and conditions as is appropriate, or decide whether in the circumstances of the case it is necessary to convene one. In the event that there is to be an oral hearing, the date, time and place will be arranged by Gafta at the offices of Gafta or elsewhere as agreed by the Parties in writing. The form in which the parties can join an oral hearing is at the Arbitrator's absolute discretion. The parties may be represented by one of their employees, or by a Gafta Qualified Arbitrator or other representative, but they may not be represented by a solicitor or barrister, or other legally qualified advocate, wholly or principally engaged in private practice, unless legal representation is expressly agreed between the parties. The Arbitrator may call upon either party to deposit with Gafta such sum or sums as the Arbitrator considers appropriate on account of fees, costs and expenses.

## **5. Issues of Substantive Jurisdiction**

- 5.1 The Arbitrator may rule on his own jurisdiction, that is, as to whether there is a valid arbitration agreement, whether the Arbitrator has been properly appointed and what matters have been submitted to arbitration in accordance with the arbitration agreement. In the event that the Arbitrator determines that he has no jurisdiction, Gafta will notify the parties of the Arbitrator's decision, which shall be final and binding.

## **6. AWARDS OF ARBITRATION**

- 6.1 All awards shall be in writing and shall be signed by the Arbitrator. The Arbitrator shall have the power to assess and award the costs of the case and also the fees and/or expenses incurred by the Arbitrator. The Arbitrator will assess and award costs at the conclusion of the arbitration. The fees and/or expenses of Gafta shall be those for the time being in force as prescribed by the Council of Gafta and any non-member fee shall be for the account of the non-member.
- 6.2 The Arbitrator shall submit the award to Gafta. Upon receipt of the signed award Gafta shall give notice to the parties named in the award that the award is at their disposal upon payment of the fees and expenses incurred by the Arbitrator and Gafta. Gafta shall first call upon the Claimants to pay any outstanding balance. If payment is not received by Gafta within 21 days from such notice, Gafta shall call upon the Respondents to take up the award. Upon receipt of the fees and/or expenses, Gafta shall date and issue the award to the parties, which date shall for the purpose of the Arbitration Act 1996 and these Rules be deemed to be the date on which the award was made.
- 6.3 No award shall be questioned or invalidated on the ground that an Arbitrator was not qualified to act unless such objection was made at the outset of the arbitration.

## **7. COSTS, FEES AND EXPENSES**

- 7.1 Unless expressly agreed otherwise, in writing, each party shall bear all their own costs including their own legal and representation costs. Each party engaging in an arbitration pursuant to these Rules, whether or not a Member of Gafta, is deemed thereby to agree to abide by these Rules and to agree with Gafta to be liable to Gafta (jointly and severally) for all fees and expenses incurred in connection with the arbitration or any remissions, which said fees and expenses shall, upon notification by Gafta be and become a debt due to Gafta.

## **8. NOTICES**

- 8.1 All notices to be served on the parties pursuant to these Rules shall be served in legible form by E-mail, or by other mutually recognised electronic method of rapid communication. For the purposes of time limits, the date of despatch shall, unless otherwise stated, be deemed to be the date of service. Service on the brokers or agents named in the contract shall be deemed proper service under these Rules. So far as concerns such notices, this Rule over-rides any other provisions of the contract.
- 8.2 All Notices, Proceedings and Documents to be served on the Arbitrator shall be given by the means specified in Rule 8.1 to Gafta's offices and when so given shall be deemed to be properly served. For the purposes of any time limits receipt of such notices by the Association shall be deemed to be the date of receipt by the Arbitrator.

## **9. NON-COMPLIANCE WITH TIME LIMITS AND RULES**

The following shall apply if any time limit(s) imposed by these Rules is (are) not complied with:-

When such matters are raised at the arbitration as a defence to the arbitration claim, the Arbitrator in his absolute discretion may admit a claim if satisfied that the circumstances were outside the reasonable contemplation of the parties when they entered into the contract and that it would be just to extend the time, or when the conduct of one party makes it unjust to hold the other party to the strict terms of the time limit in question. Otherwise the Arbitrator may determine that the claim is waived and barred and refuse to admit it.

## **10. DEFAULTERS**

- 10.1 In the event of any party to an arbitration held under these Rules neglecting or refusing to carry out or abide by the Award of the Arbitrator made under these Rules, the Council of Gafta may post on the Gafta Notice Board, Web-site, and/or circulate amongst Members in any way thought fit notification to that effect. The parties to any such arbitration shall be deemed to have consented to the Council taking such action as aforesaid.
- 10.2 In the event that parties do not pay the costs, fees or expenses of the arbitration when called upon to do so by Gafta in accordance with these Rules, the Council may post on the Gafta Notice Board, Web-site, and/or circulate amongst Members in any way thought fit notification to that effect. The parties to any such arbitration shall be deemed to have consented to the Council taking such action as aforesaid.
- 10.3 Any Party to an arbitration, who makes an application, to Gafta, to place the other party in default of this clause [10], shall be prohibited from doing so, if, at the time of the application, they are included on the list of Defaulters as published from time to time by Gafta.

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