



# **Eastern Africa Grain Council**

## **Simple Arbitration Rules**

## **PREAMBLE**

These Rules shall be known as the East Africa Grain Council (EAGC) ARBITRATION RULES FOR THE RESOLUTION OF SIMPLE DISPUTES 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 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 Arbitration Rules for the Resolution of Simple Disputes**.
- iii) These rules are applicable for all contracts that incorporate the EAGC Arbitration Rules and or one of the EAGC rules of trade

### **1. Definition of a Simple Dispute**

A simple dispute is defined as any area of disagreement between contracting parties which to the best of the contracting parties' knowledge does not involve complicated legal issues, lengthy disagreements or disputes, and which the parties consider requires a quick, simple unbiased answer.

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. Simple Dispute Rules means the Rules herein to be known as the EAGC Arbitration Rules for the Resolution of Simple Disputes

### **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 arbitrator(s) 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 the 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 limits laid out in the relevant EAGC trade rule and a Respondent may raise the defense 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 defense of time bar.

#### **4 Procedure**

The procedure for bringing a claim 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 “**Simple Dispute 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 (including telephone numbers and email addresses if available) of the Claimant and the Respondent
  - 4.1.2 an express statement that the Claimant wishes 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
- 4.2 The EAGC shall within two (2) working days notify the Respondent in writing by registered mail or reputable courier that the Claimant has requested arbitration under the Simple Arbitration rules
- 4.3 If the Respondent does not wish to arbitrate under the EAGC Arbitration Rules for the resolution of Simple Disputes, 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 the Simple Resolution Rules and their request to arbitrate under the EAGC Arbitration Rules along with a brief statement outlining the dispute and the reasons the Respondent believes the Simple Dispute Rules do not 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 Simple Dispute 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 or provide a brief statement, outlining the claim and the reasons the Claimant believes the Simple Dispute Rules 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 Respondents request to have the dispute settled under the EAGC Arbitration Rules the Respondent will have the right to appeal provided that the Respondent has fully complied with the Arbitrator’s award.
- 4.8 If the Respondent makes no reply to the EAGC notification under clause 4.2 above, the EAGC shall deem that the Respondent has accepted to arbitrate under the Simple Dispute Rules.

#### **5 Appointment of Arbitrator**

- 5.1 Once the EAGC has determined that the dispute falls within the scope of the Simple Dispute Rules the EAGC shall within five (5) working days appoint an arbitrator who shall be the sole Arbitrator, the EAGC will inform the parties of the Arbitrator and the date of the arbitration award which shall be within approximately forty (40) days from the appointment of the arbitrator.
- 5.2 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 be a person of sound reputation that has been involved in the grain industry for no less than ten (10) years.

- 5.3 An arbitrator appointed by these rules shall have no interests whether financial or personal in the transaction or interest (direct or indirect, financial or personal) in any company, or member of a company associated in the arbitration.
- 5.4 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 eight (8) working days from the date of appointment of the 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 Arbitrator, 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 eight (8) working days from the date the Claimants' statement and documents were received (or an Arbitrator's decision to allow a claim) the Respondent shall submit a clear brief and to the point statement of their case which together with a copy of the contract and any and all supporting documentation shall be delivered by registered mail or reputable courier to the Arbitrator, the EAGC offices and the Claimant.
- 6.4 The Claimant shall have five (5) 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 the Arbitrator, the EAGC offices and the Respondent.
- 6.5 The Respondent shall have five (5) working days from the date when the Claimants Response was received to respond to any new issues raised, this response shall be sent by registered mail or reputable courier to the Arbitrator, the EAGC offices and the Respondent.
- 6.6 The Arbitrator 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, the Arbitrator and the EAGC.
- 6.7 The Arbitrator shall have the power to assess and award costs of and connected to the dispute, including fees and expenses incurred by the arbitrator and the EAGC. The arbitrator shall assess and award costs at the conclusion of the arbitration.
- 6.8 The Arbitrator shall consider the submitted documents and present the award on the Arbitration date stipulated by the EAGC.
- 6.9 Where the Arbitrator considers that an oral hearing is necessary the EAGC shall notify the parties of the date, time and place. In which event the parties may be represented by one of their employees, or by an EAGC registered Arbitrator, or other representation, however the parties may not be represented by solicitors, barristers or other legally qualified advocate or advisor engaged in any way in legal practice.
- 6.10 Where the Arbitrator is of the opinion that the dispute is not simple and may involve lengthy deliberations and or legal complications the Arbitrator shall refer the dispute back to the EAGC who shall inform the parties that the dispute shall go to full arbitration provided that if the parties decide notwithstanding such opinion of

the arbitrator as aforesaid, that they prefer to have a sole arbitrator decide the dispute on the basis of the statements provided and further that they fully understand that they shall not be entitled to an appeal, the arbitrator may proceed to hear and determine the dispute unless he is of the opinion that information, evidence and other material involved is so lengthy as to render it inappropriate to decide the dispute under the Simple Dispute Rules. In such a case there may be additional charges due to additional documentation or other information to review.

- 6.11 The Arbitrator may at his sole 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 Arbitrator 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 Arbitrator's costs and fees having been paid in full by the parties, the Arbitrator shall deliver to the EAGC offices three (3) signed copies of his award on the arbitration date. Subject to all the Arbitration costs incurred by the EAGC having been paid in full the EAGC shall 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 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 Arbitrator shall state in the Award the time limit within which any payments must be made and any actions taken.
- 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 Arbitration Rules for the Resolution of Simple Disputes 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 facts on the EAGC notice board,
  - 9.1.3 advertising the name of the party and the 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 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 for the Resolution of Simple Disputes 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