

ACSA ARBITRATION RULES

The Arbitration System Description and Purpose

Section 1. The arbitrations of the American Cotton Shippers Association, authorized pursuant to Article 12 of the By-Laws, shall be conducted by panels of three and an Arbitration Appeals Committee. These committees will be formed as provided in Section 4. The administrative work in connection with arbitration shall be handled by the President or his/her designate. The purpose of arbitration in this Association is to reduce friction among its members and those with whom they deal, avoid litigation, prevent misunderstandings, and adjust unsatisfactory conditions.

Matters to be Arbitrated

Section 2. The term dispute as used, herein, shall be deemed to cover the original complaint as filed, and also any cross complaint, counterclaim, or offset as set forth by the defendant, but in no case shall the matters submitted by the parties be any other than those related to the transaction on which the original complaint is made. By agreeing to arbitration under these rules the parties agree not to assert such matters in, or as a part of, a class action.

Jurisdiction, Procedural, and Related Matters

Section 3.

- (a) An Arbitration Committee may properly consider a case involving a dispute between or among any of the following:
 - (1) Active members of this Association;
 - (2) Members of this Association and non-members by consent of both parties or by court order. In the absence of a court order a case between a member and a nonmember may not be properly considered by an Arbitration Committee without the consent of both parties. If the contract in dispute between a member and nonmember provides for arbitration pursuant to these Arbitration Rules, or if a contract between nonmembers stipulates or references that the contract is subject to these rules or the ACSA Rules or the ACSA Special Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.
 - (3) The Arbitration Committee will not arbitrate a dispute pursuant to a contract with a party who is, at the time of the arbitration, on the World Cotton Exporters Association Default list or the American Cotton Exporters Association Default list, if the contract was made after the defaulting party was placed on the default list.
- (b) All decisions shall be in accordance with the Rules of this Association, and all definitions included in the Rules shall apply under these Arbitration Rules, likewise.

- (c) The original complaint in connection with any disputed matter proposed for arbitration must be filed within one (1) year after discovery of the breach of contract or the expiration date for performance of the contract or contracts involved, whichever is later. For cases arbitrated pursuant to court order, provided the complaint filed in court was filed within the time period set forth in the first sentence of this subsection, the arbitration complaint may be filed at any time up to the 30th day after issuance of a court order or decision providing for arbitration.
- (d) The term member(s) as used in these Arbitration Rules shall mean Active member. The term nonmember(s) shall mean any individual or firm that is not an Active member.
- (e) Parties who specify ACSA arbitration shall have thereby consented to non-exclusive jurisdiction of state and federal courts in Memphis, Tennessee for enforcement of the award.
- (f) Decisions under Rule (c) are procedural, not jurisdictional. See Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002).
- (g) Determinations of arbitrability shall be made by the arbitrators.

Formation of Committees

Section 4.

- (a) There will be three arbitrators. The President shall maintain a list of approved arbitrators which shall be available to the parties. By notice to the President within the time limits specified herein, each party will select one arbitrator from the list of approved arbitrators and the two arbitrators selected shall select the third arbitrator from the list of approved arbitrators. The parties will have no *ex parte* contact with proposed arbitrators or selected arbitrators about the dispute. Each arbitrator will act impartially and not as an advocate for the party which selected him.
- (b) The list of approved arbitrators shall be made up of persons who have relevant experience and qualifications as determined by the President. To qualify as an arbitrator, an arbitrator must be commercially disinterested with respect to the particular dispute intended to be presented to him or her for judgment.
- (c) The Arbitration Appeals Committee shall consist of two persons, one selected by each party from the list of approved arbitrators.

Procedure for Instituting Cases

Section 5.

- (a) To commence a case, a complaint must be submitted to the President. This complaint should state specifically the nature of the dispute; including the defendant's name and address, applicable contract numbers, date of incident giving rise to the dispute, and the amount of damages claimed.

- (b) The President then will prepare and submit to the disputants a Contract for Arbitration, to be signed by a responsible officer of each firm which is party to the dispute or by an individual party. This Contract for Arbitration shall provide that the disputants agree: to abide by the award of the Arbitration Committee, or of the Arbitration Appeals Committee if the original verdict is appealed by one or more of them; and to release the Association and the members of said committee(s) from all responsibility for any errors in judgment that may occur in any respect whatsoever, and from any damage or loss resulting from their acts. It shall be the duty of each party to complete the Contract for Arbitration and return it within fifteen (15) days from the date the party receives the Contract from the President. Should either party refuse to sign the Contract for Arbitration (found on the ACSA website) or refuse to pay the required fees and expenses or refuse to participate in the arbitration, then the party refusing shall have waived the right to offer evidence and argument and the Arbitration Committee shall proceed with the arbitration "ex parte." In such event, the parties shall nevertheless be subject to the provisions of the Contract for Arbitration described in this subsection, and the decision of the Arbitration Committee or Arbitration Appeals Committee shall be binding on both parties to the controversy.
- (c) The party requesting arbitration shall submit to the President with the complaint a filing fee of \$3,000.00, and the defendant shall submit a filing fee of \$3,000.00 with its response to the complaint.
- (d) In the event a party against whom a complaint has been filed desires to file a cross-complaint, counterclaim, or offset, arising out of or relating to the same transaction upon which the complaint is based, he shall be permitted to do so, and same shall be passed upon by the Arbitration Committee, all with the same force and effect as though the cross-complaint was the original complaint. The cross-complaint, counterclaim, or offset shall be heard as one case.
- (e) The scope of discovery in any matter submitted pursuant to these rules shall be subject to the discretion of the arbitrators.
- (f) In addition to the filing fees set forth in section 5(c), an amount may be required to compensate the arbitrators for their time and reimburse them for expenses (including travel and legal counsel), if any. If the President of ACSA or the arbitrators determine that such additional amount is necessary or desirable, the President shall notify the parties of the fees and expenses, and they shall be paid equally by the parties. The amount shall be deposited with the President of ACSA prior to the hearing. Any such amount assessed which is not used shall be returned.
- (g) The filing fee of the substantially prevailing party will be returned at the conclusion of the case. The filing fee of the other party will not be returned.
- (h) In cases of proven financial hardship the fees and expenses required by any of the ACSA arbitration rules may be waived or reduced by the President. Except in cases of proven financial hardship, a party refusing to pay its share of fees or expenses shall forfeit its right to offer evidence or appear and be heard. In such cases the President shall give written notice to the refusing party of the time and date for commencement of the hearing, and the hearing shall be conducted to conclusion without the refusing party's participation.

- (i) The arbitrators may, in their decision and award, provide for payment by one party to the other of all or any part of fees and expenses incurred.
- (j) By agreement of the Parties, a single arbitrator may be appointed instead of three (3) in the discretion of the President in cases estimated to involve less \$100,000.00 or in cases proceeding "*ex parte*", a single arbitrator may be appointed instead of three and in these cases the President shall make the appointment.

Procedure for Preparing a Case

Section 6.

- (a) In preparing either side of a case for submission to an Arbitration Committee a party will be expected to furnish:
 - (1) A concise and clear statement of all that is claimed. Parties to the arbitration are responsible for clearly presenting all aspects of their case (the President and the Arbitration panel are not responsible for undertaking fact finding searches or discovery);
 - (2) The contract or contracts, if any, including all written evidence, emails, letters, and faxes, tending to establish the terms and conditions (or photo-static or verified copies thereof).

The contract is the basis of most of the cases, and special care should be exercised to establish the terms and conditions of it, in the preparation of a case for arbitration. An offer by one party to buy or sell, and the acceptance of the offer by the other party, may constitute the contract. The confirmation of the contract may be essential in determining what the agreement was, and should always be included.

It is all-important that the contract, when there is one, should be clearly and definitely established;

- (3) Weight;
- (4) Quality Specifications;
- (5) Payment Terms;
- (6) Delivery Terms;
- (7) Applicable Trade, Exchange, and/or Arbitration Rules;
- (8) Proof of market difference when there is any probability of the market difference effecting the rights of the parties to the case, either because of discounts for grade, delay in shipment, or non-fulfillment of contract. The proof of market difference might be the AMS reported spot market price of the market in which the cotton in question was purchased, or the New York Futures price at the expected time of delivery on which the price is to be established; but in case it is necessary to establish such difference in a market where no price is regularly issued, affidavits by disinterested persons should be furnished.

- (b) All evidence should be arranged in chronological order to present a clear history of the case.
- (c) When the original papers concerning the case are not supplied and copies are substituted, a statement should be made under oath that the copies, so offered, are true copies.
- (d) All papers should be fastened together securely to avoid loss.

Procedure for Handling a Case Prior to Committee

Section 7.

- (a) Each case shall be filed in writing with the President, who has the authority and duty to manage the arbitration proceedings so as to achieve the goal of providing a simpler, less expensive, and more expeditious process by including all the evidence and a set of pleadings as described above.
- (b) The plaintiff shall submit his initial first argument and written evidence when the case is filed, and shall notify the President of the name of the arbitrator selected by plaintiff at that time.
- (c) Upon receipt of the first papers from the plaintiff, the President shall within ten (10) days thereafter forward to the defendant a duplicate copy of all papers filed by the plaintiff.
- (d) The defendant shall have twenty (20) days to forward its answer from the date it receives the plaintiff's pleadings and written evidence from the President to submit a cross complaint or counterclaim, and to notify the President of the name of the arbitrator selected by it. Once both arbitrators have been selected, the President shall notify each party of the other's selection, and he shall notify the arbitrators to select the third arbitrator.
- (e) Upon receipt of such answer and of the cross pleadings, if any, of the defendant, the President shall forthwith and within five (5) days forward a copy of same to the plaintiff, who shall have ten (10) days after receipt thereof to file a rebuttal.
- (f) Upon receipt of the rebuttal the President shall forthwith and within five (5) days of receipt thereof forward a copy to the defendant, who shall have ten (10) days after receipt to file a surrebuttal to the President.
- (g) Upon receipt of the surrebuttal the President shall within five (5) days of receipt thereof forward a copy to the plaintiff.
- (h) Where a party has failed to file arbitration papers in accordance with the time limits specified in this Section, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal. The President or Chairman of the Arbitration Committee may for good cause shown extend the time limits specified herein. Requests for extension of time must be made prior to expiration of the specified time period. Any extension so granted must be in writing and a copy thereof sent to both parties.
- (i) The arbitrators may, but are not required to, allow additional briefing.

- (j) If a party does not timely select an arbitrator, the President shall select the arbitrator.
- (k) Issues concerning these rules, including any conflict or error or unlawful or unconscionable provision in them, shall be resolved and corrected by the President until the arbitrators are selected, and thereafter by the arbitrators.

Procedure in Committee and in Announcing Awards

Section 8.

- (a) The arbitrators selected by the parties shall select the third arbitrator who shall act as Chairman of the Arbitration Committee. Each member of the arbitration and appeals committees shall disclose to the President any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration. Upon receipt of any such information from a committee member, the President shall transmit such information to both parties. Upon assigning a case as herein provided, the President shall notify each party of the names and addresses of the chairman and members of the Arbitration Committee processing said case. Upon receipt of such notice, either party to the case may challenge the appointment of a member of the Committee for prejudice or other causes within five (5) days of receipt of this notice. Upon determination by the arbitrators or the President that such challenge should be accepted, the party who selected him shall designate a replacement.
- (b) The Chairman of an Arbitration Committee may choose for his committee to determine its awards, or otherwise dispose of the cases submitted to it by one or more of the methods hereinafter set out, provided however, that if either disputant requests an oral hearing same must be held:
 - (1) By passing the papers from one to another by mail;
 - (2) By calling a meeting of the members of a Committee;
 - (3) By calling a meeting of members of the Committee to hear oral argument;
 - (4) By such other means for conferences and hearings as the Chairman may deem necessary, including by telephone and video.
- (c) A decision of the members of an Arbitration Committee shall be by majority vote.
- (d) A Committee cannot be called together more than once each calendar month, except by the consent of every member of a Committee.
- (e) A Committee cannot act at a meeting thereof unless all members are present in person or by telephone or video or other electronic method.
- (f) For purposes of enforcing or appealing an arbitration award the location of the hearing is significant. The default location of the arbitration hearing shall be Memphis, Tennessee unless the Committee by majority vote decides on another location for the convenience of the parties and/or the members of the Committee, or unless the hearing is conducted electronically. In case of electronic

hearings in which arbitrators, parties, and/or witnesses are in different locations the place of the arbitration hearing shall be deemed to be where the Chairman was located during a hearing, or at such other location as may be designated by the Chairman as the deemed location.

- (g) The party requesting such an oral hearing must pay whatever amounts, in addition to 5(c), as shall be necessary to cover the additional expenses of the Committee for the hearing. The amount of such additional expenses shall be determined and fixed by the Committee. Unless waived by the Committee, the party requesting an oral hearing shall advance the amount determined necessary to cover approximately the additional hearing expenses, including a stenographic record or a transcribed audio tape record as set forth in subsection (h) and travel expenses as set forth in subsection (j). The President shall notify the requesting party within ten (10) days after receipt of an oral hearing request what the approximate expenses of the hearing will be. If both parties request an oral hearing, the amount to be paid by each in advance shall be one-half of the estimated amount. The amount specified by the President shall be advanced no later than fifteen (15) days before the date set for the hearing. Failure to advance expenses may be grounds for denying a request for an oral hearing or rendering the non-complying party in default. After the Committee determines and fixes the actual amount of additional expense incurred, the difference between the amount advanced and actual costs shall be refunded or billed to the parties.
- (h) In the event of an oral hearing, if a stenographic record is requested by either party, the President shall make the necessary arrangements for the taking of an official stenographic record of the hearing. The party or parties requesting the oral hearing shall pay the cost of such record directly to the President. The President shall pay the reporting agency. The stenographic or transcribed audio tape record shall be made a part of the official transcript of the case.
- (i) When a case is to be considered, the chairman of the Committee shall fix a time and a place for its hearing, and shall give the President fifteen (15) days notice of the date and the place so fixed, so as to enable the President to give the parties to the arbitration ten (10) days notification of the date and the place of the hearing. In the event of a request for oral hearing, the date so fixed shall be no sooner than fifteen (15) days from the date the amount advanced for approximate expenses is received by the President. Neither party shall seek to postpone the hearing of a case longer than ten (10) days after such date has been set, unless good cause, satisfactory to the Committee, can be shown therefore. Requests for postponement must be received by the Chairman of the Arbitration Committee at least five (5) days prior to the date set for hearing.
- (j) The members of the Arbitration Committee and the Arbitration Committee's legal counsel shall receive the amount of their actual expenses when attending meetings to consider a case or to hear oral testimony.
- (k) The Arbitration Committee shall act promptly on all cases submitted, and shall endeavor to make their report within thirty (30) days after receipt of final papers from the President. The awards shall include determination of arbitrability (if that is disputed) and award of monetary and/or statutory damages arising out of the failure of either party to perform its obligations as determined by the Arbitration Committee. The award shall not include attorney's fees unless provided for in the

contract or by applicable law. The awards shall be dated and signed by a majority of the arbitrators. They shall be transmitted to the President. Copies of said awards shall be mailed by the President to the parties to the arbitration within five (5) days after receipt thereof. Each award shall contain a concise statement of the pertinent facts and the conclusions of the Arbitration Committee and the reasons therefore. The parties to the arbitration shall file a notice of appeal, or comply with the terms of the Arbitration Committee's Award within fifteen (15) days from the receipt of said award.

- (l) All money received by the President for account of arbitration shall be placed with the general funds of the Association, and the expenses of said arbitration shall be paid out of said general fund.
- (m) The arbitration decisions shall be available to the parties. They shall also be available to members and third parties unless the Arbitration Committee or the Board of Directors determines otherwise.

Motion to Correct Award

Section 9.

If the final arbitration award contains a typographical error, a computational error, or other apparently inadvertent error, within ten (10) days of the date of the President's mailing of the final arbitration decision either party may file a motion with the original Arbitration Committee to correct the award, with copies to the President and to the other party. The other party shall have ten (10) days following receipt of the motion to respond to the motion. A motion to correct can only be filed once by a given party. The Arbitration Committee must rule on the motion to correct within sixty (60) days of the date of the arbitration decision, and its failure to rule within that time shall be a denial of the motion as of the 60th day. If a motion to correct is timely filed, the time for filing a notice of appeal shall begin to run at the time the motion to correct is granted in whole or in part or is denied.

Appeal Procedure

Section 10.

- (a) A decision of the Arbitration Committee shall be final unless appealed by either party. If timely and properly appealed, the case shall be reviewed by the Arbitration Appeals Committee and affirmed, modified, reversed or it may be remanded for reconsideration by the Arbitration Committee. There shall be no appeal under these rules from the decision of the Arbitration Appeals Committee. The party or parties to the appeal shall comply with the terms of the Arbitration Appeals Committee award within fifteen (15) days from the receipt of said award. Arguments on Appeal shall be confined to the facts contained in the record of the case. Any new evidence submitted in violation of this rule shall be removed from consideration upon request of either party.
- (b) Any decision of the Arbitration Appeals Committee must be unanimous. A failure to reach a unanimous decision shall be an affirmation of the decision of the Arbitration Committee.
- (c) The appeal fee, payable by each party appealing, shall be \$5,000.00. The fee(s) shall be deposited with the President by the appellant before the case will be

considered. Said appeal fee(s) shall be deposited at the time notice of appeal is given. If not deposited, the award of the Arbitration Committee shall be affirmed and the appeal dismissed. In its decision the Arbitration Appeals Committee shall determine if any part of these fees shall be refunded.

- (d) Notice of appeal from an award of an Arbitration Committee and appellant's brief shall be filed with the President within twenty (20) days from the date of receipt of the final award. The said notice of appeal shall be accompanied by the appellant's designation of an arbitrator to hear the appeal, its appeal fee, and its certified check for the amount of the Arbitration Committee's award in dollars and cents, if any, payable to the adverse party, to be held by the President pending the decision of the Arbitration Appeals Committee.
- (e) Within ten (10) days from the receipt of a notice of appeal at his office, the President shall forward to the appellee, by registered or certified mail or by delivery service, a copy of the appellant's notice of appeal and the name of the arbitrator selected by the appellant, and the President shall assemble a record of the case. Immediately upon the completion of the record, the President shall submit the record to the Arbitration Appeals Committee, the appellant, and the appellee.
- (f) Within ten (10) days of receipt of the record of the case, the appellee shall file its brief of this case with the President, and notify the President of its designation of arbitrator to hear the appeal. The President shall send a copy to the appellant within five (5) days. The parties shall have five (5) days from receipt of notice of the name of an arbitrator to challenge for cause. If the President or either arbitrator determines that the challenge should be accepted, the party who selected him will select the replacement. The President shall send copies of both briefs to the Arbitration Appeals Committee.
- (g) The Arbitration Appeals Committee shall meet at a time and place to be designated by them, at which meeting the Committee shall consider and decide such cases as are properly pending before the committee. In its discretion the Arbitration Appeals Committee may or may not hear oral argument (in person or by telephone or video conference), but no new evidence shall be heard in the appeal of any case.
- (h) Request for oral argument may be made at any time from filing of the notice of appeal until ten (10) days after the appellee files his answer. The chairman of the Arbitration Appeals Committee shall set the date for oral argument as soon as practical.
- (i) All expenses incurred incident to a meeting held to hear oral argument by the Arbitration Appeals Committee shall be met by the party requesting the hearing, unless the arbitrators decide to require the other party to pay, too. A party requesting oral argument shall be required to advance the amount necessary to cover the approximate expenses of the meeting, including a stenographic record (if such is requested) and travel expenses. Within ten (10) days of receipt of a party's request for oral argument the President shall notify said requesting party of the approximate expenses thereof. The amount specified shall be advanced by the requesting party no later than ten (10) days after notification from the President. If both parties request oral argument, the amount paid in advance by each party shall be one-half of the estimated amount. Failure to advance

approximate expenses required hereunder may be grounds for dismissal or affirmance of the appeal. After the committee determines and fixes the actual amount of additional expense incurred the party advancing expenses hereunder shall be given a refund or billed by the President for the difference between the approximate amount advanced and actual costs.

- (j) In the event of oral argument, if a transcript is requested, the President shall make the necessary arrangements for the taking of an official stenographic record of the appeal arguments. The party or parties requesting the oral argument shall pay the cost of such record directly to the President. The President shall pay the reporting agency. The stenographic record shall be made a part of the official transcript of the case.
- (k) Where a party has failed to file appeals papers in accordance with the time limits specified in this section that party shall be deemed in default except that the President may for good cause shown extend the time limits specified herein. Requests for extension of time must be made prior to expiration of the specified time period. No extension of time shall be granted for filing of a notice of appeal. Any extension so granted must be in writing, and a copy thereof sent to both parties.

Miscellaneous

Section 11.

- (a) Whenever any papers, documents, or pleadings are required to be filed, there should be filed with the President seven (7) copies thereof, which said copies shall be disposed of as follows: the original shall be retained by the President; one copy shall be mailed to each of the members of the ACSA Arbitration Committee; one copy shall be mailed to the adverse party; two (2) copies shall be retained by the Secretary, and if an appeal be taken from the award of the Arbitration Committee, said two (2) copies shall be mailed to the members of the Arbitration Appeals Committee. This rule shall apply with equal force and effect to the petition, complaint, exhibits, answers, and cross complaints, and any and all other papers that either party desires to or may be required to file.
- (b) In computing time, the first day shall be excluded and the last day included. If, however, the first or last day falls on a Saturday, Sunday, or a national legal holiday, then the next business day shall be considered the first or last day. The final date for filing required documents or papers in any proceedings under these rules shall be midnight of the stated final day.
- (c) Registered, certified or express delivery receipts shall be used to determine the timeliness of any filing in accordance with the several periods of time specified in these Arbitration Rules. As used throughout these Rules, the term "filing" shall mean the time at which the document is mailed, first class mail, postage prepaid, or filed with a recognized overnight delivery service. No extension of time shall be granted for filing a notice of appeal. All time limits placed on the President shall begin on the date the President receives the document or request which triggers his obligation.

- (d) Notwithstanding any provision to the contrary, time limits set forth in these rules, except the time limit for filing the original complaint and the time limit for filing an appeal, may be extended by agreement of the parties and the President.
- (e) References such as "his" or "its" shall be interpreted to refer to the appropriate party or person(s), and singular may refer to plural. Ambiguities or incongruities in these rules shall be brought to the attention of the President and his interpretation thereof shall be final and binding.

The Board of Directors of the American Cotton Shippers Association unanimously approved the following resolution to amend the ACSA Arbitration Rules at their January 15, 2015 meeting to become effective on January 15, 2015:

"RESOLVED, that the amendments to the Arbitration Rules which have been proposed by the Rules, Bylaws, and Fair Practices Committee be and are hereby adopted as of January 15, 2015 to apply to all pending and future arbitrations; provided, however, that if a party to a contract signed before January 15, 2015 timely objects to the application of any amended rule or rules, and the party objecting is, in the opinion of the arbitrators, materially prejudiced by the changed rule or rules, the changed rule or rules shall not apply."