



Deutscher Verband des
Großhandels mit Ölen,
Fetten und Ölrrohstoffen e.V.

Grofor e.V. · Adolphsplatz 1 (Börse) · Kontor 24 · D-20457 Hamburg

ARBITRATION CONDITIONS

§ 1 General

- (1) If the parties to a contract have agreed that the decision on disputes arising from this contract should be made by the arbitral tribunal of GROFOR, the following regulations on the arbitral proceedings shall apply.
- (2) The jurisdiction of the arbitration tribunal particularly covers the question of whether the sales contract has materialised as well as the disputes between the seller and/or purchaser and the broker.

§ 2 Composition of the arbitral tribunal

- (1) The arbitral tribunal shall consist of three arbitrators. It is recommended to take these from the list of arbitrators compiled by GROFOR. A person who belongs to a company registered in a trade register or cooperative register of the Federal Republic of Germany may also work as an arbitrator, providing he has the relevant technical and industrial know-how at his disposal.
- (2) Each party nominates an arbitrator.
- (3) The umpire is basically nominated by the chairman of GROFOR or his representative.
- (4) In proceedings between a member and a non-member each party may demand that the nomination of the umpire is made by the Chamber of Industry and Commerce, Hamburg. This type of application must be made by the end of the period for nominating the opposing arbitrator. Otherwise the nomination of the umpire shall be made in accordance with § 2 paragraph 3.
- (5) The nomination of the arbitrators by the parties shall be done according to the provisions in §§ 6 and 7. If the nomination is not made within the time limits laid down, the chairman of GROFOR or his representative shall nominate the arbitrator for the party that has not made use of his right to nominate. In proceedings between a member and a non-member the nomination of the compulsory arbitrator shall be done by the Chamber of Industry and Commerce, Hamburg.
- (6) If several parties are involved on the side of the claimant or the respondent, these must nominate a common arbitrator. If this is not done a compulsory arbitrator will be nominated for the concerned party in accordance with paragraph 5.

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- (7) A delayed nomination of the arbitrator by the defaulting party can still be considered by the chairman of GROFOR or his representative until the arbitrator is nominated.

§ 3 Withdrawal of arbitrators

If an arbitrator is prevented for attending, is unavailable or refuses to perform his position as arbitrator for any reason, the person who nominated him is obliged to nominate a replacement arbitrator. If the nomination of the replacement arbitrator to be nominated by a party does not take place within 3 business days after the request has been delivered by the registry, it will be effected in this case by the chairman of GROFOR or his representative.

§ 4 Rejection of arbitrators

- (1) A person proposed for the position of arbitrator must disclose all circumstances that could raise doubts about his impartiality or autonomy. An arbitrator is also obliged after being appointed until the end of the arbitral proceedings to immediately disclose such circumstances if he hasn't already done so previously.
- (2) An arbitrator may only be rejected if circumstances are given raising justified doubts about his impartiality or autonomy, or if he does not fulfil the prerequisites agreed between the parties. A party may only reject an arbitrator he has appointed or towards whose appointment he contributed for reasons that had only become known to him after the appointment. The application is to be made in writing within 2 weeks after the composition of the arbitral tribunal or a circumstance within the meaning of this paragraph has become known stating the reasons for the rejection.
- (3) Initially the arbitral tribunal shall decide on the rejection of one or several arbitrators with the elimination of the rejected arbitrators and with the addition of the relevant number of replacement arbitrators to be determined by the chairman of GROFOR or his representative. If the entire arbitral tribunal is rejected, the chairman of GROFOR or his representative shall nominate three replacement arbitrators to decide on the rejection. The replacement arbitrators carry out their duties free of charge. The parties retain the right to take legal action specified in § 1037 paragraph 3 ZPO (Code of Civil Procedure) and § 1062 paragraph 1 number 1 ZPO.

§ 5 Correspondence

All written statements of the case with appendices are to be submitted with five copies to the registry of the arbitral tribunal. A further copy is to be attached for each further party involved in the dispute.

§ 6 Recourse to the arbitral tribunal

- (1) Arbitral proceedings start upon the request for arbitration being filed to the registry of the arbitral tribunal.
- (2) The request for arbitration should include:
 1. the exact names of the parties,
 2. a statement of the relevant facts with the submittal of the existing evidence (in particular the contract which is the basis for the contentious transaction),
 3. a defined application relevant to the principal object of the action,
 4. the appointment of an arbitrator.
 5. if the respondent is a foreigner, the claimant should additionally submit a certified translation in the respondent's language.
- (3) An arbitral tribunal application submitted to the registry of the arbitral tribunal for reasons of adhering to the time limit must include the names of the parties and information on the reason for the dispute.

§ 7 Transmission of the request for arbitration

- (1) The registry sends the request for arbitration to the respondent requesting him to nominate an arbitrator within a time limit it will determine and to comment on the request for arbitration, providing this has not yet happened.
- (2) The receipt of the declaration by the registry is decisive for observing the time limit when nominating the arbitrator.

§ 8 Statement of defence

The statement of defence should include:

1. a defined application relevant to the principal object of the action,
2. a justification for the same with the submittal of existing evidence.

§ 9

Course of proceedings

- (1) The arbitral tribunal determines the course of proceedings under the leadership of the chairman as he sees fit, providing no special provisions have been made in the following.
- (2) The arbitral tribunal conducts oral proceedings providing the parties have not explicitly waived oral proceedings.
- (3) Before an award has been rendered the arbitral tribunal has to hear the parties and to determine the facts on which the dispute is based, providing the investigation requires this.
- (4) The arbitration hearing is not public. The arbitral tribunal can allow third parties to participate in the hearing with the consent of the parties.
- (5) The language of the proceedings is German.
- (6) A legal advisor and/or another lawyer, who has a general aptitude for magistracy, can be called up at each stage as a consultant during the execution of the proceedings.
- (7) Business days in terms of these arbitration conditions are the workdays with the exception of Saturdays as well as 24th and 31st December.
- (8) The registry is entitled to demand an advance payment to secure the costs of the proceedings.

§ 10

Counterclaim and set-off

- (1) The respondent can put forward a counterclaim providing the arbitration agreement includes this matter in dispute and there is a connection with the cause of action.
- (2) It is permissible to set-off in arbitration proceedings if there is no contractual exclusion of set-off. This also applies in such cases in which the counterclaim is not subject to arbitration proceedings.
- (3) The arbitral tribunal can abstain from making the decision on the counterclaim or the claim made for set off if a delay in the proceedings is expected.

§ 11

Third-party notice

- (1) A party that believes he is entitled in case of failing to make a claim to guarantee or indemnity against a third party or fears a claim made by a third party, can serve third-party notice up until the end of the last hearing on which the award is issued.
- (2) The third party is entitled to serve third party notice.
- (3) Third party notice is served by sending a written statement of the case explaining the facts and the course of the proceedings up to

now and by attaching each one copy of the exchanged written statements of the case and evidence as well as a summons to a scheduled hearing, if need be. The notification is sent either by means of a registered letter directly giving notice to the registry or through its intervention.

- (4) The third party is entitled but not obliged to join in the dispute. If he joins in, this intervention has the effect of § 74, paragraph III ZPO in connection with § 68 ZPO based on the agreement between him and the third party servicing notice.

§ 12

Simultaneous decision-making

- (1) On application in the same proceedings the arbitral tribunal is also entitled to decide simultaneously on a claim asserted by the respondent against a third party if the contracts and the other facts essentially tally and if the arbitral tribunal is also responsible at the ratio of the respondent to the third party and its composition for all parties.
- (2) The same composition is achieved by the arbitrator informing the third party and the third party in turn being requested to nominate an arbitrator while the respondent does not nominate an arbitrator.
- (3) It is at the discretion of the arbitral tribunal to grant or reject the proceedings of the simultaneous decision-making. Granting the rejection is not contestable.
- (4) If the arbitral tribunal rejects the execution of the simultaneous decision-making, the proceedings have to be separated and both proceedings are to decide on separately in the same composition. The rejection can also be made by the higher arbitral tribunal.
- (5) If several applications for simultaneous decision-making are made in proceedings, the above regulations shall be correspondingly applicable.
- (6) When lodging an appeal this functions through the chain of parties involved in the dispute without these in turn having to file an appeal.

§ 13

Deadlines when serving third party notice and simultaneous decision-making

In the case of third party notice being served resp. simultaneous decision-making, the third party is obliged to give up his arbitrator within a period to be set by the registry.

§ 14 Summons

- (1) The registry sets the dates in agreement with the umpire and makes the necessary dispositions in this respect.
- (2) The summons is done in writing by the registry. An appropriate notice of the summons is to be taken into account that must be at least 2 weeks.
- (3) In the case of international summonses the registry must take into account the mailing route.
- (4) The registry is entitled to set a period for the claimant to justify his complaint and/or to pay the advance on costs. In the case of failure to observe this time limit, the complaint shall be valid as having been withdrawn.
- (5) All written statements of the case, documents and other notifications are to be informed to the other party by the registry.

§ 15 Representation

- (1) The parties can have themselves represented in front of the arbitral tribunal by representatives or counsels if these are employees of the party or lawyers. The arbitral tribunal can allow for exceptions to the aforementioned restrictions.
- (2) If the party has himself represented at the hearing by a lawyer without having informed the opposing party of this at least six business days before the hearing, the arbitral tribunal may adjourn the hearing date upon the application of the other party.
- (3) The costs for a representation must be borne by the party himself with the exception of costs arising through a necessary representation in front of the court of law to effect a judicial action ordered by the arbitral tribunal.

§ 16 Hearing the parties, experts

- (1) The arbitral tribunal can order that the parties appear personally and question them not under oath.
- (2) The arbitral tribunal can question witnesses and experts not under oath appearing voluntarily in front of it. Possible travel and/or lodging costs shall be borne by the party who arranged for the witnesses.
- (3) The arbitral tribunal or a party with the consent of the arbitral tribunal can apply for support at court for the hearing of evidence or performing such judicial actions for which the arbitral tribunal is not authorised. The court completes the application providing it does not consider it to be impermissible, according to the procedural regulations valid for the hearing of evidence or other judicial actions.

The arbitrators are entitled to take part in a judicial hearing of evidence and to ask questions.

§ 17

Rejection of the decision

- (1) The arbitral tribunal is entitled at any time to reject a substantive decision without stating reasons in the form of decision-making. In this case the arbitration agreement is used.
- (2) In a case of a rejection the arbitral tribunal decides on the apportionment of the costs accrued up to then at its discretion.

§ 18

Decision on the jurisdiction

- (1) The arbitral tribunal can decide on its own jurisdiction and in this context on the existence or validity of the arbitration agreement. An arbitration clause is hereby to be treated as an agreement independent of the remaining contractual provisions.
- (2) The claim of a lack of jurisdiction of the arbitral tribunal is to be presented at the latest when the defence is filed. A party is not excluded from making such a claim due to it having nominated an arbitrator or cooperated in nominating an arbitrator. The claim that the arbitral tribunal is exceeding its powers is to be made as soon as the matter, of which this is maintained, is discussed in arbitration proceedings. The arbitral tribunal may allow for a later claim in both cases if the party sufficiently excuses the delay.
- (3) If the arbitral tribunal considers itself to be responsible, it shall generally decide on a claim according to paragraph 2 by means of an interim decision. In this case each party can apply for a judicial decision within one month after written notification of the decision. While such an application is pending the arbitral tribunal may continue the arbitration proceedings and issue an award. The same procedure is to be followed if the higher arbitral tribunal approves the jurisdiction in the case of paragraph 4 against a claim by the respondent.
- (4) If the arbitral tribunal considers itself to be not responsible, it shall decide on this through an award. The decision is contestable upon an appeal.

§ 19

Decisions made by arbitral tribunals

- (1) The decisions are made with a simple majority of votes.
- (2) If an arbitrator refuses to participate in a vote, the remaining arbitrators can decide without him. The intention to vote on the award without the refusing arbitrator is to be informed to the parties beforehand. In the case of other decisions the parties are to be informed of the refusal to vote retrospectively.
- (3) The arbitrators are obliged to preserve the secrecy of the deliberations.

§ 20

Procedure in the case of non-appearance

The non-appearance of one or both parties to the hearing does not exempt the arbitral tribunal from the obligation to investigate the facts, providing this is necessary for the decision; a decision can be made on the basis of the facts presented to him or that become known to him if the proof of delivery for the complaint and the summones are available.

§ 21

Arbitral award

- (1) The arbitral award must contain:
 1. the name of the arbitral tribunal and the arbitrators who contributed towards the decision,
 2. the name of the parties,
 3. the decision in the matter and the costs,
 4. the reasons for the decision providing the parties have not explicitly waived this resp. providing this is not an arbitral award with agreed wording.
- (2) All copies of the arbitral award are to be signed by the arbitrators stating the day and the place of the composition.

The arbitral award is valid as having been issued on this day and at this place. The signatures of the majority of all members of the arbitral tribunal are sufficient providing the reason for the missing signature is stated.
- (3) Each party is to be sent an arbitral award signed by the arbitrators.
- (4) A correction, interpretation or supplement to the arbitral award is to be done according to § 1058 ZPO.

§ 22 Settlement

- (1) If the parties settle the dispute during the arbitration proceedings, the arbitral tribunal shall end the proceedings. Upon the application of the parties it shall record the settlement in the form of an arbitral award with agreed wording providing the contents of the settlement do not breach public policy (ordre public).
- (2) An arbitral award with agreed wording is to be issued according to § 21 of the rules of arbitration and must state that it is an arbitral award. This type of arbitral award has the same effect as every other arbitral award regarding the matter.

§ 23 End of the arbitral proceedings

- (1) The arbitral proceedings end upon the final arbitral award, or upon a decision being made by the arbitral tribunal according to paragraph 2 or a certificate being issued by the registry according to paragraph 3.
- (2) The arbitral tribunal determines the end of the arbitral proceedings upon the decision if
 1. the claimant
 - a) has omitted to submit his complaint within the time limit intended for this and no case of § 1048, paragraph 4 ZPO is on hand,
 - b) retracts his complaints, apart from if the respondent contradicts this and the arbitral tribunal acknowledges a justified interest of the respondent in the final settlement of the dispute,
 2. the parties agree on the end of the proceedings, or
 3. the parties do not further pursue the arbitration proceedings in spite of being requested to do by the arbitral tribunal or the continuation of the proceedings has become impossible for another reason.
- (3) If the arbitral tribunal has not yet established itself, the registry shall issue a certificate in the case of the complaint being retracted regarding the end of the arbitration proceedings.

§ 24 Continuation of the arbitration agreement

- (1) If an arbitral award is cancelled by the court of law for another reason than that of a lack of jurisdiction of the arbitral tribunal or refused upon the application for a writ of execution of an arbitral award, the arbitration agreement is not used in this case.
- (2) If the claimant intends to continue to pursue his right, he must submit a new request for arbitration within one month after the final

adjudication by the court of law. The arbitral tribunal will be newly formed in this case in accordance with the provisions in section II of these rules of arbitration, whereby the submission of the first request for arbitration is decisive for establishing deadlines.

§ 25 Responsibility of the court of law

The responsible court in terms of the 10th book of the ZPO is the district court for judicial actions according to § 17 paragraph 3, in all other cases the Higher Regional Court, in whose district the place of the arbitration proceedings is located.

§ 26 Publication of arbitral awards

The registry and the legal advisor to the arbitral tribunal are entitled to publish final arbitral awards in a neutral form.

§ 27 Appeal

- (1) The parties are entitled to appellate remedies against the arbitral award at the higher arbitral tribunal.
- (2) The opposing party can still join in the appeal after the expiry of the period allowed for appeal. If he wishes to make use of this right, this must be exercised within six business days. This period starts when the notice of appeal is received after the expiry of the period allowed for appeal, on the day of receipt, otherwise upon the expiry of the period allowed for appeal.

§ 28 Time limit and form of the appeal

- (1) The appeal is to be lodged within a period of 10 business days after delivery or receipt of the arbitral award by means of a written announcement resp. by facsimile by the registry of the arbitral tribunal. No reasons thereby need to be stated.
- (2) The justification for the appeal and the payment of the advance on costs must be done within an appropriate period set by the registry of the arbitral tribunal. In the case of missing even one deadline the appeal is valid as having been retracted. In justified cases the appeal justification deadline and the deadline to pay the advance on costs can be extended upon a timely application.

- (3) If there is a dispute about the timely lodging of the appeal, its timely justification or the timely payment of the appeal advance on costs, the higher arbitral tribunal shall decide on this.

§ 29

Composition of the higher arbitral tribunal

- (1) The higher arbitral tribunal shall consist of three arbitrators, of whom one chairs the arbitral tribunal as umpire.
- (2) The arbitrators and the umpire are nominated by the chairman of GROFOR or his representative taking into account the regulation of § 2 paragraph 1. In a procedure between a member and non-member, each party can demand that the nomination of the arbitrators and the umpire is made by the Chamber of Industry and Commerce Hamburg. This type of application must be made by the time the period for justifying the appeal has elapsed. Otherwise the nomination will be done according to sentence 1.
- (3) The arbitrators or legal advisors, who contributed in the court of first instance, may no longer be active as consultants in the court of second instance.

§ 30

Procedural regulations

The procedural regulations of the court of first instance are valid for the procedure in front of the higher arbitral court, providing no special determinations have been made.

§ 31

Certificates on the end of the proceedings

Upon request the registry of the arbitral tribunal shall issue certificates on the fact that

- a) no appeal has been lodged against the arbitral award,
- b) only a partial appeal has been lodged resp. to what extent an appeal has been lodged against an arbitral award,
- c) the appeal was not lodged in time and subsequently is impermissible,
- d) the appeal is considered to be withdrawn due to the appeal justification and/or payment of the advance on costs not being sent on time,
- e) the arbitral award is entirely or partly final.

§ 32 Liability

A liability on the part of the arbitrators, their legal advisers and the association bodies due to their work in the arbitration proceedings is excluded to the full extent, providing the legal system permits such an exclusion.

§ 33 Non-performance of arbitral awards

Upon the application of a party the board of GROFOR is entitled to publish the name of a company that has not issued a legally valid arbitral award within a period of one month after transmission. Before the board takes such measures, the concerned party is to be given the opportunity to make a statement with an appropriate deadline being set for this; the outcome of pending enforcement or rescission proceedings proven by the party at a German court remains to be seen.

§ 34 Fee ordinance of GROFOR

- (1) The fees are based on the value of the matter in dispute, which is determined by the arbitral tribunal.
- (2) The following charges will be incurred:
 1. as a basic fee with a claim value of up to € 1,000.-
€ 250.- as a minimum rate;
plus from an amount exceeding € 1,000.- up to € 5,000.-
11 % for each hundred or part thereof;
plus from an amount exceeding € 5,000.- up to € 25,000.-
9 % for each hundred or part thereof;
plus from an amount exceeding € 25,000.- up to € 50,000.-
7 % for each hundred or part thereof;
plus from an amount exceeding € 50,000.- up to € 250,000.-
4 % for each hundred or part thereof;
plus from an amount exceeding € 250,000.-
2 % for each hundred
 2. Fee for nominating a compulsory arbitrator € 125.-
 3. Third party notice each € 125.-
 4. Fee for simultaneous decision-making € 175.-
 5. For other expenses and costs at least € 200.-
in the court of appeal at least € 300.-
 6. Fees for retracting the complaint
 - a) before the arbitral tribunal is established
standard disbursements € 125.-
 - b) up to the summons
25 % of the basic fee, at least € 125.-

- c) until the hearing commences
50 % of the basic fee, at least € 125.-
- d) after the hearing commences
the fee due according to number 1.,
upon retracting the third party notice
and/or the application for simultaneous decision-making
resp. when completing these applications by retracting the
complaint
before the hearing begins € 125.-
standard disbursements, otherwise the full fee.

Along with the basic fees due for payment for b), c) and d) the standard disbursements and, if need be, the fee for nominating a compulsory arbitrator will be charged.

7. In cases of suing for payment for the purchase price in arrears, rejection of a decision by the arbitral tribunal and in the case of settlements the arbitral tribunal may grant a discount on the basic fees.
 8. In the case of proceedings requiring several hearings or special time and work expenditure, the arbitral tribunal may increase the basic fees up to three times the amount.
 9. With proceedings in which there is only one request for a decision to be made on a partial amount or a partial quantity of the total object of dispute, the arbitral tribunal may increase the basic fees up to ten times the amount. The same applies to proceedings that are to serve as a test case to decide other disputes between the parties or third parties. In both cases the increased fees may not exceed the amount that would have to be charged if the complete object had been the matter of dispute.
 10. In the court of appeal the basic fees to be calculated according to numbers 1. and 2. are charged at one and a half times the amount; the regulations in numbers 5. to 8. are also valid for the court of appeal.
- (3) All arbitral tribunal fees are net prices without VAT.
- (4) The three arbitrators shall each receive one fifth of the fees charged and GROFOR shall receive two fifths.

§ 35 Cost bearing

- (1) The entire costs shall be borne by the defeated party, providing the arbitral tribunal determines nothing to the contrary.
- (2) If an appeal is lodged the higher arbitral tribunal shall also decide who bears the whole costs of the proceedings in the first instance.

§ 36
Liability for the costs

The parties are liable to the arbitral tribunal and the higher arbitral tribunal for the costs as joint and several debtor.

§ 37
Price determination procedure

- 1) On request of the chairman of CROFOR or his representative a broker or an agent will be nominated to determine prices. The broker's note and a nomination fee of € 50.00 are to be attached to the application.
- 2) The fees to determine prices are calculated according to the disputed quantity and are 1 % of the value of this quantity, however at least € 250.- and at most € 500.-. These full amount of these fees will fall to the broker/agent.

§ 38
Coming into force

The arbitral tribunal conditions come into force on 1st June 2010.

In the event of disputes the German version is valid as the decisive version and shall prevail over the English version.