

Effective for Charter Parties dated from 1st June 2014



Arbitration Rules No.127

For use with Charter Parties or Other Forms of Maritime Transport

Copyright

Printed in England and issued by

GAFTA

**THE GRAIN AND FEED TRADE ASSOCIATION
9 LINCOLN'S INN FIELDS, LONDON WC2A 3BP**

post@gafta.com

www.gafta.com

INDEX

1. PRELIMINARY
2. PROCEDURE AND TIME LIMITS FOR CLAIMING ARBITRATION
3. APPOINTMENT OF THE TRIBUNAL
4. ARBITRATION PROCEDURE
5. CONSOLIDATED ARBITRATIONS AND CONCURRENT HEARINGS
6. ISSUES OF SUBSTANTIVE JURISDICTION, PROVISIONAL ORDERS AND AWARDS ON DIFFERENT ASPECTS
7. AWARDS OF ARBITRATION
8. LEGAL REPRESENTATION AND COSTS
9. TRIBUNAL'S OWN EVIDENCE
10. FEES AND EXPENSES
11. NOTICES
12. NON-COMPLIANCE WITH TIME LIMITS AND RULES
13. DEFAULTERS

References to the masculine include references to the feminine and also to companies, corporations or other legal persons.

ARBITRATION RULES NO.127
For use with Charter Parties or Other Forms of Maritime Transport

Any dispute arising out of a charter-party, which incorporates these Rules, shall be referred to arbitration 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 4 of the Arbitration Act 1996 as, England.

1:3 Any oral hearing fixed in an arbitration shall take place at the registered offices of The Grain and Feed Trade Association (GAFTA), London, or (but without prejudice to Rules 1:1 and 1:2 above), elsewhere if agreed by the parties in writing.

2. PROCEDURE AND TIME LIMITS FOR CLAIMING ARBITRATION

The claimant shall serve on the respondent a written notice stating his intention to refer a dispute to arbitration within 12 months of the last day of discharge, or in the case of non-performance, from the date of the charter-party.

3. APPOINTMENT OF THE TRIBUNAL

The dispute shall be heard and determined by a tribunal of three arbitrators (appointed in accordance with Rule 3:2) or, if both parties agree, by a sole arbitrator (appointed in accordance with clause 3:1). The time limits imposed by this Rule for the appointment of the tribunal shall run from the date of service pursuant to Rule 2 of a notice referring a dispute to arbitration.

3:1 Procedure for the Appointment of a Sole Arbitrator

(a) If he requires the appointment of a sole arbitrator the claimant shall, not later than the 9th consecutive day after service of the notice referring a claim to arbitration, serve a notice on the respondent seeking his agreement to the appointment of a sole arbitrator by GAFTA.

(b) Not later than the 9th consecutive day after service of the notice referred to in (a) above, the respondent shall either; (i) serve a notice on the claimant stating that he agrees to the appointment of a sole arbitrator by GAFTA, or (ii) appoint an arbitrator to a tribunal of three arbitrators and serve on the claimant a notice of the arbitrator so appointed, in which case Rule 3:2(c) shall apply.

(c) Where the parties have agreed to the appointment of a sole arbitrator by GAFTA, the Association shall then appoint an arbitrator on receipt of the first statements and evidence submitted in accordance with Rule 4, or, where interlocutory or interim decisions are required of the tribunal, upon the application of either party.

3:2 Procedures for the Appointment of a Tribunal of Three Arbitrators

(a) The claimant shall not later than the 9th consecutive day after service of the notice referring a claim to arbitration appoint an arbitrator and serve a notice on the respondent of the name of the arbitrator so appointed.

(b) The respondent shall, not later than the 9th consecutive day after service of the notice with the name of the claimants' arbitrator, appoint a second arbitrator and serve a notice on the claimant

of the name of the arbitrator so appointed.

(c) If the respondent does not agree to the appointment of a sole arbitrator and has instead appointed an arbitrator and given written notice thereof pursuant to Rule 3:1 (b), the claimant shall not later than the 9th consecutive day after service of such notice of appointment, appoint a second arbitrator and serve a notice on the respondent of the name of the arbitrator so appointed.

(d) Where two arbitrators have been appointed, GAFTA shall appoint a third arbitrator on receipt of the first statements and evidence submitted in accordance with Rule 4, or, where interlocutory or interim decisions are required of a tribunal, upon the application of either party. The third arbitrator shall be the chairman of the tribunal so formed and his name shall be notified to the parties by GAFTA.

3:3 Appointments of Arbitrators by GAFTA

If either party fails to appoint an arbitrator or to give notice thereof within the above time limits, the other party may apply to GAFTA for the appointment of an arbitrator. Notice of such application must be served on the party who has failed to appoint.

Where the claimant has already sought the respondent's agreement to the appointment of a sole arbitrator pursuant to Rule 3:1 then GAFTA will appoint a sole arbitrator. Where either party has already appointed an arbitrator, pursuant to Rule 3:1 (b) or Rule 3:2, then GAFTA will appoint the second arbitrator of the tribunal.

3:4 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 to the other party (i) claiming arbitration and (ii) stating that an application has been made to GAFTA for the appointment of an arbitrator,
- (c) the appropriate fee ruling at the date of application.

3:5 Upon applications being made to GAFTA under Rule 3 for the appointment(s) of an arbitrator(s), GAFTA will make the appointment(s) and will give notice of the name(s) of the arbitrator(s) appointed to the parties.

3:6 Any party making an application to GAFTA for the appointment of an arbitrator, may be required by GAFTA to pay a deposit of such sum as it may require on account of any fees and expenses thereafter arising.

3:7 An arbitrator appointed under these rules shall be a Qualified Maritime Arbitrator Member of the GAFTA, 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.

3:8 An appointment of an arbitrator shall be valid and effective for all purposes provided that he has signified his acceptance of the appointment to the party appointing him, or to GAFTA, as the case may be, at any time prior to the discharge of any arbitral function

3:9 (a) If an arbitrator dies, refuses to act, resigns, or becomes incapable of acting, 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 Association's Rules and Regulations, the party, or GAFTA as the case may be, who originally appointed that arbitrator shall forthwith appoint a substitute and serve notice thereof on the other party.

(b) If a party fails, contrary to (a) above, to appoint a substitute arbitrator and to give notice thereof within 5 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 claimant shall draw up clear and full submissions of his case, which, together with a copy of the contract and any supporting documents shall be served as set out in Rule 4.4. The Claimant shall deposit with GAFTA such sum, as GAFTA considers appropriate on account of the costs, fees and expenses of the arbitration.

4:2 The respondent shall, on receipt of the claimant's case and documents, draw up a clear and full defence submissions (and counterclaim, if any) which, together with any supporting documents, shall be served as set out in Rule 4.4.

4:3 The claimant may submit further written comments and/or documents in reply, such to be served as set out in Rule 4.4.

4:4 All submissions and evidence shall be served by sending them to the other party, with copies to GAFTA. In the case of a sole arbitrator 2 sets, or in the case of a tribunal of three arbitrators, 4 sets of statements and evidence shall be delivered to GAFTA. Failure to send all sets to GAFTA will render the party responsible liable for the costs of copying such documents for forwarding to the arbitrators.

4:5 The tribunal may vary or depart from the above procedure in order to give each party a reasonable opportunity of putting his case and dealing with that of his opponent, and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

4:6 Upon receipt of the deposit as per Rule 4:1 the timetable for the proceedings, including any steps to be taken pursuant to Rule 4 and/or determined by the tribunal will be advised to the parties by GAFTA. It shall be the duty of the tribunal to ensure the prompt progress of the arbitration, including the making of orders where appropriate. Any delay in the proceedings may be notified to GAFTA.

4:7 Nothing in this Rule shall prevent the respondent from delivering his statement and documentary evidence before receiving documents/statements from the claimant.

4:8 The Tribunal may at its discretion grant an oral hearing at the request of either party 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. In which event 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. The tribunal may call upon either party to deposit with GAFTA such sum or sums as the tribunal considers appropriate on account of fees, costs and expenses.

4:9 Where no oral hearing is to take place members of a three arbitrator tribunal need not meet in person but may communicate with each other by post, telephone, fax and e-mail in order to discuss the parties' submissions and to arrive at a decision of the dispute, always without prejudice to the requirement in Rule 9:1 below that all three arbitrators shall sign the award.

4:10 If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay to GAFTA the tribunals and the Association's costs, fees and expenses.

5. CONSOLIDATED ARBITRATIONS AND CONCURRENT HEARINGS

If all parties concerned expressly agree, the tribunal may conduct arbitral proceedings concurrently with other arbitral proceedings, and, in particular, concurrent hearings may be held, but separate awards shall be made pursuant to each contract.

6. ISSUES OF SUBSTANTIVE JURISDICTION, PROVISIONAL ORDERS AND AWARDS ON DIFFERENT ASPECTS

6:1 Issues of Substantive Jurisdiction

(a) The tribunal may rule on its own jurisdiction, that is, as to whether there is a valid arbitration agreement, whether the tribunal is properly constituted and what matters have been submitted to arbitration in accordance with the arbitration agreement.

(b) In the event that the tribunal determines it has no jurisdiction, GAFTA will notify the parties of the tribunal's decision. Such decision shall be final and binding upon the parties. GAFTA will invoice the claimant for any costs, fees and expenses incurred. In the event that the tribunal determines that it has jurisdiction there will be no appeal against that decision.

6:2 Provisional Orders

The tribunal may decide at any time to order on a provisional basis any relief, which it would have power to grant in a final award.

6:3 Awards on Different Aspects

Where the tribunal decides during the course of an arbitration to make an award dealing finally with one or more aspects of the dispute, but which leaves to be decided by it other aspect(s) of the dispute, it may make an award which shall be final and binding as to the aspect(s) with which it deals.

7. AWARDS OF ARBITRATION

All awards shall be in writing and shall be signed by the sole arbitrator or, in the case of an award made by a three-man tribunal, by all three arbitrators. The tribunal shall have the power to assess and award the costs of and connected with the reference, including GAFTA's fees and/or expenses (which shall be those for the time being in force as prescribed by the Council) and also the fees and/or expenses incurred by the tribunal. The tribunal will assess and award costs at the conclusion of the arbitration.

8. REPRESENTATION COSTS

8:1 The parties may expressly agree in writing that they may engage legal representatives (i.e. a solicitor and a barrister, or other legally qualified advocate, or advisor, wholly or principally engaged in private practice), to represent them in the arbitration proceedings and to appear on their behalf at any oral hearings. The tribunal shall determine the recoverable costs of engaging legal representatives.

8:2 Where there is no such agreement between the parties they are nevertheless free to engage legal representatives to represent them in the written proceedings but not to appear on their behalf at oral hearings. The costs of engaging legal representatives in such circumstances shall not be recoverable even if claimed.

8:3 In any event, an instructed representative is obliged to provide proof of identity of their client's company and evidence demonstrating they are instructed to act by the party in the arbitration proceedings.

8:4 Unless expressly agreed otherwise, in writing, each party shall bear all their own costs.

9. TRIBUNAL'S OWN EVIDENCE

If at any time prior to the close of the proceedings the tribunal deem it appropriate, it may take steps to ascertain the facts and the law on its own initiative, provided that both parties are given reasonable opportunity to comment on and/or provide evidence in response.

10. FEES AND EXPENSES

Each party engaging in an arbitration pursuant to these Rules, whether or not a Member of the Association, is deemed thereby to agree to abide by these Rules and to agree with GAFTA to be liable to GAFTA (jointly

and severally with the other parties to the arbitration) 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 the Association.

11. NOTICES

11:1 Service on parties

All notices to be served on the parties pursuant to these Rules shall be served by letter, telex, telegram or by other method of rapid written 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 charter-party shall be deemed proper service under these Rules. So far as concerns such notices, this Rule over-rides any other provisions of the contract.

11:2 Service on Tribunals

Unless the tribunal otherwise directs, all notices, proceedings and documents to be served on arbitrators pursuant to these Rules shall be served by letter, telex, telegram or other method of rapid written communication on the Secretary of the Association at GAFTA's offices. For the purposes of any time limits receipt of such notices by the Association shall be deemed to be the date of service.

11:3 Computation of Time

Where these Rules require service not later than a specified number of consecutive days after a specified date or occurrence, that specified date or occurrence shall not count as one of the consecutive days.

12. NON-COMPLIANCE WITH TIME LIMITS AND RULES

If any time limit or provisions imposed by these Rules are not complied with then, when such matters are raised at the arbitration as a defence to the arbitration claim, the tribunal in its 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 tribunal may determine that the claim is waived and barred and refuse to admit it.

13. DEFAULTERS

13:1 In the event of any party to an arbitration held under these Rules neglecting or refusing to carry out or abide by a final award of the tribunal made under these Rules, the Council of the Association may post on GAFTA's Notice Board 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.

13:2 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 GAFTA's Notice Board 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.

Effective for Charter Parties dated from 1st June 2014