



Eastern Africa Grain Council

Appeal Rules

PREAMBLE

These Rules shall be known as the **EASTERN AFRICA GRAIN COUNCIL (EAGC) APPEAL RULES** and they shall be applied in Appeals arising out of the determination by an Arbitrator of disputes arising out of contracts that incorporate the EAGC Arbitration Rules and/or one of the EAGC Rules of Trade or under any other arbitration rules of EAGC, provided that such appeal is permitted either under the rules under which the dispute was arbitrated or under 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.

1. 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

2. Introduction

- 2.1 The party bringing the claim shall be known as the Appellant
- 2.2 The party responding to the claim shall be known as the Respondent.
- 2.3 Any party engaging in an appeal subject to the EAGC Appeal 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 appeal 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 Any party contesting the award of an arbitrator made under any of the EAGC Arbitration Rules and who is entitled to appeal by virtue of such EAGC Rules or under the Arbitration Act no. 95 of the Laws of Kenya, shall have its appeal filed and heard and determined in the manner set out herebelow:

3. Procedure

- 3.1 The Appellant shall within thirty (30) days from receipt of the date of the award:
 - 3.1.1 serve a written notice of appeal upon EAGC;
 - 3.1.2 serve upon the respondent the same notice of appeal;
 - 3.1.3 pay to EAGC the requisite appeal deposit as laid out by EAGC from time to time;
- 3.2 Where appeals are lodged by more than one party arising out of the same award, EAGC shall have the power to consolidate such appeals for hearing by the same board of appeal.
- 3.3 No appeal shall be heard before the fees and expenses of the arbitrator/s and the EAGC awarded in the arbitration proceedings sought to be appealed against have been paid in full.

- 3.4 The Appellant shall be required to pay the Appeal Deposit referred to in clause 3.1 (iii) above or provide a bank guarantee for payment of the same to EAGC within five (5) working days after the date of service of the Notice of Appeal and in default of such payment or provision of such bank guarantee as aforesaid, the Notice of Appeal shall be deemed to have been withdrawn and the right of appeal waived unless, prior to the expiry of the period of five (5) working days, the appellant applies in writing to the board of appeal for an extension, in which case the Board of Appeal may in its absolute discretion upon hearing evidence or submissions from each party grant an extension for a specified period of time.

4. BOARDS OF APPEAL

- 4.1 Where the arbitration award appealed against was made by a sole arbitrator, the Board of Appeal shall be comprised of three members.
- 4.2 Where the arbitration award appealed against was made by three arbitrators, the board of appeal shall be comprised of five members.
- 4.3 The EAGC will constitute the members of the Board of Appeal and notify the parties of the names of the members.
- 4.4 Upon constitution of a Board of Appeal, the members shall at their first meeting promptly appoint one of their members to be the Chairman.
- 4.5 Only persons approved by the EAGC and listed on the EAGC list of Arbitrators may act as members of a Board of Appeal and it shall be a requirement that a member of a Board of Appeal shall either be a professionally qualified arbitrator, or have occupied a senior position in the grains industry or be a person of sound reputation that has been involved in the grain industry for no less than ten (10) years.
- 4.6 A member of the Board of Appeal appointed by these rules shall have no interests whether financial or personal in the transaction nor interest (direct or indirect, financial or personal) in any company or be a member of a company associated in the arbitration.
- 4.7 If a member of the Board of Appeal dies, becomes incapable of acting, refuses to act, resigns from their appointment, fails to proceed with the arbitration, or is found to be ineligible, the EAGC shall appoint a substitute within five (5) working days of the member ceasing to act. In the event of no substitution in a five member board, the parties may by agreement in writing allow the appeal to proceed with the remaining four members of the Board of Appeal provided that the remaining four members of the Board of Appeal shall agree in writing before hand the procedure to be adopted in the event of an equal vote at the conclusion of the hearing.

5. Appeal Procedure

- 5.1 At the end of the hearing of the appeal, the Board of Appeal shall set a date for the Appeal Award; the EAGC shall advise the parties in writing.
- 5.2 All statements and other documentation intended to be used in the appeal shall in every case be delivered by way of registered delivery (either mail or reputable courier company) as follows;

- 5.2.1 one copy to the opposite party and in case of more than one opposite party, to each one of them;
- 5.2.2 one copy for each appointed member of the Board of Appeal sent through the EAGC office and;
- 5.2.3 one copy to the EAGC.
- 5.3 The Appellant shall, within thirty (30) days from the date of notification by the EAGC of the appointed members of the Board of Appeal, serve upon all the parties mentioned in clause 5.2 above, a clear, brief and to the point statement of its case to contest the arbitration award.
- 5.4 The Respondent shall, within thirty (30) days from the date the claimant's statement and documentation were served on it, serve on all the parties mentioned in clause 5.2 above a clear, brief and to the point statement of their case supporting the Arbitration award the Appellant shall have the right, within ten (10) days from the date of the Respondent's statement to serve upon the Respondent a response to the Respondent's.
- 5.5 Where a party feels that it may require more time than that provided for in clauses 5.4 to 5.6 above, such party may apply to the Board of Appeal and the Board of Appeal may in its discretion extend the time limit for each party by such time as it shall consider necessary provided that, written notification shall be given to both parties where time limit is so extended.
- 5.6 An arbitrator/s may in their sole discretion consult with experts on aspects of the Appeal, the costs of such expert consultation shall be part of the Appeal expenses and shall be charged to such of the parties as the Arbitrators shall decide.
- 5.7 The Appellant and or the Respondent may in writing and for reasons stated request that the Board of Appeal consider granting an oral hearing. The Board of Appeal's decision shall be final.
- 5.8 Whether or not the Appellant and or the Respondent request for an oral hearing the Board of Appeal may decide in its sole discretion that an oral hearing is necessary.
- 5.9 The EAGC shall inform all parties of the date, time and place of the oral hearing and arrange the venue. At an oral hearing the parties may be represented by one of their employers, or by an EAGC Arbitrator (who has not previously acted in the dispute) or other representative involved in the trade. No party shall be represented at the hearing of such an appeal or have present an attorney, barrister, solicitor or other legally qualified advocate wholly or partly engaged in private practice unless legal representation is expressly agreed to in advance with the Board of Appeal.
- 5.10 Either party receiving notice of the date fixed for the oral hearing may in writing request for an adjournment stating the reasons. The Board of Appeal shall decide in its absolute discretion whether to grant the adjournment.
- 5.11 If the Appellant requests for an adjournment of more than ten (10) working days, the Board of Appeal may in its sole discretion require that the Appellant deposit all or a proportion of the award into a bank account and in such currency as directed by the Board of Appeal to be held in the name of the EAGC until the Board of Appeal makes an award and if the appellant fails to make such payment within the time period stipulated by the Board of Appeal then, subject to the provisions herein the appeal shall be deemed to have been withdrawn.

- 5.12 The Board of Appeal shall after hearing the entire appeal decide by majority vote to confirm, amend or set aside the award of the arbitrators. In particular (but without restriction) the Board of Appeal may;
- 5.12.1 Amend an award by increasing or reducing the liability of any party
 - 5.12.2 Correct any errors in the award of the arbitrator/s or alter or amend the award
 - 5.12.3 Award the payment of costs and expenses which result in the implementation of the award and appeal.
- 5.13 The award of the Board of Appeal whether confirming, amending or setting aside the original award of arbitration shall be signed by the chairman of the board of Appeal and so signed shall be considered the award of the Board of Appeal and shall be final, conclusive and binding on all parties.
- 5.14 No award shall be questioned or invalidated on the grounds that an arbitrator was not qualified or entitled to act unless an objection was made at the outset of the arbitration.

6 WITHDRAWALS OF APPEALS

- 6.1 An appellant shall have the right at any time before an award is made to withdraw an appeal by sending to the EAGC by registered post or reputable courier written notice of such withdrawal and the EAGC shall notify all parties of such withdrawal subject to payment of reasonable costs to the other party as determined by the EAGC Board of Appeal.

7 APPEAL COSTS

- 7.1 The total costs and fees for Appeal shall be determined by the EAGC Board of Directors and published by the EAGC from time to time. In the event of the Board of Appeal and or the EAGC incurring additional expenses, the EAGC shall inform the parties who subject to any specific orders on costs, shall be jointly and severally responsible for such expenses.

8 AWARD

- 8.1 Subject to all the Board of Appeal Arbitrators costs having been paid in full by the parties the Board of Appeal shall cause to be delivered to the EAGC offices three (3) signed copies of the award on the Appeal Award date. Subject to all the Arbitration costs incurred by EAGC and the Board of Appeal costs and fees having been paid in full by the parties, the EAGC shall notify the parties to collect their respective copies of the award from EAGC. The Board of Appeal's decision and award shall be final and binding on the parties and shall not be the subject of any further dispute or litigation except in so far as and to such extent as may be permitted by the Arbitration Act.
- 8.2 The Board of Appeal shall state in the Award the time limit within which any payments must be made.
- 8.3 Such payment ordered in the award shall be made as specified by the arbitration award

- 8.4 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 Appeal Rules failing or refusing to abide by the Board of Appeal Award including the payment of costs and fees of the Arbitration, the EAGC may take such action against such member as it may deem appropriate in the circumstances including but not limited to:
- 9.1.1 posting such member and facts on the EAGC web site,
 - 9.1.2 posting such member and facts on the EAGC notice board,
 - 9.1.3 advertising such member and facts 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 blacklisting the member and advising other EAGC members to stop trading with such defaulting member.
- 9.2 Parties seeking arbitration through the EAGC Appeal Rules shall be deemed to have consented to the EAGC taking such actions as referred to in clause 9.1 above and they shall be totally excluded from taking any action or bringing any claims against EAGC in respect of such action.