



# RULES OF ARBITRATION - COMPROMISSORY CLAUSE

## Appendix VI - Art 3 of the ECR [European Cotton Rules]

### **1 – Arbitration clause**

#### 1.1 – Commercial arbitration in Le Havre

Any dispute stemming from a contract governed by the ECR that is not settled in advance on an amiable basis or by quality arbitration (Appendix VI - art. 4 ECR) shall be settled by arbitration in accordance with the version in effect, at the time of filing of the arbitration request, of the Rules of the Association Française Cotonnière (French Cotton Association, AFCOT), 45 r Gustave Nicolle 76600 LE HAVRE (Appendix VI – Art 3 ECR), by three arbitrators in Le Havre. The arbitration shall be subject to French law. The arbitrators shall rule as mediators. The award shall not be subject to appeal.

#### 1.2 – Commercial arbitration pursuant to the I.C.C. rules

As a departure from article 1.1, the parties may both waive the AFCOT arbitration clause and, by joint agreement, assign a court of arbitration to make a definitive settlement of their differences resulting from the present contract in accordance with the Rules of Arbitration of the International Chamber of Commerce, 38 cours Albert 1<sup>er</sup>, 75008 Paris, France.

To that end, the parties must formalise their agreement in the form of an arbitration agreement, including the following provision: "All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules".

The parties undertake to provide AFCOT with the award made following the I.C.C. procedure. Service of the award on AFCOT has the purpose of developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any award communication by AFCOT for research purposes shall have to be made anonymously.

#### 1.3 – Exclusive nature of the option

Recourse to one of the two procedures mentioned in articles 1.1 and 1.2 automatically excludes any subsequent call on the other.

The choice made by the parties in favour of an I.C.C. procedure under the terms of article 1.2., however, does not exclude application of the last paragraph of article 2.4.5. – Execution of the award – relative to the entry in the "default list".

### **2 – Rules of Arbitration:**

#### 2.0. – Definitions

For purposes of the present rules, the following terms shall have the indicated meanings:

**Notification:** Any communication made to the parties or to the court of arbitration by registered letter with receipt or by an equivalent procedure in the country of the addressee, or by any means providing written proof of dispatch and of receipt. The fastest procedure must be used whenever possible.

**Calculation of the periods:** The periods provided for in the present rules are expressed in days. They expire at midnight on the day bearing the same date of the month as the day of the document, the event, the decision or the notification initiating the period. If there is no identical date, the period expires on the following day.

A period that would normally expire on a legal holiday or a non-working day is extended to the first following business day.

A period beginning with execution of a notification begins on the day of dispatch.

**Plaintiff:** The plaintiff, also called the "plaintiff party", is the individual or the legal entity taking the initiative in filing arbitration proceedings with a view to obtaining recognition of a right.

**Defendant:** The defendant, also called "the defendant party", is the individual or legal entity that has been served with a writ calling for an appearance before the court of arbitration.

**Statement:** A written document addressed to the court of arbitration as well as to the adverse party to explain a situation and assert legal arguments aimed at obtaining a right or an advantage in connection with the situation explained therein.

**Introductory statement:** An initial brief filed by the plaintiff that entails application to the court of arbitration. It contains the plaintiff's principal applications.

**Defence statement:** A brief filed by the defendant. It contains the defendant's applications.

**Responsive statement:** The brief addressed by one of the parties in response to a previous brief.

**Cross-application:** An application by the defendant in response to the one filed by its adversary. The cross-application is an "incidental claim" that includes the claims asserted during the proceedings.

**Exequatur:** A judicial procedure on behalf of minimal supervision the purpose of which is to make the arbitration award enforceable so as to allow enforcement thereof.

## 2.1 – Court of arbitration

### 2.1.1 – Principles

The arbitrators constituting the court of arbitration must be and remain totally independent of each of the parties to the arbitration proceedings.

The arbitration proceedings are confidential. The arbitrators and the parties must not disclose any information stemming from the said proceedings, during the proceedings and

after issue of the award. The award is also confidential. The content thereof may be disclosed only with the explicit approval of all parties to the case.

### **2.1.2 – Designation of the arbitrators**

The court of arbitration consists of three arbitrators. Each of the parties designates one arbitrator appearing – if the case arises – in a list of arbitrators approved by AFCOT.

The plaintiff designates the first arbitrator in its arbitration application, pursuant to Appendix VI - Art 3 of the ECR. The defendant has 30 days starting with the time of notification of the arbitration request in which to inform the plaintiff of the name and particulars of the second arbitrator.

The first two arbitrators designated in this way have a period of 30 days starting with the time of appointment of the second arbitrator to choose, together, a third arbitrator, who is to act as chairman of the court of arbitration.

The parties are informed by the Chairman, who serves notice on the parties concerning the definitive constitution of the court of arbitration.

### **2.1.3 – Challenging an arbitrator**

Any information that could compromise the independence of an arbitrator must be disclosed, in writing, to the parties within 15 days following the designation, or the time at which the arbitration becomes aware of the said information.

Each party is entitled to challenge an arbitrator, subject to supervision, in case of abuse of that right, by the President of the Commercial Court of Le Havre.

### **2.1.4 – Replacement of an arbitrator**

In case of resignation, death, inability to act or challenge affecting an arbitrator, he shall be replaced in accordance with the procedures governing his designation.

The arbitration proceedings shall be suspended starting with the time of the death, the inability to act or the challenge, and shall resume as of the time of notification of designation of the new arbitrator.

### **2.1.5 – Difficulties in establishing the court of arbitration**

If, once the dispute has arisen, constitution of the court of arbitration encounters a difficulty because of one of the parties or due to implementation of the procedures regarding designation, challenge or replacement of a defaulting arbitrator, the said arbitrator shall be designated by the President of the Commercial Court of Le Havre at the request of the most diligent party.

## **2.2 – Filing of the arbitration proceedings**

### **2.2.1 – Arbitration application**

The party wishing to implement the arbitration proceedings (the plaintiff or the plaintiff party) must send an arbitration request by way of notification to the adverse party (the defendant or the defendant party).

The application must contain the following, in particular:

- complete identification of each of the parties: name, corporate name, status, mailing and email address, telephone particulars
- a brief explanation of the circumstances and nature of the dispute
- a copy of the arbitration convention
- the subject of the arbitration application
- a rough estimate of the amount of the application
- the designation of the first arbitrator: name, status, mailing and email address, telephone particulars
- invitation to the defendant to designate the second arbitrator pursuant to article 2.1.2 of Appendix VI – Art 3 ECR, within a period of 30 days.

### **2.2.2 – Application to the court of arbitration; service of statements**

Once the court of arbitration has been constituted pursuant to article 2.1, the court of arbitration is applied to as of the time of submission by the plaintiff of a copy of the arbitration application and of the introductory brief, which must be served on the defendant party.

The defendant has a period of 30 days starting with the time of service of the *introductory statement* in which to serve, on the court of arbitration as well as on the plaintiff, its *defence statement*, accompanied by a *cross-application*, if desired.

In case of a cross-application, the plaintiff has a period of 30 days starting with the time of its receipt in which to serve its *responsive statement* on the court of arbitration and on the defendant.

In case of the defendant's default, the arbitration proceedings continue regardless.

### **2.2.3 – Assignment report**

Within 30 days following receipt of the defence statement (or of the responsive statement in case of a cross-application), or after the end of the period of 30 days granted to the defendant under article 2.2.2. § 2, the court of arbitration summons the parties with a view to establishment of an assignment report, subject to payment of the deposit mentioned in article 2.2.4.

In the parties' presence, the court of arbitration establishes an assignment report containing the following:

- a delimitation of the subject of its assignment, in accordance with the introductory statement, the defence statement and the responsive statement, if the case arises.
- an indication of the venue for the court of arbitration's meetings
- the schedule of the proceedings
- the language of the proceedings
- the amount of the deposits calculated pursuant to article 2.2.4.
- the arbitration period.

The assignment report is signed by the parties and the arbitrators. If one of the parties defaults, the assignment report is signed by the arbitrators alone.

Signature of the assignment report determines the framework of the arbitration. Any new application then becomes inadmissible, subject to authorisation by the court of arbitration.

The report is sent to the parties.

### **2.2.4 – Deposit**

The advance mentioned in article 2.2.3. is aimed at making it possible to cover the expenses of the arbitration proceedings, particularly payment of the arbitrators' fees and

the expenses of the court of arbitration. It is determined by the arbitrators and is calculated in accordance with the scale communicated in response to a simple request filed with AFCOT. It is paid by the parties in equal shares, at the request of the chairman of the court of arbitration, within 30 days following signature of the assignment report mentioned in article 2.2.3.

In case of a failure by one of the parties to pay the advance, the other party must pay all of the defaulting party's participation. Failing that, the arbitration proceedings will be suspended until full payment of the advance.

The amount of the deposit shall be paid into the AFCOT account.

In case, during the proceedings, the court of arbitration considers the advance insufficient, it may require the parties to pay an additional advance.

The advance shall be settled in the arbitration award.

### 2.3 – Execution of the arbitration proceedings

#### **2.3.1 – Period**

The arbitrators' assignment lasts for 6 months starting with the date of acceptance of his assignment by the third arbitrator as defined in article 2.1.2.

It may be extended for a maximum period of 6 months, either by agreement between the parties, or, at the request of one of them or of the court of arbitration, by the Presiding Judge of the Commercial Court of Le Havre.

#### **2.3.2 – Consideration of the briefs**

The court of arbitration considers the briefs and exhibits produced by the parties as soon as possible.

#### **2.3.3 – Hearing in the parties' presence**

The court of arbitration hears the parties in each other's presence, at the request of one of them or on its own initiative. It summons them to appear by any means providing written proof of dispatch and receipt within a reasonable period of at least two weeks, and at an appropriate place as agreed on the assignment document.

The parties appear personally or through duly mandated representatives, assisted by an advisor if desired.

#### **2.3.4 – Absence of one of the parties**

In the absence of an excuse accepted by the court of arbitration at its sole discretion, the absence of one of the parties does not constitute an obstacle to holding the hearing in the parties' presence.

#### **2.3.5 – Evidence**

The court of arbitration is empowered to ask the parties to produce any additional evidence.

#### **2.3.6 – Closing arguments**

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Once the court of arbitration considers itself sufficiently enlightened, the chairman closes the arguments.

## 2.4 – Award

### **2.4.1 – Period**

The award must be issued within 30 days following the conclusion of the arguments, subject to observance of the period of 6 months provided for in article 2.3.1.

### **2.4.2 – Procedures regarding adoption of the award**

The deliberations are secret.

The award is issued by a majority of the votes.

### **2.4.3 – Content of the award**

The award must identify the parties to the proceedings. It mentions the following:

- the names of the arbitrators issuing it;
- the last names, given names or corporate names of the parties, as well as their domicile or registered office;
- if the case arises, the names of the advisors or of any persons having represented or assisted the parties.

The award must also include the following:

- a brief reminder of the facts
- a summary of the parties' applications and defences
- a reminder of the assignment of the court of arbitration
- a summary of the proceedings
- the solution reached to the dispute
- the grounds for the solution adopted
- the settlement of the arbitration expenses and the designation of the party or parties to pay the said expenses
- an indication of its date.

The arbitration award is issued in six originals. Each one is to be signed by all of the arbitrators.

### **2.4.4 – Communication of the award**

The original award is served by the chairman of the court of arbitration on the parties as well as on AFCOT, within a reasonable time.

Service of the award on AFCOT is aimed at developing a collection of arbitration precedents. AFCOT undertakes to respect the confidentiality of the proceedings and of the award. Any communication of the award by AFCOT for research purposes shall have to be in an anonymous form.

The parties to the arbitration proceedings bear joint and several liability for payment of the arbitration expenses.

### **2.4.5 – Execution of the award**

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The arbitration award issued in accordance with the present rules is not subject to appeal. It is binding on the parties.

The parties undertake to spontaneously carry out, without delay, any sentences issued in connection with the award.

Failing this, the most diligent party has the option of applying for exequatur of the award to the Tribunal de Grande Instance (Regional Court) of Le Havre with a view to its enforcement.

In the absence of execution of the award, the diligent party reserves the right to communicate the name of the said party to AFCOT, which will forward the name to the CICC for purposes of entry in the "default list".