



ACE

AGRICULTURAL COMMODITY EXCHANGE FOR AFRICA

RULES OF ARBITRATION

Chapter 1: Introductory Provisions

Article 1 – Jurisdiction

- 1 Any dispute arising out of any contracts, matters or dealings which are subject to the Regulations of the Exchange, including any questions of the law arising in connection therewith, shall be referred to arbitration in accordance with these Rules as read with the Arbitration Act (Chapter 6:03) or any statutory modification or re-enactment thereof for the time being in force in Malawi.
- 2 The Arbitration Committee appointed by ACE in terms of Regulation 10 of the Regulations of the Exchange shall deal with all matters relating to arbitration in terms of these Rules, it being noted that the said Arbitration Committee is empowered to amend these Rules from time to time.
- 3 Any party engaged in arbitration pertaining to these Rules shall abide by the same and shall be liable, jointly and severally with the other parties to the arbitration, for all fees and expenses incurred in connection with the arbitration proceedings in accordance with Article 8.2.
- 4 Arbitration proceedings in terms of these Rules shall be held either in Lilongwe or at such other place or places as may be determined by the Arbitration Committee.

Chapter 2: Arbitration Procedure

Article 2 – Reference to Arbitration

Any party wishing to refer a dispute to arbitration shall, after giving the other party or parties not less than four (4) business days notice either by registered mail, telefax, telex, email or hand delivery, submit a copy of such notice to the Chief Executive Officer of the Exchange for onward transmission to the Arbitration Committee.

Article 3 - Time Limits

1 Time Limits for Technical Claims

A technical claim is usually a claim for breach of contract which, for example, may consist of non-performance by one side of the other, usually called a default, or it may be in respect of uncontractual performance e.g. a late delivery, delivery of non-conforming uncontractual goods or a failure to give certain vital notices at the appropriate times.

In such cases the aggrieved party may claim arbitration with a view to declaring the other party to be in breach of contract and in default of his obligations to perform and a requirement that the defaulting party should pay damages or comply with an order for specific performance.

All matters in dispute in terms of the foregoing must be referred to arbitration within 30 (thirty) days of the last contractual delivery period, provided that the Arbitration Committee may in its absolute discretion permit matters in dispute to go to arbitration even if referred outside the said thirty-day period.

2 Time Limits for Quality/Condition

Where a dispute arises over the quality and /or condition of goods traded, it shall be referred to arbitration within 14 (fourteen) days of the last contractual delivery period, provided that the Arbitration Committee may in its absolute discretion permit matters in dispute to go to arbitration even if referred outside the said fourteen-day period.

3 Time Limits on Monies Due

Monies due may cover such issues as remaining balances on final invoices and, in particular demurrage and despatch, which might not be settled for some time after the completion of the shipment. All such matters shall be referred to arbitration within 30 (thirty) days of the last contractual payment date, provided that the Arbitration Committee may in its absolute discretion permit matters in dispute to go to arbitration even if referred outside the said thirty-day period.

Article 4 - Appointment of Arbitrator(s)

- 1 Upon receiving the statement of case from the party referring the dispute to arbitration, the Arbitration Committee shall send to both parties a list of no less than five potential arbitrators from which the parties shall, by mutual consent, agree on a sole Arbitrator and notify the Arbitration Committee within three (3) business days from the date on which the list of arbitrators is sent to the parties by the Arbitration Committee.
- 2 Where the parties have not agreed upon a sole arbitrator, within three (3) business days, three (3) Arbitrators shall immediately be appointed by the Arbitration Committee and the identity of these Arbitrators so appointed shall forthwith be provided by the Arbitration Committee to the parties to the dispute. In the event of failing consensus between the parties as to the appointment of the appropriate Arbitrator the Arbitration Committee shall have a sole and unfettered discretion as to the appointment of the Arbitrators.
- 3 No person shall be eligible to serve as an Arbitrator if he has any personal or financial interest in the matter or matters under consideration or becomes directly or indirectly interested in the subject matters in dispute. In the event of a person having become so interested, dying, or of having become in any way, in the discretion of the Arbitration Committee incapacitated from acting, the Arbitration Committee shall, in its sole and unfettered discretion appoint another Arbitrator to take his place and the arbitration shall thereupon proceed as if that other person had originally been appointed as Arbitrator.
- 4 Where an Arbitrator has misconducted himself or the proceedings, the Arbitration Committee may remove him. Any such allegation shall be referred in writing to the Arbitration Committee who shall determine in its discretion as to whether the appointed Arbitrator should be replaced or not.

Article 5 - Statements of Case

- 1 The party referring any dispute to arbitration shall provide in writing a clear and concise statement of his case, together with a copy of the contract, a statement of relief sought, including, to the extent possible, an indication of any amount(s) claimed and such other documentary evidence as he thinks proper, and shall forward the same in triplicate to the Chief Executive Officer within four (4) business days of the date at which the matter was referred to arbitration.
- 2 The Chief Executive Officer shall forthwith send a copy of the statement of case to the other party or parties to the dispute, together with a copy of each supporting document and shall give them four (4) business days in which to submit their response.
- 3 The Chief Executive Officer shall forthwith send a copy of the reply from the other party or parties to the party, which has referred the matter to arbitration.

- 4 Each party to the dispute will be permitted a further period of three (3) business days within which to submit further written comments and/or documents, as they may deem appropriate. The Arbitration Committee shall before the beginning of this period set a date for the arbitration hearing.
- 5 All statements of claim and defences and any documentary evidence submitted, shall be written in the English language, or where written in any other language, accompanied by an authenticated translation.

Article 6 - Hearing procedure

- 1 The Arbitrator(s) may, in his/their sole discretion, decide the matter or matters before him/them on the basis of the written statements and documents submitted to him/them in accordance with Article 5, without calling for a hearing.
- 2 The Arbitrator(s) may, in his/their sole discretion however, call the parties before him/them and request the attendance of witnesses or the provision of further documents or information in written form, and may also consult legal advisors of his/their choice.
- 3 In the event of the Arbitrator(s) requiring a hearing in terms of sub-clause 2, above, whether or not witnesses shall be called to such hearing, the parties to the dispute shall either appear personally or be represented by an agent duly appointed in writing, but shall not be represented by any duly registered legal practitioner unless the other party or parties to this dispute shall have been informed.
- 5 No party or parties to the dispute shall, at any hearing called by the Arbitrator(s) in terms thereof, make any oral statement in the absence of the other party or parties to the dispute, save in instances where such other party or parties, or their duly authorised representatives, as the case may be, shall fail to appear at any such hearing after notice to so appear has been given to such party or parties by the Arbitrator(s).

Article 7 - Rules of evidence

The Arbitrator(s) shall, subject to these Rules of Arbitration, adopt such Rules and procedures as he may in his sole discretion, deem fit, and he shall not be bound by the strict rules of evidence and shall be at liberty to admit and consider any material whatsoever notwithstanding that the same may not be admissible under the law for the time being relating to evidence and may, without prejudice to the generality or the foregoing, order one party to the arbitration to disclose to another party such documents or information which he may deem relevant to the arbitration.

Article 8 - Decisions of the Arbitrator(s)

- 1 When there are three arbitrators, an award is given by a majority decision.
- 2 The Arbitrator(s) shall determine in writing to the Arbitration Committee, any dispute or disputes before him/them and he/they shall make such orders, including orders for payment of damages or costs, as he/they may in his unfettered discretion deem appropriate.
- 3 The award shall state the reasons upon which it is based.
- 4 If any of the parties fails to appear when the case is called on for hearing and has failed to give notice, the Arbitrator(s) shall proceed with default proceedings only if the Arbitrator(s) is/are satisfied that there is no good reason for the Party's absence.
- 5 Any decision(s) or order made by the Arbitrator(s) shall be final and binding upon the parties and carried into effect and, further, may be made an Order of Court of competent jurisdiction at the instance of either party. Subject to any provisions of the Arbitration Act (Chapter 6:03), as amended or substituted from time to time, to the contrary, the decision(s) of the Arbitrator(s) shall not be subject to any review, appeal or re-hearing procedures.

That the Arbitrator(s) shall be entitled, in his/their sole discretion, to make any order or award in relation to any party who shall refuse to concur in the reference to arbitration proceedings as herein provided, and the said Arbitrator(s) shall further be entitled to determine any matters referred to him/them in the absence of any defaulting party.

Chapter 3: Fees and Costs

Article 9 – Fees

- 1 A non-returnable registration fee of **ONE HUNDRED UNITED STATES DOLLARS (US\$100, 00)** shall be paid to the Arbitration Committee upon any reference to arbitration, by the party referring a dispute to arbitration. In addition to the said non-refundable registration fee, the party referring a dispute to arbitration shall deposit with the Arbitration Committee such other amount or amounts as the Arbitration Committee may, in its absolute discretion, call for in relation to general fees and expenses connected with the arbitration. In the event of any failure to pay the registration fee or further deposit as may be required by the Arbitration Committee, the latter may postpone or discontinue the arbitration proceedings.
- 2 That the registration fee and/or other amounts deposited in terms of sub-clause 1 above shall be applied in payment of the total fees and costs of the arbitration without prejudice to the incidence of liability therefore, as between the parties to the dispute, under an award of the Arbitrator(s). Any balance of such sums shall thereafter be returned to the party referring a dispute to arbitration in such proportions as the Arbitrator(s) may determine.

Article 10 – Costs

The Arbitrator(s) shall be entitled, in his/their sole discretion, in any arbitration, to determine which of the parties shall be liable to pay the costs incurred in or necessarily incidental to the arbitration proceedings and may, further, apportion the total costs as between the disputing parties in such ratios as he/they may deem appropriate.

Chapter 4: Miscellaneous

Article 11 – Arbitration Decisions

A Record shall be made by the Arbitration Committee of all decisions made by Arbitrators in all arbitration proceedings. The Arbitration Committee shall notify the parties of any arbitration as soon as the decision or decisions of the Arbitrator(s) are provided to it and such decisions shall be held by the said Arbitration Committee at the disposal of the parties to the arbitration against payment of fees and costs incurred in relation to the arbitration proceedings. A copy of the decision or decisions of the Arbitrator(s) shall be provided to all parties and such decision or decisions shall be honoured within fourteen (14) days after the date that the parties are notified in regard to the same.

Article 12 – Notices on Failure to Abide by Arbitrator(s) Decision

In the event of a party to an arbitration neglecting or refusing to carry out or abide by any decision(s), order or award made by an Arbitrator within fourteen (14) days, of being notified of the same the Arbitration Committee may circularise to members of ACE, by any means which it may, in its discretion deem appropriate, a notification to that effect and the parties to such arbitration shall be deemed to have consented to the Arbitration Committee making such notification.

Article 13 – Applicable Rules of Law

- 1 The substantive law applicable to any dispute between residents of Malawi or companies registered in Malawi shall be determined in accordance with the laws of Malawi
- 2 The substantive law applicable to any dispute to which one or more of the parties is not resident or a company registered in Malawi shall be the law chosen by the parties or, failing such choice, shall be general principles of law.