

Arbitration Rules
for the
Arbitral tribunal of
Deutscher Verband des Großhandels mit
Ölen, Fetten und Ölrohstoffen e. V.
(German Association of Wholesale Traders
in Oils, Fats and Oil Raw Materials)
- GROFOR e. V. -

Adolphsplatz 1, Börse, Kontor 57
20457 Hamburg

Phone: 040 36 98 79-0
E-mail: schiedsgericht@grofor.de

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ARBITRATION RULES

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§ 1

General information

- (1) If the parties to a contract have agreed that disputes arising from this contract are to be settled by the GROFOR arbitral tribunal, the following regulations on the arbitration procedure apply.
- (2) The jurisdiction of the arbitral tribunal extends in particular to the question of whether the purchase agreement has been concluded, as well as to disputes between the seller and/or buyer and the agent.

§ 2

Composition of the arbitral tribunal

- (1) The tribunal decides in a panel of three arbitrators. Each party appoints one arbitrator.
- (2) It is recommended that this arbitrator be chosen from the list of arbitrators compiled by GROFOR. Anyone who belongs to a company that is registered in a commercial register or cooperative register of the Federal Republic of Germany may also act as an arbitrator, provided that they have the relevant specialist and industry knowledge.
- (3) The chairperson is generally appointed by the chairperson of GROFOR or their representative.
- (4) In proceedings between a member and a non-member, either party may request that the chairperson be appointed by the Hamburg Chamber of Commerce. Such a request must be made before the deadline for appointing the counter-arbitrator expires. Otherwise, the chairperson is appointed in accordance with § 2(3).
- (5) The parties must appoint the arbitrators in accordance with the provisions of §§ 6 and 7. If the appointment is not made within the prescribed time limits, the chairperson of GROFOR or their representative appoints the arbitrator for the party that has not exercised their right of appointment. In proceedings between a member and a non-member, the compulsory arbitrator is appointed by the Hamburg Chamber of Commerce.

- (6) Until the appointment of the arbitrator by the chairperson of GROFOR or their representative, a late appointment of the arbitrator by the defaulting party may still be considered.

§ 3

Absence of arbitrators

If an arbitrator is unable to attend for any reason, is removed, or refuses to accept or perform the duties of arbitration, the person who appointed them must appoint a replacement. If the appointment of the substitute arbitrator to be appointed by one of the parties is not made within 3 business days after delivery of the request by the office, it is made by the chairperson of GROFOR or their representative.

§ 4

Rejection of arbitrators

- (1) A person who is offered an arbitrator position must disclose all circumstances that could raise doubts about their impartiality or independence. Even after their appointment, an arbitrator is obliged to disclose such circumstances to the parties without delay until the end of the arbitration proceedings if they have not already disclosed them beforehand.
- (2) An arbitrator may only be rejected if there are circumstances that give rise to justified doubts as to their impartiality or independence, or if they do not meet the prerequisites agreed between the parties. A party may reject an arbitrator they have appointed or in whose appointment they were involved only for reasons they became aware of after the appointment. The request including the reasons for the rejection must be submitted in writing within two weeks after the composition of the arbitral tribunal or a circumstance related to the subject of this paragraph has become known.
- (3) If the rejected arbitrator does not withdraw from their office or if the other party does not agree to the rejection, the arbitral tribunal decides on the rejection. The parties retain the right to take legal action as provided for in § 1037(3) of the German Code of Civil Procedure (ZPO).

§ 5 Correspondence

All written submissions and attachments must be submitted in five copies to the office of the arbitral tribunal. An additional copy must be enclosed for each other party involved in the dispute.

§ 6 Recourse to the arbitral tribunal

- (1) The arbitration proceedings commence with the submission of an arbitration claim to the office of the arbitral tribunal.
- (2) The arbitration claim must include:
 1. The exact designation of the parties,
 2. A description of the facts, including any existing proof (in particular the contract for the transaction under dispute),
 3. A specific request for relief,
 4. The appointment of an arbitrator.
 5. If the defendant is a foreign national, the claimant must submit a certified translation into the defendant's national language.
- (3) An arbitration request filed with the arbitral tribunal's office for reasons of meeting the deadline must contain the names of the parties and a statement of the grounds for the dispute.

§ 7 Submission of the arbitration claim

- (1) The office sends the arbitration claim to the defendant with the request to appoint an arbitrator within a time period to be set by the office, unless this has already been done, and to respond to the arbitration claim.
- (2) For the observance of the deadline for the appointment of the arbitrator, the date of receipt of the declaration by the office is relevant.

§ 8**Statement of defence**

The statement of defence must include:

1. A specific request for relief,
2. A justification of said request, including any existing proof.

§ 9**Procedure of the arbitration process**

- (1) The arbitral tribunal, presided over by the chairperson, determines the procedure of the arbitration process at its discretion, unless specific provisions are made below.
- (2) The arbitral tribunal conducts oral proceedings unless the parties have expressly waived oral proceedings.
- (3) Before issuing the arbitration decision, the arbitral tribunal must hear the parties and investigate the facts underlying the dispute, insofar as it deems such investigation necessary.
- (4) The proceedings are not open to the public. With the consent of the parties, the arbitral tribunal may allow third parties to participate in the proceedings.
- (5) The proceedings are conducted in German.
- (6) During any phase of the proceedings, the in-house lawyer and/or another lawyer who is qualified to hold judicial office may be called in as an advisor.
- (7) For the purposes of these arbitration rules, business days are working days with the exception of Saturdays and 24 and 31 December.
- (8) The office is entitled to request an advance payment to cover the costs of the proceedings.

§ 10**Counterclaim and set-off**

- (1) The defendant may file a counterclaim provided that the arbitration agreement covers this subject matter and there is a connection with the claim.
- (2) Unless there is a prohibition on set-off, set-off is permissible in arbitration proceedings. This also applies in cases where the counterclaim is not subject to arbitration proceedings.
- (3) The arbitral tribunal may refrain from ruling on the counterclaim or the claim for set-off if a delay in the proceedings is to be expected.

§ 11**Notice of litigation**

- (1) A party who believes that, in the event of losing the case, they will be able to assert a claim for warranty or indemnification against a third party, or who fears a claim by a third party, may, until the conclusion of the last oral hearing of the arbitration proceedings, give notice of litigation to the third party.
- (2) The third party is entitled to further notice of litigation.
- (3) The notice of litigation is given by serving a written statement setting out the facts of the case and the course of the proceedings to date, enclosing a copy of each of the written pleadings and evidence exchanged and, where applicable, summoning the parties to a scheduled hearing. The notice is served either directly by means of registered letter with notification to the office or through the office's agent.
- (4) The third party is entitled, but not obliged, to join the litigation. If they join, then this joining is effective by virtue of the agreement between them and the litigating party in accordance with § 74 (III) ZPO in conjunction with § 68 ZPO.

§ 12**Simultaneous decision**

- (1) The arbitral tribunal is entitled, upon request, to rule in the same proceedings on a claim brought by the defendant against a third party if the contracts and the other facts are essentially the same and if the arbitral tribunal also has jurisdiction in the relationship between the defendant and the third party and its composition is the same for all parties.
- (2) The same composition is achieved by informing the third party of the arbitrator appointed by the claimant, and the third party is in turn requested to appoint an arbitrator, while the defendant does not appoint an arbitrator.
- (3) It is at the discretion of the arbitral tribunal to allow or reject the simultaneous decision procedure. The admission of the rejection is not contestable.
- (4) If the arbitral tribunal rejects simultaneous decision proceedings, it must separate the proceedings and decide on both proceedings separately with the same composition. The rejection can also be issued by the Higher Arbitral Court.
- (5) If several applications for a simultaneous decision are made in one set of proceedings, the above provisions apply accordingly.
- (6) When an appeal is lodged, it takes effect through the chain of parties involved in the dispute, without them having to lodge an appeal themselves.

§ 13**Time limits for notice of litigation and simultaneous decision**

In the event of notice of litigation or simultaneous decision, the third party is obliged to withdraw their arbitrator within a time period to be set by the office.

§ 14

Summons

- (1) The office sets the dates in agreement with the chairperson and makes the necessary arrangements.
- (2) The parties are summoned by the office in writing to appear at the set dates. The office must observe an appropriate notice period of at least two weeks.
- (3) For summons sent to foreign countries, the office must take mail delivery times into account.
- (4) The office is entitled to set a deadline for the claimant to substantiate their claim and/or pay the advance on costs. If this deadline is missed, the claim is deemed withdrawn.
- (5) All pleadings, documents and other communications must be brought to the attention of the other party by way of the office.

§ 15

Representation

- (1) The parties may be represented before the arbitral tribunal by agents or advisers, provided that they are employees of the party or lawyers. The arbitral tribunal may allow exceptions to the above restrictions.
- (2) If a party is represented during a tribunal proceedings by a lawyer without having informed the opposing party at least six business days prior to the date of the proceedings, the arbitral tribunal can postpone the date of the proceedings upon request by the other party.
- (3) The costs of representation are borne by the party itself, with the exception of costs incurred as a result of necessary representation before the ordinary court in order to obtain a judicial act ordered by the arbitral tribunal.

§ 16**Hearing of parties, experts**

- (1) The tribunal may order the parties to appear in person and hear their evidence without administering an oath.
- (2) The arbitral tribunal may hear witnesses and experts who appear before it voluntarily without administering an oath. Any travel and/or accommodation expenses are borne by the party who has provided the witness or expert.
- (3) The arbitral tribunal or one of the parties with the consent of the arbitral tribunal may apply to the court for assistance in taking evidence or performing other judicial acts which the arbitration tribunal is not authorised to perform. The court processes the application, if it does not consider it inadmissible, in accordance with its procedural rules applicable to the taking of evidence or other judicial acts. The arbitrators are entitled to participate 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 decision on the merits without giving reasons in the form of a resolution. In this case, the arbitration agreement is exhausted.
- (2) In the event of rejection, the arbitral tribunal decides on the distribution of the costs incurred up to that point at its reasonable discretion.

§ 18**Decision on jurisdiction**

- (1) The arbitral tribunal may rule on its own jurisdiction and, in this context, on the existence or validity of the arbitration agreement. An arbitration clause is treated as an agreement independent of the other provisions of the contract.
- (2) The objection that the arbitral tribunal lacks jurisdiction must be raised at the latest in the response to the statement of claim. A party is not precluded from such an objection by the fact that they have appointed an arbitrator or participated in the appointment of an arbitrator. The complaint that the arbitral tribunal is exceeding its powers must be raised as soon as the matter of which this is alleged arises in the arbitral proceedings.

In both cases, the arbitral tribunal may allow a later objection if the party provides sufficient justification for the delay.

- (3) If the arbitral tribunal considers itself to have jurisdiction, it generally decides on an objection under (2) by way of an interim decision. In this case, either party may apply for a court ruling within one month of receiving written notification of the decision. While such an application is pending, the arbitral tribunal may continue the arbitral proceedings and render a decision. The same procedure is followed if, in the cases referred to in (4), the higher court affirms jurisdiction contrary to an objection raised by the defendant.
- (4) If the arbitral tribunal considers itself to not have jurisdiction, it decides on this matter by means of an arbitral decision. The decision may be challenged by way of appeal.

§ 19

Decisions of the arbitral tribunal

- (1) The decisions are made by a simple majority of votes.
- (2) If an arbitrator refuses to participate in a vote, the remaining arbitrators may decide without them. The intention to vote on the decision without the refusing arbitrator must be communicated to the parties in advance. In other decisions, the parties must be informed retrospectively of the refusal to vote.
- (3) The arbitrators must maintain confidentiality regarding their deliberations.

§ 20

Procedure in the event of non-appearance

Failure of one or both parties to appear at the scheduled date for the oral hearing does not release the arbitral tribunal from its duty to investigate the facts of the case, insofar as this is necessary for the decision. Based on the facts presented to the tribunal or known to the tribunal, it may make a decision in the matter if the proof of service for the claim and the summonses are available.

§ 21

Arbitration decision

- (1) The arbitration decision must contain:
 1. The name of the arbitral tribunal and the arbitrators who participated in the decision,
 2. The names of the parties,
 3. The decision on the case and on the costs,
 4. The reasons for the decision, unless the parties explicitly waived this or unless it is a decision with agreed wording.
- (2) All copies of the decision must be signed by the arbitrators, stating the date and place of its issuance. The arbitration decision is deemed to have been issued on that date and at that location. The signatures of the majority of all members of the arbitral tribunal are sufficient, provided that the reason for the missing signature is stated.
- (3) Each party must be provided with an arbitration decision signed by the arbitrators.
- (4) Any correction, interpretation or addition to the arbitration decision must be made in accordance with § 1058 ZPO.

§ 22

Settlement

- (1) If the parties reach a settlement agreement during the arbitration proceedings, the arbitral tribunal terminates the proceedings. At the request of the parties, the tribunal records the settlement in the form of an arbitration decision with agreed wording, provided that the content of the settlement does not violate public policy (ordre public).
- (2) A decision with agreed wording must be issued in accordance with § 21 of the Arbitration Rules and must state that it is a decision. Such a decision has the same effect as any other decision on the merits.

§ 23

Termination of the arbitration proceedings

- (1) The arbitration proceedings are terminated by the final decision or by a decision of the arbitral tribunal pursuant to (2) or a certificate from the office pursuant to (3).
- (2) The arbitral tribunal determines the termination of the arbitral proceedings by means of a decision if
 1. The claimant
 - a) fails to file their claim within the prescribed period and § 1048(4) ZPO does not apply,
 - b) withdraws their claim, unless the defendant objects and the arbitral tribunal recognises that the defendant has a legitimate interest in the final settlement of the dispute,
 2. The parties agree to terminate the proceedings, or
 3. The parties do not continue the arbitration proceedings despite a request by the arbitral tribunal, or the continuation of the proceedings has become impossible for another reason.
- (3) If the arbitral tribunal has not yet been constituted, the office issues a certificate confirming the termination of the arbitration proceedings if the claim is withdrawn.

§ 24

Continuation of the arbitration agreement

- (1) If an arbitral decision is set aside by a court of law for reasons other than lack of jurisdiction of the arbitral tribunal, or if an application for a declaration of enforceability of an arbitration decision is rejected, the arbitration agreement remains in effect.
- (2) If the claimant wishes to pursue their claim further, they must file a new arbitration claim within one month of the final decision of the ordinary court. In this case, the arbitral tribunal is reconstituted in accordance with the provisions of § 2 of these Rules of Arbitration, whereby the submission of the first arbitration claim is relevant for the observance of time limits.

§ 25

Jurisdiction of the ordinary court

The competent court as defined in Book 10 ZOP, for judicial acts pursuant to § 17(3), is the local court, and in all other cases the higher regional court in whose district the place of arbitration is located.

§ 26

Publication of arbitration decisions

The office and the legal adviser of the arbitral tribunal are authorised to publish final arbitration decisions in a neutral form.

§ 27

Appeal

- (1) The parties have the recourse of filing an appeal to the Higher Arbitral Court.
- (2) The other party may still join the appeal after the appeal period has expired. If they wish to exercise this right, they must do so within six business days. This period begins when the notice of appeal is received by the defendant after the expiry of the appeal period, on the date of receipt, otherwise upon expiry of the appeal period.

§ 28

Time limit and form of the appeal

- (1) The appeal must be lodged with the office of the arbitral court within ten business days of delivery or receipt of the arbitration decision by written notification or by fax. It is not necessary to state reasons.
- (2) The grounds for appeal and the advance on costs must be submitted within a period to be determined by the office of the arbitral tribunal. If even one deadline is missed, the appeal is deemed withdrawn. In justified cases, the deadline for filing the grounds of appeal and the deadline for paying the advance on costs may be extended by the office upon timely request.

- (3) If there is a dispute about the timely filing of the appeal, the timely submission of the grounds for appeal or the timely payment of the advance on the costs of the appeal, the Higher Arbitral Court decides on the matter.

§ 29

Composition of the Higher Arbitral Court

- (1) The Higher Arbitral Court decides in a panel of three arbitrators, one of whom presides as a chairperson.
- (2) The arbitrators and the chairperson are appointed by the chairperson of GROFOR or their representative in accordance with the provisions of § 2(1). In proceedings between a member and a non-member, either party may request that the arbitrators and the presiding arbitrator be appointed by the Hamburg Chamber of Commerce. Such a request must be submitted by the expiry of the deadline for the statement of grounds for the appeal. Otherwise, the appointment is made in accordance with sentence 1.
- (3) Arbitrators or legal advisers who were involved in the first instance may not act in an advisory capacity in the second instance.

§ 30

Procedural rules

Proceedings before the Higher Arbitral Court are subject to the procedural rules of the first instance, unless special provisions have been established.

§ 31

Certificates regarding the conclusion of proceedings

Upon request, the office of the arbitration court issues certificates confirming

- a) that no appeal has been lodged against an arbitration decision,
- b) that an arbitration decision was appealed only in part, or to what extent,
- c) that the appeal was not lodged in time and is therefore inadmissible,
- d) that the appeal is deemed withdrawn due to late submission of the grounds for appeal and/or late payment of the advance on costs,

- e) that the arbitration decision is final in whole or in part.

§ 32 Liability

Liability of the arbitrators, their legal advisers and the association bodies for their activities in the arbitration proceedings is excluded in full, insofar as the legal system permits such exclusion.

§ 33 Non-fulfilment of arbitration decisions

Upon request from one party, the board of GROFOR is entitled to publish the name of a company failing to implement a final arbitration decision within one month of issuance of the decision. Before the board takes such measures, the party concerned must be given the opportunity to comment within a reasonable period of time. The outcome of pending enforcement or appeal proceedings before a German court, as proven by the party, must be awaited.

§ 34 Fee schedule 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 fees apply:
 1. As a base fee for a dispute value of up to € 5,000.00:

€ 1,000.00 as a minimum fee

plus, of the amount in excess of € 5,000.00 up to € 50,000.00:

10% for each hundred or part thereof

plus, of the amount in excess of € 50,000.00 up to € 100,000.00:

8% for each hundred or part thereof

plus, of the amount in excess of € 100,000.00 up to € 250,000.00:

5% for each hundred or part thereof

plus, of the amount in excess of € 250,000.00:

2% for each hundred or part thereof

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| 2. | Fee for the appointment of a compulsory arbitrator | € 350.00 |
| 3. | Notice of litigation each | € 350.00 |
| 4. | Fee for simultaneous decision | € 350.00 |
| 5. | For other expenses and costs at least
in the appeal phase at least | € 350.00
€ 500.00 |
| 6. | Fees for withdrawal of the claim | |
| | a. before the constitution of the arbitral tribunal
Expenses flat-rate | € 500.00 |
| | b. until summons to the hearing date
25% of the base fee, at least | € 500.00 |
| | c. until the start of oral proceedings 50% of the base fee, | |
| | d. after the start of oral proceedings, the fee due under No. 1., | |
| | e. upon withdrawal of the notice of litigation and/or the request for
simultaneous decision or upon settling of these requests by withdrawal
of the claim prior to the start of the oral proceedings
Expenses flat-rate
otherwise, the full fee. | € 175.00, |
| 7. | In addition to the basic fees payable under b), c) and d), the flat-rate expenses
and, where applicable, the fee for appointing a compulsory arbitrator are
charged. | |
| 8. | In cases of claims for payment of the outstanding purchase price, rejection of
a decision by the arbitral tribunal, and settlements, the arbitral tribunal may
reduce the basic fees. | |
| 9. | In proceedings requiring multiple hearings or involving a significant amount
of time and effort, the arbitral tribunal may increase the basic fees up to
threefold. | |

10. In proceedings where only a decision on a partial amount or a partial quantity of the total subject matter of the dispute is sought, the arbitral tribunal may increase the basic fees up to tenfold. The same applies to proceedings that are intended to serve as a precedent for the resolution of other disputes between the parties or third parties. In both cases, the increased fees may not exceed the amount that would have been charged if the entire quantity had been the subject of the dispute.
 11. In the appeal phase, the basic fees to be charged in accordance with No. 1 are levied at double the amount. The provisions of No. 5 to 9 also apply to the appeal phase.
- (3) All arbitration fees are net prices plus value added tax.
 - (4) Of the fees collected, the three arbitrators each receive one-fifth and GROFOR receives two-fifths.

§ 35

Bearing the costs

- (1) All costs are borne by the losing party, unless the arbitral tribunal decides otherwise.
- (2) If an appeal is lodged, the Higher Arbitral Court also decides who must bear the entire costs of the proceedings in the first instance.

§ 36

Liability for the costs

The parties are jointly and severally liable to the arbitral tribunal and the Higher Arbitral Court for the costs.

§ 37**Price determination procedure**

- 1) For price determinations, a broker or agent is appointed upon request by the chairperson of GROFOR or their representative. The request must include the final certificate and an appointment fee of € 50.00.
- 2) The fees for price determinations are calculated according to the value of the dispute and amount to 1% of that value, but at least € 250.00 and at most € 500.00. These fees are remitted in full to the broker/agent.

§ 38**Taking effect**

These Arbitration Rules take effect on 1 September 2024.

Hamburg, 30 August 2024