

ROYAL DUTCH GRAIN AND FEED TRADE ASSOCIATION

Conditions for arbitration of disputes subject to German-Dutch contracts and other c.i.f. and c.& f. contracts.

1. General

Article 1 –Definition

The Royal Dutch Grain and Feed Association shall hereinafter be referred to as “ Het Comité ” in these conditions.

Article 2 –Announcements

The words “ in writing ” or “ written ” in the following articles shall be understood to mean communication by mail, telegram, telex, fax as well as by any other expedient written form and / or method of electronic communication.

Article 3 –Place of Arbitration

The place of arbitration shall be Rotterdam.
Arbitration shall be subject to Dutch arbitration laws.

Article 4 –Applicability

These conditions of arbitration are applicable to disputes subject to German-Dutch contracts, which specifically cite Het Comité as the institute of arbitration, as well as to disputes originating in c.i.f. and c.& f. matters negotiated under an other than German-Dutch Contract, wherein “ Arbitration through the Dutch Grain and Feed Association ” or subject to “ (Arbitration)-clauses of Het Comité ” or equivalent terminology, has been stipulated.

Article 5 –List of arbitrators

Annually, the General Meeting of Het Comité Members shall compile a list of at least 18 persons employed by members, who shall be duly appointed for a period of one year. They shall be notified of disputes registered with Het Comité during the period of appointment, for which they have been named as possible arbitrators. The list of arbitrators shall be made public after conclusion of the General Meeting of Members. Wherever reference is made to arbitrators in the conditions, it shall be deemed to mean exclusively those persons stated in the above-mentioned list. Should it not seem possible to nominate an arbitration board from

the said list, one or more external arbitrators may be selected with the consent of Het Comité

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2. Arbitration in the first instance

Article 6 – Claim for arbitration

1. Arbitration shall become pending by Het Comité upon receipt of an arbitration claim nominating the arbitrator.
The arbitration claim shall be in writing and contain an explanation of the dispute as well as the claim or claims made.
2. Concurrent with the arbitration claim, the claimant shall notify the respondent stating the nominated arbitrator.
3. The claimant shall, on written request by Het Comité deposit the estimated cost of arbitration with Het Comité
4. Should the estimated arbitration cost not be deposited, even after a written reminder, within the stipulated time period mentioned therein, the arbitration claim shall be considered as withdrawn.

Article 7 – Directives of the arbitrators

1. The hearing and judgement, in the first instance, shall be within the competency of three arbitrators.
2. The respondent shall nominate an arbitrator, stating the name of the arbitrator to both, Het Comité and the claimant.
3. The third arbitrator shall be appointed by Het Comité and function as the Chairman.
4. Should the respondent not nominate its arbitrator within the contractually stipulated time, or, in the absence of such contractual stipulation, within ten working days of being notified by the claimant, Het Comité shall, at the request of the claimant, appoint all the three arbitrators with due consideration being given to the nominee of the claimant.

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3. Procedure

Article 8 –Written and verbal hearing

1. The respondent shall be given the opportunity of submitting a written defence, within a stipulated time period set by Het Comité
2. The arbitrators shall offer both parties an opportunity to verbally elaborate their individual representations at a stipulated place, date and time.
Both parties shall be served written notice thereof.
3. Should the respondent neglect to be present at the first hearing or bring its defence to the attention of the arbitrators, the claim shall be awarded, unless the arbitrators consider the claim to be unlawful or unfounded or determine that there is reason to continue the arbitration.
4. The respondent shall be entitled to submit a counter-claim against the claimant at the first hearing of the arbitrators, provided this claim results from the same sales contract as the original claim.
5. The court of arbitration shall be assisted by a legal expert as Registrar.

Article 9 –Condition and / or Quality

1. In disputes over the condition of received goods, this shall, at the request of either party, be determined forthwith. However, a conclusive assessment shall not be made before both parties have been heard, or at least called upon.
2. In a dispute over condition and / or quality, the respondent, in divergence from the requirements of article 7 paragraph 4, shall have 3 working days to exercise its right of choice.

Article 10 –Award

1. Arbitrators shall make fair awards based on good business principles.
2. Het Comité shall send an attested copy of the awards to each of the contestants.

4. Arbitration in appeal

Article 11 –Notification

1. Either party shall be entitled to appeal against the award rendered by sending a written notice to Het Comité within 21 days from the date of dispatch of the award to the parties.
2. Concurrently, the appellant shall send a written notice of appeal to the adversary party.
3. Should the grounds for appeal as well as the estimated cost of appeal-arbitration not be deposited with Het Comité within the period of time stated in the demand, the appellant may forfeit its right of appeal.
4. The adversary party shall be entitled to instate a counter appeal, even after the mentioned expiration date, however, no later than the first hearing of the appeal-arbitrators.
5. An appeal on awards of condition shall not be permissible.

Article 12 –Procedure

1. The appeal shall be dealt with and decided on by five arbitrators, who have been nominated for that purpose by Het Comité
2. Barring the statutes of article 7 and 9, the rules governing arbitration in the first instance shall also be applicable on appeal.

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5. Cost of arbitration

Article 13 –Cost distribution

1. Cost of arbitration shall, in general, be borne by the unsuccessful party. Arbitrators, however, shall have authority to deviate therefrom by rendering that circumstances of the case warrant a deviation.
2. In the event of an appeal, the cost of both instances shall, ordinarily, be awarded against the unsuccessful party on appeal. The second sentence of paragraph 1 shall be applicable.

3. Should the rendered award be reversed or partly revised on appeal as a result of the fact that one of the parties failed to adequately substantiate or defend its claim or defence in the first instance, the appeal arbitrators may award all or part of the appeal cost against this party. In exceptional cases, the appeal arbitrators may, at their discretion, render that the cost of appeal shall be borne by Het Comité

Article 14 –Arbitration cost

1. The arbitrators shall estimate, in their award, the amount of the arbitration costs up to and including the filing of the award with the Court Registrar. In as much as the arbitrators find grounds for the inclusion of travelling and other expenses necessarily incurred by the prevailing party as well as the cost of witnesses and their summoning, these may, according to the arbitrators' estimation, be included.
2. Arbitration cost payable to Het Comité shall be recovered, as far as possible, from the amount deposited by the claimant or appellant.
3. Het Comité may, during the course of the arbitration, demand that the deposit be supplemented.
4. The costs payable to Het Comité shall comprise:
 - a. Disbursements by Het Comité and arbitrators for correspondence, legal aid, filing of the award, etc.
 - b. Compensation for Het Comité as determined by the Board.
 - c. Fees for arbitrators and experts.
5. Fees for arbitrators and experts shall be due as last determined by the Board of Het Comité Under extraordinary circumstances and at the discretion of the arbitrators or appeal arbitrators respectively, these fees may be supplemented after consultations with the aforementioned Board.

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6. Withdrawal from arbitration

Article 15

1. A claimant may withdraw from arbitration by written notice or verbally at the first hearing of the arbitrators, subject to the following conditions:
2. In as much as the claimant withdraws from arbitration before the arbitrators or experts commence their work, the claimant shall pay to Het Comité the amount last determined by the Board and a compensatory amount for costs, which may already have occurred.
3. This amount shall be doubled, if the arbitrators have summoned parties or the experts have already commenced their work. Should the arbitrators have examined samples prior to withdrawal, the full amount shall become due and payable.
4. Should an arbitration be withdrawn less than 24 hours before the time set by the arbitrators for dealing with the dispute, one half of the full determined arbitration cost shall become due and payable by the claimant.
5. The latter shall also be applicable, if an arbitration, which has been postponed at the request of either party, be subsequently withdrawn.
6. Should a party withdraw from arbitration during or after the first hearing, the arbitration cost shall become due and payable in full. Withdrawal after a defence has been established shall only be permissible, if the adversary party declares its consent to the withdrawal, either verbally at the hearing or in writing.
7. In case of withdrawal from appeal-arbitration, the amounts mentioned in this article shall be doubled.

7. Article 16 - Non-compliance of an arbitral award

1. Should one of the parties not comply with the final award rendered by the arbitrators in compliance with these conditions, Het Comité shall be authorised, not only to bring this to the attention of the Members of Het Comité but also, in accordance with the instructions of the Board of Het Comité to openly publicise the same.

2. Should it be resolved to proceed with the publicising, as described in paragraph 1, Het Comité shall give the referred party adequate time for remedy. The referred party shall be informed before publication.
3. In the case mentioned in paragraph 1, arbitration, in respect of disputes in which the party referred to in that paragraph is the claimant or respondent, shall be excluded if these disputes arise out of or are related to contracts entered into one week after the announcement as referred to in paragraph 1 has been made and as long as the situation provided for in that paragraph continues.

8. Final Provisions

Article 17 –Alterations to the Conditions for Arbitration

Alterations to these Conditions may be proposed by the Board or by at least eight vote-entitled members of Het Comité and shall be ratified by the General Meeting of Members of Het Comité

Article 18

The “Bestimmungen des Rotterdamer Schiedsgerichtes für Streitigkeiten über Geschäfte zu den Bedingungen der deutsch-niederländischen Verträge No. 1 u.s.w.” as well as the “Allgemeine Bestimmungen für Rotterdam über Geschäfte auf die deutsch-niederländischen Verträge No. 1 u.s.w.” and the “Arbitrage-Bepalingen voor geschillen uit c.i.f.- en c.& f. -zaken”, wherein “Arbitration through the Dutch Grain and Feed Association” or “subject to (Arbitration)-clauses of Het Comité” or other terminology to that effect has been stipulated, hereby lose their validity and are superseded by these Conditions for Arbitration.

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The above was determined at the Members Meeting of the Royal Dutch Grain and Feed Trade Association in Rotterdam on the 28th of June 1999 and subsequently lodged with the Registrar of the District Court in Rotterdam.

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