



Eastern Africa Grain Council

General Arbitration Rules

PREAMBLE

These Rules shall be known as the **EASTERN AFRICA GRAIN COUNCIL ARBITRATION RULES**; and they shall be applied in:

- (i). all disputes arising out of a contract or transaction containing an arbitration clause in which the parties have expressly agreed to submit all future disputes arising out of such contract or transaction to arbitration under these rules or under any one of the EAGC Rules of Trade.
- (ii). circumstances where no such express arbitration clause or agreement exists but where after a dispute has already arisen the parties have mutually submitted themselves in writing to arbitration under the EAGC.

DEFINITIONS

In these rules;

- i. EAGC means the **Eastern Africa Grain Council**
- ii. BoD means the Board of Directors of the EAGC
- iii. Officers mean any appointed representatives of the BoD
- iv. Arbitrator means an EAGC appointed Arbitrator
- v. The Arbitration Act means The Arbitration Act No. 95 of the Laws of Kenya or such other law or enactment amending, replacing or repealing the same as may then be in force.

2 Introduction

- 2.1 The party bringing the claim shall be known as the Claimant.
- 2.2 The party responding to the claim shall be known as the Respondent.
- 2.3 Any party engaging in an arbitration or an appeal subject to these Rules whether a member of the EAGC or not, is deemed to agree to abide by these Rules and to agree to be liable to the EAGC (separately or jointly with the other parties to the arbitration) for all fees and expenses incurred in connection with the arbitration or the enforcement of a ruling. Upon notification to EAGC these fees and expenses shall become a debt due to the EAGC by the parties.
- 2.4 If the parties are unable to settle a dispute amicably, the dispute shall be referred to arbitration and the Arbitrators or the Board of Appeal shall determine all disputes according to evidence placed before them and in accordance with the following provisions;
 - 2.4.1 The Arbitration Act No. 95 of the Laws of Kenya or such other law or enactment amending, replacing or repealing the same as may then be in force
 - 2.4.2 Unless the parties with the approval of EAGC otherwise agree, to hold the Arbitration outside Kenya, the seat of the Arbitration hearings shall be in Kenya.

3 Time Limits

- 3.1 The Claimant shall bring their claim to the EAGC within the time limit laid out in the relevant EAGC trade rule and a Respondent may raise the defence of Time bar where such claim has been brought outside the stipulated time limit, provided that the Arbitrator may in his absolute discretion but for reasons to be given in his ruling decide to allow the bringing of such a claim notwithstanding the defence of time bar.

4 Procedure

The procedure for bringing a claim under the EAGC Arbitration Rules shall be as follows:

- 4.1 The claim shall be in the form of a written statement addressed to the EAGC Arbitration Committee and sent by registered mail by reputable courier to the EAGC offices marked "**EAGC Arbitration**" along with the relevant fees as laid out by the EAGC and the letter shall set out the following:
 - 4.1.1 name and address (telephone numbers and email addresses where available) of the Claimant and the Respondent
 - 4.1.2 an express statement that the Claimant wishes to arbitrate under the EAGC Arbitration Rules and does not accept to arbitrate under the EAGC Arbitration Rules for the Resolution of Simple Disputes
 - 4.1.3 The date of the contract under which EAGC Contract Rules were applied
 - 4.1.4 Two copies of the original contract under which the dispute has arisen
 - 4.1.5 The name of the Claimants appointed EAGC Arbitrator.

- 4.2 The EAGC shall within two (2) working days of having received the claim notify the Respondent in writing by registered mail or reputable courier that the Claimant has requested arbitration under the EAGC Arbitration Rules and the name of the Claimants appointed Arbitrator
- 4.3 If the Respondent does not wish to arbitrate under the EAGC Arbitration Rules, the Respondent shall within five (5) working days of receiving the EAGC notification referred to in clause 4.2 above, communicate to the EAGC by letter sent by registered mail or reputable courier, stating the Respondents rejection of arbitration by EAGC Arbitration Rules and their request to arbitrate under the EAGC Arbitration Rules for the Resolution of Simple Disputes along with a brief statement outlining the dispute and the reasons the Respondent believes the Simple Dispute Rules cover the claim.
- 4.4 The EAGC Arbitration Committee shall within two (2) working days of having received the notification referred to in clause 4.3 notify the Claimant that the Respondent does not wish to arbitrate under the EAGC Arbitration Rules.
- 4.5 The Claimant shall within five (5) working days of having received the EAGC notification referred to in clause 4.4 communicate with the EAGC by letter sent by registered mail or reputable courier either to inform the EAGC their agreement to arbitrate using the EAGC Arbitration Rules for the Resolution of Simple Disputes or provide a brief statement, outlining the claim and the reasons the Claimant believes the Simple Dispute Rules do not cover the claim.
- 4.6 The EAGC Arbitration Committee shall within five (5) working days review the information provided by the Claimant and the Respondent, and may where necessary request further information from the Claimant or the Respondent. The EAGC shall notify the parties whether the dispute falls under the EAGC Arbitration Rules for the resolution of Simple Disputes or the EAGC Arbitration Rules and shall inform the Respondent and Claimant of their decision and the consequences thereof.
- 4.7 If the EAGC Arbitration Committee does not uphold the Claimants request to have the dispute settled under the EAGC Arbitration Rules the Claimant will have the right to appeal provided that the Claimant has fully complied with the Arbitrator's award.
- 4.8 If the Respondent does wish to arbitrate under the EAGC Arbitration Rules or the Respondent fails to respond to the EAGC under clause 4.3 the Respondent shall within ten (10) working days of the EAGC sending the notification referred to in clause 4.2 above, communicate by letter sent by registered mail or reputable courier to the EAGC Arbitration Committee in the form of a written statement addressed to the EAGC Arbitration Committee and shall include the following:
 - 4.6.1 name and address of the Claimant and the Respondent
 - 4.6.2 an express statement that the Respondent wishes to arbitrate under the EAGC Arbitration Rules
 - 4.6.3 The date of the contract under which EAGC Contract Rules were applied
 - 4.6.4 Two copies of the original contract under which the dispute has arisen
 - 4.6.5 The name of the Respondents appointed EAGC Arbitrator.

4 Appointment of Arbitrators

- 5.1 The EAGC shall inform the Claimant of the Respondents Arbitrator
- 5.2 The two Arbitrators shall confirm their appointments within three (3) working days from the date of their respective appointments
- 5.3 Two officers of the EAGC Arbitration Committee shall upon receipt of acceptance of appointment by the two Arbitrators and upon receipt of the stipulated payment in respect of the EAGC preliminary arbitration costs appoint a third Arbitrator and inform the parties of such. The third Arbitrator shall be the chairman presiding over the Arbitration proceedings and his name shall be notified to the parties by the EAGC.
- 5.4 In the event that the Arbitrators fail to agree on any ruling in the course of the proceedings or on the final decision, the majority decision shall be final.
- 5.5 If either party fails to appoint an Arbitrator within the stipulated time, the other party may apply to the EAGC for the appointment of an Arbitrator for the other party. The party applying to the EAGC must notify the other party in writing that they have applied to the EAGC to appoint an

- Arbitrator for the other party. The EAGC shall appoint an Arbitrator and inform both parties the name of the appointed Arbitrator.
- 5.6 Applications to the EAGC for the appointment of an Arbitrator shall be accompanied by;
 - 5.6.1 evidence that the parties have entered into a contract subject to these rules
 - 5.6.2 copies of notices claiming arbitration
 - 5.6.3 payment or evidence of payment of the current arbitration appointment fee
 - 5.7 Only persons approved by the EAGC and listed on the current EAGC list of Arbitrators may act as Arbitrators under these rules. In all cases an Arbitrator appointed under these Rules shall either be a professionally qualified Arbitrator, or have occupied a senior position in the grains industry or has been involved in the grain industry for no less than ten (10) years.
 - 5.8 An Arbitrator appointed by these rules shall have no interests whether financial or personal in the transaction or interests (direct or indirect, financial or personal) in any company, or member of a company associated in the arbitration.
 - 5.9 If for any reason an appointed Arbitrator is no longer capable of acting or continuing to act or is found to be ineligible to act as an Arbitrator the EAGC shall within five (5) working days of being informed of the Arbitrator's incapacity appoint a substitute Arbitrator.

6 Statement Procedure

The procedure after appointment of the Arbitrator shall be as follows:

- 6.1 Within ten (10) working days from receiving the notice from the EAGC of the appointment of the final Arbitrator, the Claimant shall submit a clear, brief and to the point statement of their case accompanied by copies of the Contract and any and all supporting documentation and shall deliver by registered mail or reputable courier one copy each to the Arbitrators, the EAGC offices and to the Respondent.
- 6.2 If the Claimant fails to submit the above documentation within the time limit the Claimant shall be considered to have waived their right to make a claim provided that the Arbitrator may in his absolute discretion and for reasons to be given in writing allow the Claimant to submit his documentation later than the prescribed period.
- 6.3 Within ten (10) working days from the date the Claimants statement and documents were received the Respondent shall submit a clear brief and to the point statement of their case accompanied by copies of the Contract and any and all supporting documentation and shall deliver by registered mail or reputable courier to each of the Arbitrators, the EAGC offices and the Claimant
- 6.4 The Claimant shall have eight (8) working days from the date when the Respondents statement and documents were received to respond to any new issues raised, this response shall be sent by registered mail or reputable courier to each of the Arbitrators, the EAGC offices and the Respondent.
- 6.5 The Respondent shall have eight (8) working days from the date when the Claimants Response were received to respond to any new issues raised, this response shall be sent by registered mail or reputable courier to each of the Arbitrators, the EAGC offices and the Respondent.
- 6.6 The Arbitrators may in their sole discretion request the Claimant or the Respondent within a set time limit to simplify their statements, or substantiate their documentation and send such documents to the other party, each of the Arbitrators and the EAGC.
- 6.7 The Arbitrators shall have the power to assess and award costs of and connected to the dispute, including fees and expenses incurred by the Arbitrators and the EAGC. The Arbitrators shall assess and award costs at the conclusion of the arbitration.
- 6.8 The Arbitrators shall consider the submitted documents and present the award on the Arbitration date stipulated by the EAGC.
- 6.9 Where the Arbitrators considers that an oral hearing is necessary the EAGC shall notify the parties of the date, time and place and at such hearings the parties may be represented by one of their employees, or by an EAGC registered Arbitrator, or other representation, but the parties may not be represented by solicitors, barristers advocate or other legally qualified advisor.
- 6.10 The Arbitrators may at their absolute discretion re-schedule the arbitration date and the EAGC shall inform the parties immediately.

7 Arbitration Costs

- 7.1 The EAGC Board of Directors shall from time to time determine the costs and fees applicable in arbitration and the same shall be published by EAGC and made available to members. In the event of the Arbitrators and or the EAGC incurring additional expenses, the EAGC shall inform the parties who (subject to the final order on costs) shall be jointly and severally responsible for such expenses.

8 Award

- 8.1 Subject to all the Arbitrators' costs and fees having been paid in full by the parties, the Arbitrator Chairman shall deliver to the EAGC offices 3 signed copies of his award. Subject to all the Arbitration costs incurred by the EAGC having been paid in full the EAGC shall within 5 working days of having received the Arbitrators award notify the parties to collect their respective copies of the award from EAGC. The Arbitrator's decision and award shall be final and binding on the parties subject to a right of appeal as limited by the Arbitration Act 1995 of Kenya and such appeal where allowed shall be governed by the EAGC Appeal rules.
- 8.2 Regardless of the right to appeal as set out in clause 8.1 above, parties must in the first instance comply fully with the arbitrator's decision and if the decision is overturned in the appeal, the appeal decision shall order restitution.
- 8.3 The Arbitrators shall state in the Award the time limit within which any payments must be made any actions taken.
- 8.4 Such payment ordered in the award shall be made as specified by the arbitration award
- 8.5 If due to currency regulations in a party's country of operation the party is restricted in making payments within the time limits laid out, the party may in writing apply to the EAGC for an extension, the application to the EAGC must include evidence that the application for a transfer has been made by the party concerned.

9 Default

- 9.1 In the event of a party arbitrating under the EAGC Arbitration Rules failing or refusing to abide by the Arbitration Award including the payment of costs and fees of the Arbitration, the EAGC may take such action against the party as it may deem appropriate in the circumstances including but not limited to:
- 9.1.1 posting the name of the party and the facts on the EAGC web site,
 - 9.1.2 posting the name of the party and the on the EAGC notice board,
 - 9.1.3 advertising the name of the party and the in relevant news papers,
 - 9.1.4 circulating the information around the EAGC members and any other organizations the EAGC has involvement with,
 - 9.1.5 if the party is a member of the EAGC the EAGC shall immediately blacklist the member and advising other EAGC members to stop trading with such defaulting member.
- 9.2 Parties seeking arbitration through the EAGC Arbitration Rules shall be deemed to have consented to the EAGC taking such actions and they shall be totally excluded from taking any action or bringing any claims against EAGC in respect of such action.