



# *Arbitration Rules No.125*

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**GAFTAGafta**

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## ARBITRATION RULES NO. 125

Any dispute arising out of a contract or arbitration agreement, which incorporates or refers to these Rules, shall be referred to arbitration, and arbitrator(s) or board of appeal, as the case may be, will proceed to determine all issues put before them, 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 and/or appeal 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 a place designated by~~ The Grain and Feed Trade Association (~~GAFTA~~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 notice stating his intention to refer a dispute to arbitration within the following time limits. (The appointment of arbitrators shall be in accordance with Rule 3).

#### 2.1 ~~Disputes as to Quality and/or Condition~~ When Samples are to be Examined by Arbitrators

- (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. (See Rule 6).
- (b) In other cases where samples are to be examined by the arbitrators, 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. In respect of claims arising out of certificates of analysis in respect of which allowances are not fixed by the terms of the contract, not later than the 21<sup>st</sup> consecutive day after the date on which the claimant receives the final certificate of analysis.
- ~~(c) In respect of all other quality and/or condition disputes, not later than the 21<sup>st</sup> consecutive day after the date of completion of final discharge, or delivery, or the unstuffing of the container(s), 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&O 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 of delivery, 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 Amounts Payable**

Irrespective of the time limits in Rule 2.2 (a), (b) and (c) above, in the event of non-payment of amounts payable, either party may notify the other that a dispute has arisen and, within 60 consecutive days from the date of that notice, appoint an arbitrator or apply to Gafta for an appointment of an arbitrator, not later than 60 consecutive days from the notice that a dispute has arisen as provided for in the Payment Clause of the contract.

~~2.34~~ No award by the tribunal shall be questioned or set aside on appeal or otherwise on the ground that the claim was not made within the time limits stipulated in this Rule if the respondent to the claim did not raise the matter in their submissions, so as to enable the tribunal to consider whether or not to exercise the discretion vested in it by Rule 21.

### **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). This ~~R~~rule is without prejudice to Rule 6, which governs the appointment of the tribunal in relation to disputes arising out of the Rye Terms clause, and Rule 5.3, which governs the appointment of a tribunal for examination of samples.

#### **3.1 Procedure for the Appointment of a Sole Arbitrator**

- (a) If he requires the appointment of a sole arbitrator the claimant shall, before expiry of the time limit for claiming arbitration, serve a notice on the respondent seeking his agreement to the appointment of a sole arbitrator by ~~GAFTA~~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~~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, or where the respondent has not responded to the claimant's notice under 3.1(a) above, or where the respondent has not agreed to a sole arbitrator but has not appointed an arbitrator, GAFTA Gafta shall 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 before the expiry of the time limit for claiming arbitration appoint an arbitrator and serve a notice on the respondent of the name of the arbitrator so appointed, or apply to ~~GAFTA~~Gafta for the appointment of an arbitrator on ~~their~~its behalf and serve a copy of the application on the respondent.
- (b) The respondent shall, not later than the 9th consecutive day after service of the notice of the name of the claimant's 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-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 ~~GAFTAGafta~~.

**3.3 Procedures for the Appointments of Arbitrators by ~~GAFTAGafta~~.**

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-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-Gafta~~ will 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 appoint a sole arbitrator. Where either party has already appointed an arbitrator, pursuant to Rule 3.1(b) or Rule 3.2, then ~~GAFTA-Gafta~~ will appoint the second arbitrator of the tribunal.

**3.4 Applications to ~~GAFTA-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) claiming arbitration and (ii) stating that an application ~~has~~ will ~~been~~ made to ~~GAFTA-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-Gafta~~ under Rule 3 for the appointment(s) of an arbitrator(s), ~~GAFTA-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-Gafta~~ for the appointment of an arbitrator, may be required by ~~GAFTA-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 ~~GAFTA-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.**

**3.8 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 ~~GAFTAGafta~~, 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 the ~~GAFTA-Gafta~~ pursuant to the ~~GAFTA-Gafta~~ Rules and Regulations and Code of Conduct for Qualified Arbitrators, the party, or ~~GAFTA-Gafta~~ as the case maybe, 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-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-claimant~~ shall deposit with ~~GAFTA-Gafta~~ such sum as ~~GAFTA-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 60th consecutive day of the date on which it was called for, the application shall be deemed to be waived and barred. Time limits as per Rule 2 to apply.
- 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~~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~~Gafta. All submissions and evidence are to be in English or with English translations. 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~~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~~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 ~~t~~Tribunal may grant an oral hearing if requested by a party to do so, on such terms and conditions as it deems 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~~Gafta. The form in which the parties can join an oral hearing is at the tribunal's discretion. Tribunal members must attend an oral hearing. In which event tThe parties may be represented by one of their employees, or by a ~~GAFTA-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-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 or other appropriate means 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 threethe chairman arbitrators~~ shall sign the award.
- 4.10 **Lapse of Claim**  
If neither party submits any documentary evidence or submissions as set out in this Rule or as ordered by the tribunal, within 1 year from the date of the notice claiming arbitration, then, the claimant's claim shall be deemed to have lapsed on the expiry of the said period of 1 year unless before that date the

claim is renewed:

- (a) by a notice served by either party on the other, such notice to be served during the 30 consecutive days prior to the expiry date, or
- (b) by the service of documentary evidence or submissions by either party,

in which case the claim and counterclaim are each renewed for a further year.

The claim may be thus renewed for successive periods of 1 year, but not to exceed more than 6 years from the date of the first notice served in accordance with Rule 2. Wherever a claim is renewed any counterclaim is also deemed to be renewed.

- 4.11** 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~~Gafta the tribunal's and ~~GAFTA~~Gafta's costs, fees and expenses.

## **5. SAMPLES**

- 5.1** If either party wish to submit samples for examination by the tribunal, those samples shall be drawn, sealed and despatched to ~~GAFTA~~Gafta in accordance with the provisions of the ~~GAFTA~~Gafta Sampling Rules No. 124, no later than 21 consecutive days after the date of completion of discharge or of the unstuffing of the container or the date the sample was taken, as the case may be, and shall be held at the disposal of the tribunal.

- 5.2** As soon as possible after receipt (and if necessary prior to the completion of the exchange of submissions and documents pursuant to Rule 4 and/or the order of the tribunal), the samples shall be examined by the tribunal. ~~In particular, In the case of claims arising out of the "rye terms" clause, the samples shall be examined not later than 21 consecutive days after the date of completion of final discharge of the ship at port of destination.~~

- 5.3** Upon the joint application of both parties and at their expense, ~~GAFTA~~Gafta may arrange for the examination of the ~~contract goods samples~~ to take place at the ~~relevant place agreed by the parties port of destination,~~ by ~~the tribunal a sole arbitrator or (in the case of a dispute arising out of the "rye terms" clause) three arbitrators, such arbitrator or arbitrators~~ to be appointed by ~~GAFTA~~Gafta. This provision does not over-ride the parties' obligations to take, seal and despatch samples where required by the ~~GAFTA~~Gafta Sampling Rules No. 124. The tribunal so appointed shall determine all matters in dispute between the parties.

- 5.4** All samples sent to ~~GAFTA~~Gafta for arbitration, testing and/or other purposes shall become and be the absolute property of ~~GAFTA~~Gafta.

## **6. ARBITRATION PROCEDURE FOR CLAIMS ARISING OUT OF THE "RYE TERMS" CLAUSE**

- 6.1** When the claimant has served on the respondent notice of its intention to refer the dispute to arbitration in accordance with Rule 2.1(a) he shall send a copy of the notice to ~~GAFTA~~Gafta, together with sufficient information to identify the samples relating to the claim.

- 6.2** Notwithstanding anything to the contrary in these Rules, upon receipt of the notice as above, ~~GAFTA~~Gafta shall appoint a tribunal of three arbitrators.

- 6.3** Any documentary submissions or evidence to be submitted by the parties shall be provided in accordance with Rule 4.

- 6.4** An award made pursuant to this Rule shall be final and binding and no appeal shall lie to a board of appeal.

## 7. STRING ARBITRATIONS - CONSOLIDATED ARBITRATIONS AND CONCURRENT HEARINGS

### 7.1 ~~Quality and Condition~~

If a contract forms part of a string of contracts which contain materially identical terms (albeit that the price may vary under each contract), ~~the tribunal may hold a single arbitration to determine determining the a~~ dispute ~~as to quality and/or condition may be held~~ between the first seller and the last buyer in the string as though they were parties who had contracted with each other, provided all the parties in the string of contracts agree to it in writing.

Any award made in such proceedings shall, subject only to any right of appeal pursuant to Rule 10, be binding on all the parties in the string and may be enforced by an intermediate party against his immediate contracting party as though a separate award had been made pursuant to each contract.

### 7.2 ~~Other Cases~~

~~In all other cases, if all parties concerned expressly agree, the~~ In the absence of an agreement from all the parties involved, the tribunal ~~has the right to may~~ conduct arbitral proceedings concurrently with other arbitral proceedings, and, in particular, concurrent or consolidated hearings may be held, but separate awards shall be made pursuant to each contract.

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

### 8.1 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-Gafta~~ will notify the parties of the tribunal's decision. Such decision shall be final and binding upon the parties subject to any right of appeal to a board of appeal pursuant to Rule 10. ~~GAFTA-Gafta~~ will invoice the claimant for any costs, fees and expenses incurred. In the event that the tribunal determines that it has jurisdiction, no appeal shall lie to a board of appeal.
- (c) If the board of appeal upholds the tribunal's determination that it has no jurisdiction, the board of appeal shall order accordingly and ~~GAFTA-Gafta~~ shall notify the parties and the tribunal and will invoice the appellants for any costs, fees and expenses incurred.
- (d) If the board of appeal reverses the tribunal's determination that it has no jurisdiction, the board of appeal shall order accordingly, and ~~GAFTA-Gafta~~ shall notify the parties and the tribunal, and shall order that the dispute be referred to arbitration afresh, whereupon: -
  - (i) The dispute shall be deemed to be one arising out of a contract embodying these Rules.
  - (ii) The tribunal formerly appointed shall thereupon cease to act and shall not be re-appointed when the dispute is referred as aforesaid.
  - (iii) The provisions of Rule 3 shall apply, the time limits for appointment running from the date of the board of appeal's order.
  - (iv) The board of appeal may in its absolute discretion extend the time limits in these Rules, and no objection that time has expired shall be taken if the requirements of Rules were previously complied with.

### 8.2 Provisional Orders



Where the tribunal decides at any time to order on a provisional basis any relief which it would have power to grant in a final award, no appeal shall lie to a board of appeal until the tribunal has issued a final award determining the issues between the parties.

### 8.3 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 the tribunal 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, subject to any right of appeal pursuant to Rule 10.

## 9. AWARDS OF ARBITRATION

9.1 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 chairman. The tribunal shall have the power to assess and award the costs of and connected with the reference and also the fees and/or expenses incurred by the tribunal. The tribunal will assess and award costs at the conclusion of the arbitration. The fees and/or expenses of GAFTA-Gafta shall be those for the time being in force as prescribed by the Council of GAFTA-Gafta and any non-member fee shall be for the account of the non-member.

9.2 The tribunal shall, on the application of either party, made before the arbitration award is made, have the power to extend the time for appealing in any case in which it considers it just or necessary so to do. Any such extension must be stated in the award.

9.3 The tribunal shall submit the award to GAFTAGafta. Upon receipt of the signed award GAFTA-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 tribunal and GAFTAGafta. ~~Gafta shall first call upon the claimant to pay any outstanding balance.~~ If payment is not received by GAFTA-Gafta within 214 days from such notice, GAFTA-Gafta shall ~~may~~ call upon ~~any one or more of the parties~~ the respondent to take up the award, ~~and in such case the party or parties so called upon shall pay the fees and expenses as directed.~~ Upon receipt of the fees and/or expenses, GAFTA-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.

9.4 Subject to any right of appeal pursuant to Rule 10 awards of arbitration shall be conclusive and binding on the parties with respect both to the matters in dispute and as to costs.

9.5 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.

## 10. RIGHT OF APPEAL

10.1 Save as provided in Rules 6.4, 8.1(b), 8.2, 19 and 21, either party may appeal against an award to a board of appeal provided that the following conditions are complied with: -

(a) Not later than 12 noon on the 30th consecutive day after the date on which the award was made the appellant shall: -

(i) ensure that a written notice of appeal is received by GAFTAGafta,

(ii) serve a notice of his intention to appeal on the other party and ensure receipt of a copy by GAFTAGafta, and

(iii) ~~and ensure make payment to GAFTA-Gafta of~~ have received cleared funds of the appeal deposit stated on the award of arbitration on account of the costs, fees and expenses of the appeal,

otherwise the right of appeal shall be deemed to be waived and barred.

- (b) The fees and expenses of the arbitration award incurred by the tribunal and/or ~~GAFTA-Gafta~~ shall be paid to ~~GAFTA-Gafta~~ before the appeal is heard.
- (c) The appellants shall pay such further sum or sums on account of fees, costs and expenses as may be called for by ~~GAFTA-Gafta~~ or the board of appeal at any time after the lodging of the appeal (as defined in (a) and (b) above). In the event of non-payment the respondent may be directed by the board of appeal to pay such further sum or sums. If payment is not received from either party prior to the hearing or subsequent hearings, the board of appeal may decide to stay the proceedings until such payment is made or if the further sums are not received within 60 days of the date on which they were called for, the appeal may be deemed lapsed. withhold the publication of the award. The fees charged by the board of appeal shall be in accordance with the scale of fees laid down by the Council from time to time.

**10.2** If appeals are lodged by both parties to the award ~~GAFTA-Gafta~~ shall have the power to consolidate such appeals for hearing by the same board of appeal.

## **11. BOARDS OF APPEAL**

**11.1** Boards of appeal shall be elected and constituted in accordance with the ~~GAFTA-Gafta~~ Rules and Regulations. Where the first tier arbitration award was made by a sole arbitrator the board of appeal will comprise of three members. Where the first tier award was made by a tribunal of three arbitrators, then the board of appeal shall comprise of five members. ~~GAFTA-Gafta~~ will notify the parties of the names of the members of the board of appeal. The board of appeal will be provided with a copy of the first tier Award.

**11.2** If a member of the board of appeal dies, refuses to act, resigns, or becomes incapable of acting, or if he fails to proceed with the appeal, or is found to be ineligible, or his authority is revoked by ~~GAFTA-Gafta~~ pursuant to the ~~GAFTA-Gafta~~ Rules and Regulations ~~GAFTA-Gafta~~ will appoint a substitute.

## **12. APPEAL PROCEDURE.**

**12.1** The board of appeal may grant an oral hearing at the request of either party, on such terms and conditions as it deems 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-Gafta~~ having due regard to any agreement reached by the parties, the time table below or any other timetable determined by a board of appeal. The form in which parties may join an oral hearing is at the board of appeal's discretion. All board of appeal members must attend an oral hearing.

**12.2** In the event of an oral hearing the parties may be represented by one of their employees, or by a ~~GAFTA-Gafta~~ Qualified Arbitrator (who has not previously acted in the case) 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. In accordance with the time table notified to the parties by ~~GAFTA-Gafta~~ concise statements of case (skeleton arguments) shall be exchanged and a common bundle of documents (documentary evidence) agreed by the parties as follows: -

- (a) The aAppellant shall serve his concise statement of case (skeleton arguments) on the rRespondent with a copy to ~~GAFTA-Gafta~~.
- (b) The rRespondent shall serve his concise statement of case (skeleton arguments) on the aAppellant with a copy to ~~GAFTA-Gafta~~.
- (c) The aAppellant shall send to ~~GAFTA-Gafta~~ 5 sets of documentary evidence, in a common bundle, agreed by the rRespondents. (Either party may submit documentary evidence not agreed for inclusion in the common bundle of documents).

**12.3** In the event that there is no oral hearing the parties shall serve their full submissions and documentary evidence in accordance with the time table notified to the parties by GAFTA/Gafta, as follows: -

- (a) The aAppellant shall serve his submissions together with supporting documents
- (b) The rRespondent shall on receipt of the aAppellant's submissions and any documents, serve defence submissions, together with supporting documents.
- (c) The aAppellant then has the right on receipt of the rRespondent's defence submissions and documents, to issue a statement in reply.

Submissions and documentary evidence (which may include new evidence not before the arbitrators) shall be served by sending them to the other party with copies to GAFTA/Gafta. Where the appeal is against the award of a sole arbitrator 4 copies, or where the appeal is against the award of a tribunal of three arbitrators 6 copies, shall be sent to GAFTA/Gafta. ~~Failure to send all copies to GAFTA will render the party responsible liable to GAFTA for the costs of copying such documents for forwarding to the board of appeal.~~

Where no oral hearing of the appeal is to take place, members of a board of appeal need not meet in person but may communicate with each other by telephone, letter, fax and e-mail or any other electronic means, in order to discuss the parties' submissions and to arrive at a decision on the appeal.

**12.4** The board of appeal has the right to decide to conduct arbitral proceedings concurrently with other arbitral proceedings, and, in particular, concurrent or consolidated hearings may be held, but separate awards shall be made unless all the parties involved agree otherwise in writing.

**12.54** An appeal involves a new hearing of the dispute and the board of appeal may confirm, vary, amend or set-aside the award of the tribunal. In particular (but not by way of restriction), the board of appeal may;

- (a) vary an award by increasing or reducing the liability of either party,
- (b) correct any errors in the award or otherwise alter or amend it,
- (c) award the payment of interest,
- (d) award the payment of costs, fees and expenses of and incidental to the hearing of the arbitration and the appeal. Such costs, fees and expenses will normally follow the event.

**12.65** An award shall be confirmed unless the board of appeal decides by a majority to vary, amend or set it aside.

**12.76** The award of the board of appeal, whether confirming, varying, amending or setting aside the original award of arbitration, shall be signed by the chairman of the board of appeal, and, when so signed, shall be deemed to be the award of the board of appeal, and shall be final, conclusive and binding. Rule 9.3 shall apply to awards of the board of appeal.

**12.87** The board of appeal may upon application by either party order on a provisional basis relief by the disposition of property as between the parties and/or payment of all or any part of the sum(s) of money required by the terms of the award of arbitration to be paid by either party to the other or which shall be deposited in such bank and in such currency (either in the United Kingdom or abroad) as the board of appeal may direct.

- (a) Such money shall be held by such bank in an account in the name of GAFTA/Gafta, on such terms as the board of appeal may direct. The board of appeal shall, where such money has been

deposited, direct in its final award how and to which of the parties the amount so held shall be paid out.

- (b) If the appellant fails to make such payment as aforesaid in accordance with the directions of the board of appeal, and within such time as the board of appeal stipulates, then (subject to the provisions of Rule 19) the appeal shall be deemed to be withdrawn.
- (c) If in the opinion of the board of appeal the appellant has been guilty of undue delay in proceeding with his appeal the board of appeal shall give due warning to the appellant that he should proceed with due despatch. If the appellant continues, thereafter, to delay the progress of the appeal, the board of appeal may (after giving both parties a reasonable opportunity to make submissions) order that the appeal is deemed to have been withdrawn, in which event the money on deposit (with interest if any, less any tax deductible) shall immediately become due and payable to the party and/or parties entitled thereto under the terms of the award of arbitration.
- (d) Any monies received by ~~the AssociationGafta~~ and any sums awarded by arbitrators are required to comply with the current UK anti-money laundering legislation. ~~The AssociationGafta~~ or arbitrator(s) as the case may be has the obligation to report a suspicious transaction to the ~~relevant authorities National Criminal Intelligence Service (NCIS)~~.

**12.98** No award of a board of appeal or decision by a board of appeal on any issue or aspect shall be questioned or invalidated on the ground that any of its members was not qualified to act unless objection is made within a reasonable period of the notification of the members of the board of appeal.

### **13. WITHDRAWALS OF APPEALS**

**13.1** The appellant shall have the right, at any time before the board of appeal makes an award, to withdraw his appeal by giving notice of such withdrawal to ~~GAFTA Gafta~~, and in such case ~~GAFTA Gafta~~ shall forthwith notify all parties to the arbitration that the appeal has been withdrawn. If notice of withdrawal is received by ~~the AssociationGafta~~ within 10 consecutive days of the date on which the appeal was lodged in accordance with Rule 10.1, two thirds of the deposit shall be returned. Thereafter, if notice of withdrawal is received before the final award is made, the parties shall be jointly and severally liable to pay to ~~GAFTA Gafta~~ the ~~appeal boardsboard of appeal's~~ and ~~GAFTA Gafta's~~ costs, fees and expenses.

**13.2** In the event of withdrawal the respondent shall continue to have the right of appeal against the award to a board of appeal in accordance with the provisions of Rule 10, save that the time limit laid down in Rule 10.1 shall be 12 noon on the 30th consecutive day after the date of service of notice by ~~GAFTA Gafta~~ to that party of the aforesaid withdrawal.

### **14. APPEALS ON STRING CONTRACTS – Quality and/or Condition**

**14.1** Where a “string” award is made pursuant to Rule 7.1, then, unless it is an award determining a dispute arising out of the “Rye Terms” clause, each party in the string shall be entitled to appeal against that award to a board of appeal, provided that each of the following provisions, in addition to the provisions of Rule 10, are complied with: -

- (a) If the appellant is an intermediate party he shall state in his notice of appeal whether he is appealing as a buyer or as seller.
- (b) If the appellant is the first seller or the last buyer he shall, within the time limits set out in Rule 10.1 (a) (ii) serve written notice of his intention to appeal on the party in immediate contractual relationship with him.
- (c) If the appellant is an intermediate party and is appealing as buyer or seller he shall, within the time limits set out in Rule 10.1 (a) (ii) serve notice of his intention to appeal on both the

respondent to the appeal and also his own immediate seller or buyer.

- (d) The recipient of a notice served pursuant to the above provisions may, if it wishes to commence appeal proceedings against its own immediate contracting party, pass on a like notice upon the next party in the string. Such notice shall be passed on with due despatch, in which case the time limit in Rule 10 shall be deemed to have been complied with.

**14.2** All appeals to which this Rule applies and to all awards made pursuant to this Rule shall be binding on every appellant and respondent. Non-compliance with any provisions of Rule 14.1(d) shall in no way limit or affect the jurisdiction of the board of appeal.

## **15. APPEAL AWARDS**

~~15.1 GAFTA may call upon either of the disputing parties to take up the award of the board of appeal and in such case the party so called upon shall take up the award and pay the fees, costs and expenses of the board of appeal and/or GAFTA. The board of appeal 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 board of appeal and Gafta. Gafta shall first call upon the appellant to pay any outstanding balance. If payment is not received by Gafta within 21 days from such notice, Gafta shall call upon the respondent to take up the award. Upon receipt of the fees, costs and expenses, GAFTA-Gafta shall then date and issue the award to the parties, which date shall, for the purposes of the Arbitration Act 1996, be deemed to be the date upon which the award is made.~~

~~15.2 Appeal awards may be made available to the first tier tribunal.~~

## **16. CANCELLATION COSTS**

~~In the event of either party cancelling or postponing a hearing, the tribunal or board of appeal (as the case may be), shall be entitled, at their discretion, to charge a cancellation fee and expenses. The fee shall be based on the Gafta notional daily sitting rate, as may vary from time to time, multiplied by the number of days which, but for the cancellation or postponement of a hearing, have been vacated.~~

~~The fee shall be calculated on a sliding scale, as follows:~~

~~If the cancellation or postponement is between 6-2 weeks before the date of the hearing, 50% of the Gafta notional daily sitting rate.~~

~~If the cancellation or postponement is within 2 weeks of the date of the hearing, including during the hearing itself, 75% of the Gafta notional daily sitting rate~~

## **17. REPRESENTATION COSTS**

~~17.1~~ 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 and/or in any appeal proceedings and to appear on their behalf at any oral hearings. The tribunal, and/or the board of appeal, shall determine the recoverable costs of engaging legal representatives.

~~17.2~~ 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.

~~17.3~~ 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.

**176.4** Unless expressly agreed otherwise, in writing, each party shall bear all their own costs including their own legal and representation costs.

### **187. TRIBUNAL'S OR BOARD OF APPEAL'S OWN EVIDENCE**

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

### **198. FEES AND EXPENSES**

**19.1** Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of ~~GAFTA~~Gafta, is deemed thereby to agree to abide by these Rules and to agree with ~~the Association~~Gafta to be liable to ~~GAFTA-Gafta~~ (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 or any remissions, which said fees and expenses shall, upon notification by ~~GAFTA-Gafta~~ be and become a debt due to ~~GAFTA~~Gafta.

### **2019. CURRENCY REGULATIONS**

If an appellant is precluded by currency regulations from paying any money due to be paid by him ~~as required under Rule 10~~, and notifies ~~GAFTA-Gafta~~ in writing (a) in the case of inability to pay the appeal fee when giving notice of appeal, and (b) in the case of inability to pay any further sum directed to be paid ~~under Rules 10 and/or 12~~, within 9 consecutive days of the money being demanded, accompanied in every case by evidence from a bank that he has already made application for the transfer of the required sum, he shall be entitled to an extension of up to 35 consecutive days from the date when the said payment became due in which to pay such sum.

### **210. NOTICES**

#### **210.1 Service on parties**

All notices to be served on the parties pursuant to these Rules shall be served by letter, fax, or E-mail or other electronic means. 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.

#### **210.2 Service on Tribunals and ~~Appeal Boards~~Boards of Appeal**

Unless the tribunal or board of appeal otherwise directs, all notices, proceedings and documents to be served on arbitrators and members of a board of appeal pursuant to these Rules shall be served by letter, fax, or E-mail or other electronic means on the Secretary of ~~the Association~~Gafta at the offices of ~~GAFTA~~Gafta. For the purposes of any time limits receipt of such notices by ~~GAFTA-Gafta~~ shall be deemed to be the date of service.

#### **210.3 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.

### **22. RETENTION OF DOCUMENTS**

**22.1** All case documents, except submissions, will be kept by Gafta for a period of 6 months from the date

the award is issued unless a longer period is requested by either party in writing.

### **23. 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:-

- (a) 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. If the provision of 4.1 has not been complied with, then the case shall be deemed to be waived and absolutely barred subject to the discretion of the Tribunal. There shall be no appeal to the board of appeal against the decision of the tribunal to admit a claim. If a tribunal decides not to admit the claim, then the claimant shall have the right to appeal pursuant to Rule 10, and the board of appeal shall have the power in its absolute discretion to overturn that decision and to admit the claim;
- (b) On appeal if any of the provisions of Rules 10.1(a), 10.1(b), 12.7 or 19 have not been complied with, then the appeal shall be deemed to be waived and absolutely barred, subject to the discretion of the board of appeal when raised as a defence by the appellant. The board of appeal in its absolute discretion may dispense with the necessity for compliance. In which event the board of appeal may proceed to hear and determine the appeal as if each and all of those Rules had been complied with. Any decision made pursuant to this Rule shall be final, conclusive and binding.

### **242. DEFAULTERS**

**242.1** In the event of any party to an arbitration or an appeal held under these Rules neglecting or refusing to carry out or abide by a final award of the tribunal or board of appeal made under these Rules, the Council of GAFTA-Gafta may post on the GAFTA-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 or appeal shall be deemed to have consented to the Council taking such action as aforesaid.

**242.2** In the event that parties do not pay the costs, fees or expenses of the arbitration or appeal when called upon to do so by GAFTA-Gafta in accordance with these Rules, the Council may post on the GAFTA 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 or appeal shall be deemed to have consented to the Council taking such action as aforesaid.

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