



## Association of Food Industries, Inc.

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# Arbitration Rules

Under the By-Laws of the Association, the arbitration procedure and practice is under the supervision of the Arbitration Board which, with the President, assigns arbitrators for hearings, interprets these Arbitration Rules, determines questions of jurisdiction and in general decides all issues in connection with an arbitration which are raised prior to the actual hearing itself. This Board, however, may refer to the arbitrators any questions and/or issues that, in its judgment, should be decided upon by the Arbitrators.

Under the By-Laws of the Association, the President of this Association acts as the Secretary for Arbitrations.

## SECTION I

### Institution of Proceedings

1. Any party to a contract which contains a provision for arbitration of any future dispute by or under the auspices of this Association, shall, when a controversy arises thereunder, file with the President of this Association a copy of the Demand for Arbitration made upon the other party and the fee to cover the cost of the arbitration as prescribed in Section X of these Rules. Such filing shall constitute a request for the institution of proceedings under these rules.

2. The clause providing for arbitration by the Association of Food Industries must appear on the front of the contract or, at least, on the signature page. Wording in substance as follows is sufficient:

**ARBITRATION:** Any controversy or claim arising out of this contract shall be settled in binding arbitration by the Association of Food Industries, Inc., of New Jersey in accordance with its rules then obtaining and judgment may be entered upon the award by any court having jurisdiction. The parties understand that this agreement waives their right to present their controversy or claim in a trial in court or before a jury. [See addendum for recommended arbitration clause.]

It is not necessary that the contract which contains the arbitration clause be signed but only that it is in a record in a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and by conduct of the parties was intended as governing their obligations.

3. If a transaction between two parties is initiated and one party issues a contract containing the AFI arbitration

clause and the other party simultaneously or subsequently issues a purchase order without the AFI arbitration clause, the Association will conduct an arbitration hearing. Any responsibility for defending that action shall be borne by the party filing for the arbitration.

4. The Demand for Arbitration, referred to in Paragraph 1, shall state briefly and clearly the general nature of the claim or matter and must be accompanied by a copy of the contract containing a provision for arbitration. Official Demand for Arbitration forms, available from the Association, are required.

5. Any party to a submission or other written agreement referring any existing dispute to arbitration under these rules shall file a signed copy of such submission or agreement with the President of this Association, along with the fee referred to in Paragraph 1, and such filing shall constitute a request for the institution of proceedings under these rules.

6. The Association of Food Industries, Inc., may be designated as the Arbitration Tribunal in a contract or submission agreement only in cases where any party or broker in the transaction is a member of this Association. In other cases, the President and/or the Arbitration Board shall determine in each case whether or not the Association shall act as designated.

7. Contracts issued by foreign brokers that contain an AFI arbitration clause shall only be accepted for arbitration if the broker is a member of the Association. Furthermore, the broker must agree to attend the arbitration or present testimony for the hearing at least five days before the scheduled date of the arbitration.

8. The Association in its absolute discretion may decline to serve as the Arbitration Tribunal for disputes where the amount in controversy is less than \$2,500 (U.S.).

9. The filings referred to in Paragraphs 1 and 4 must be simultaneously served by the initiating party on the other party in the manner provided in Section XIII below.

## SECTION II

### Statement of the Controversy

1. The Demand for Arbitration or the Arbitration Submission Agreement, required under Section I of these rules, shall contain the initial statement of the matter to be arbitrated. No answer is necessary.

2. The case of each of the arbitrating parties may be presented in the form of a brief in accordance with the provisions of Section VIII below. If the parties agree in

writing to waive oral hearings and the presentation of each case is restricted to written statements, argument and evidence, then each party shall submit five copies of its brief. The copies of the briefs shall have attached to them copies of all documents submitted in evidence such as letters, emails, invoices, bills of lading, letters of credit, etc. Email and fax submission of these briefs and supporting documents is not permitted unless the members of the arbitration panel subsequently request further documentation and allow such transmittal.

3. Where the defending party desires to interpose a counterclaim based upon an issue not arising out of the subject matter of the claim under which the arbitration proceeding has been brought, then the defending party must notify the President within twenty days of the date on the Notice of Arbitration. He must, at the same time, deposit fees for his counterclaim in accordance with the schedule in Section X ("Cost of Proceedings"). The subject matter of the counterclaim must be such that if brought under an independent proceeding it would be arbitrable.

4. After the proceedings have been instituted, no new or different claim shall be made by either party except by permission of the Arbitration Board; the President shall forthwith cause a copy of such new or different claim to be mailed or delivered to the other party who shall have a period of two days from the date of delivery within which to prepare its answer. If a new or different claim is made at the hearing, the arbitrators shall decide whether to allow presentation of the claim.

### **SECTION III**

#### **Qualifications of Arbitrators**

1. No person shall knowingly be selected to serve as an arbitrator who has any financial or other interest in the result of the arbitration which may prejudice the right of either party to a fair and impartial award; and no person having such interest shall be eligible to serve on such an arbitration.

2. Upon application of any party and upon proof satisfactory to it, the President and/or Arbitration Board may determine that any arbitrator is ineligible and may require his/her withdrawal or removal before the proceeding.

### **SECTION IV**

#### **Appointment of Arbitrators**

1. Immediately upon the filing of a demand for, or a submission to, arbitration under these Rules, the President of the Association shall select a proposed panel of domestic and/or foreign arbitrators who shall, in the judgment of the President, be suitable as arbitrators for the particular proceeding. Domestic panel members are defined as residents of the U.S. and Canada; all others are defined as foreign. The President, after advising the parties and receiving the challenges, if any, shall choose three members of the proposed panel to serve as arbitrators. If it shall appear that the alleged contract supporting the demand does not constitute a valid written contract as

required by the aforesaid Paragraph 1 of Section I, the Board shall direct the President to notify the parties that the Association declines to serve as the arbitration tribunal in the dispute: in all other cases the President shall proceed to select a proposed panel of arbitrators that shall in the judgment of the President be suitable for the particular proceeding. No member or alternate member of the Arbitration Board shall participate in the selection of the arbitrators in any arbitration in which he may have a financial or other interest that might cause him to be prejudiced for or against any of the parties.

2. The President is authorized to appoint qualified arbitrators from abroad to serve on AFI arbitration panels, provided that the overseas arbitrators are members of the association. In an effort to include foreign panel members, the Association will schedule hearings once per quarter for disputes involving a foreign party. The Association will provide as much notice as possible of those dates. All demands for hearings involving a foreign party must be made at least 90 days prior to a scheduled date for disputes involving international parties. At least 60 days prior to the scheduled international dispute hearing date, the President will contact members in foreign countries to ask them if they are willing to serve as arbitrators. AFI will reimburse the arbitrator for round-trip economy airfare, two nights of hotel charges plus up to \$100 for meals and miscellaneous expenses. Should the arbitrator cancel his/her participation on the panel, any incurred costs will not be reimbursed. Requests to postpone the hearing in any dispute involving a foreign party must be made at least 45 days prior to the date of the scheduled hearing. Hearings for disputes involving two domestic parties will be scheduled as soon as possible. Postponements for hearings involving two domestic parties must be made at least 21 days prior to the scheduled hearing date.

3. Where, in the judgment of the President, the standing "lists" are inadequate in any given case, or where the Association undertakes to conduct an arbitration on products which are not dealt in by any extensive group of the Association's own members, the selection of arbitrators shall be made from a special "list" compiled by the President, of members or nonmembers who, to his best knowledge and belief, are recognized in the trade as being competent to serve as arbitrators in the specific controversy.

4. The President shall notify both parties of the names on the proposed arbitration panel so selected and each of the parties shall have the right to challenge one arbitrator "without cause." Either party may challenge any arbitrator "for cause." Challenges must be made within ten days of the date on the Notice of Arbitration, except in the case of an overseas party not represented by a U.S. agent, such overseas party shall submit challenges within twenty days of the date on the Notice of Arbitration. These challenges may be submitted via mail, fax or email. The enlargement of the original proposed panel of arbitrators by additional names shall not entitle the parties to additional challenges "without cause."

5. In the event of a challenge "for cause," the removal of any arbitrator shall be at the discretion of the President and/or Arbitration Board, whose decision shall be final. If the number of available arbitrators on the panel is reduced either by challenge, inability to serve or for any other reason, the President may appoint or request the Arbitration Board to appoint additional arbitrators to the panel to replace those not available.

6. Except where, in the sole judgment of the President or Arbitration Board, circumstances render it necessary or where the parties have otherwise agreed, arbitrators shall not be selected exclusively of merchants or exclusively of brokers.

7. The President shall notify each arbitrator of his appointment either by telephone or in writing.

8. No detailed information regarding any controversy shall be released to the arbitrators until after they shall have subscribed to the Arbitrators' Oath; except that they shall be given sufficient general information as to the nature of the controversy, the article and the parties involved, to enable each arbitrator to determine whether or not he is eligible to serve.

## **SECTION V**

### **Arrangements for the Hearing**

1. The seat of AFI arbitration is New York. The hearing shall ordinarily be held in New York, N.Y. or such other place within 25 miles of New York City or by telephone or video-conference at the discretion of the President, as soon as practicable after the appointment of the arbitrators at a time and place to be fixed by the arbitrators through the President, who shall also act as Secretary of the hearing. The arbitration will be held in accordance with New York State law whether the hearing is held in New York or is held outside of New York State or by telephone or videoconference call. Parties participating via telephone or videoconference call must make five copies of all documents available to the Association at least 48 hours prior to the scheduled start time of the hearing. These documents may not be submitted via email or fax; they must be hard copies. Additional documents may only be submitted at the request of the arbitrators. The panel may allow these documents to be submitted electronically or via fax.

2. The President shall give notice by telephone, email, fax or by mail to the parties at least twenty days prior to the time fixed for the hearing, unless such notice is waived by the parties.

3. In case a party to the controversy is not located in the City of New York, notice to his agent or broker through whom the contract was made shall be deemed notice to the party.

4. An overseas party to an arbitration may be represented at a hearing by a party in the U.S. whom it designates.

5. The postponements of the commencement of a hearing may be granted for a cause deemed adequate by the President and/or Arbitration Board; but where in the

judgment of the President and/or Board, such request for postponement is unreasonably delayed, it will require that the party requesting such postponement, as a condition to the granting thereof, pay costs of \$750 to the Association.

6. Parties shall make available five copies of their documentary evidence, one for each arbitrator, one for the adversary and one for the Association.

## **SECTION VI**

### **Submission of Samples**

1. The parties arbitrating may agree on the method of examining or sampling merchandise in dispute, the quantities of samples to be drawn and other cognate detail and shall advise the arbitrators of their agreement. The arbitrators may determine any of the foregoing matters upon which the parties fail to agree.

2. The arbitrators may, at their discretion and without regard to any agreements on the subject by the parties, take any means necessary to satisfy themselves that the samples submitted have been properly drawn, that they fairly represent the average quality and condition of the merchandise from which they were drawn and that the quantity thereof is adequate for the determination of the controversy - and, thereafter, act thereon solely in their own discretion.

## **SECTION VII**

### **Proceedings during the Hearing**

1. Before entering upon the duties of their office, the arbitrators shall take and subscribe to an oath. This oath, in addition to binding the arbitrators to a faithful performance of their duties, shall also stipulate that except as provided by law, they shall hold in strict confidence every feature and circumstance of the arbitration.

2. All the decisions of the arbitrators, including the making of the award, shall be by majority vote.

3. Parties who do not participate in the proceedings in person or by duly authorized officers may be represented by their agents, brokers or employees. Any party may be represented by Counsel. A party intending to be represented by Counsel shall notify the President and the other parties of the name and address of Counsel at least three days prior to the date set for the hearing at which Counsel is to first appear. When an arbitration is initiated by Counsel or where Counsel replies for the other party, such notice is deemed to have been given.

4. The order of the proceedings shall be the recording of a Minute by the President, setting forth the presence of the arbitrators and parties, the statement of the claim and of the answer and any counterclaim and the arrangements made for the hearing. The complaining party shall then present its case, call its witnesses, present its proofs and then submit to questions and examination on the proofs presented. The defending party shall then present its defense, call its witnesses, present its proofs and submit to questions and examination thereon. All witnesses shall be sworn.

5. All proofs shall be taken in the presence of the

parties; but the hearing may proceed in the absence of either party if, by his/her own fault and after due notice as provided under Section V ("Arrangements for the Hearing"), he/she fails to be present or fails to obtain an adjournment.

6. The arbitrators may, in their discretion, inspect the subject matter of the controversy or open and/or examine submitted samples during or after the hearing and with or without the presence of the parties. With the specific consent of the parties, the arbitrators may make inquiries or obtain evidence outside of the hearing if, in their judgment, such action is necessary.

7. At their discretion, the arbitrators may adjourn the proceedings upon their own initiative or on request of either party for good cause.

8. The hearing may be reopened by the arbitrators at any time within ten days of the close of the hearing and before the award is made. Reopened hearings must be held within ten days of the notice of reopening, though extensions can be granted by the President or Arbitration Board. The time within which the arbitrators must make their award under Section IX, Paragraph 1, is extended to not later than ten days after the closing of the reopened hearing.

9. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing shall be deemed to have waived his right to object.

## **SECTION VIII**

### **Proceedings If Oral Hearing Is Waived**

In the absence of a specific agreement to the contrary by the parties, the following rules are to govern arbitration proceedings that are held without oral hearings.

1. If the Arbitration Agreement specifies that there shall be no oral hearing but that written statements, argument and evidence only shall be submitted or where both parties request this in writing, all written statements submitted shall be sworn to before a notary public or other officer authorized to administer an oath.

2. Each party shall, on or before the date specified in the Notice of Arbitration, submit five copies of its brief to the President in accordance with Paragraph 2 of Section II of these Rules.

3. After both briefs have been received, the President shall promptly send by mail, email or fax to each party the duplicate copy of the brief of the other party.

4. Each party shall have two days from receipt of a copy of the brief of the other party in which to send by registered mail any written statement he desires to make in rebuttal.

5. Upon receipt of rebuttal statements, the President shall notify the arbitrators and a time and place for a meeting or conference call of the arbitrators shall be set for not later than twenty business days following receipt of such rebuttal statements. The arbitration hearing will not be considered to be closed until that time.

6. If either party fails to submit a brief or a rebuttal statement within the allotted periods, the arbitrators will proceed and make an award based on the written statements and evidence available.

## **SECTION IX**

### **Awards**

1. The award of the arbitrators shall be made in writing as soon as is practicable and not later than ten days after closing of the hearings unless the parties extend the time by written stipulation.

2. The award shall be signed and acknowledged by the arbitrators or a majority of them and shall be filed with the President of the Association for delivery to the parties unless, under the prevailing arbitration law, the arbitrators file it with the court having jurisdiction to confirm the award.

3. A duplicate original of the award shall be delivered by the President to each of the parties by mail addressed to their respective business addresses of record. The terms of the award may not be transmitted by telephone to either party.

4. Where more than one contract between the parties is in controversy, a breakout per contract shall be listed on the award or a separate award shall be issued on each contract.

5. The arbitrators may, at their discretion, award to either party as damages, the expenses, including legal fees, necessarily incurred by such party in connection with one or more of the following proceedings: (a) compulsion of arbitration; (b) stay of arbitration; (c) trial of any preliminary issue; or (d) the arbitration proceeding itself.

6. The arbitrators may grant any remedy or relief which they deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of the contract.

7. Arbitrators may add interest at the legal rate to an award for pre-award interest from the date any monies awarded were originally due up to the date of the award and for post-award interest to commence from the day the award was granted, provided that the award has not been satisfied within thirty days of notice to the parties.

8. The arbitrators may include travel expenses in the award for the party in whose favor it was granted.

9. The arbitrators are not to discuss the award with anyone, not even with the parties to the arbitration.

10. After sixty days, the party in whose favor an award has been made is entitled to reasonable legal costs and other fees in obtaining enforcement of the award which is to be awarded by the panel that made the award upon application by the prevailing party.

11. If an award remains unsatisfied for thirty (30) days after it has been granted, the party in whose favor it was granted can request the Association to publish a notice of the unsatisfied award and the reason for the award and send it to the members of the trade here and abroad, to government authorities and to organizations directly involved in the trade. A copy of the request must be sent to the party against whom the award was granted, either

directly or through the agent, at least ten days prior to publication.

12. According to the Section Eight of the Bylaws of the association, "Failure to satisfy an Arbitration Award is considered sufficient cause for the suspension or termination of membership, provided the Award is granted by an arbitration panel of the association or of any other arbitration forum that is duly recognized by AFI."

13. If an award is challenged in court, the party in whose favor the award was made, is entitled to reasonable legal fees pursuant to the successful defense of the award, which is to be awarded by the panel that made the award upon application by the prevailing party.

## **SECTION X Cost of Proceedings**

1. The following is a schedule of fees charged for the first hearing by the arbitrators:

a. \$750 deposit for an arbitration brought by a member;  
\$1,000 deposit for multiple contracts between the same parties.

b. \$1,500 deposit for an arbitration brought by a non-member;  
\$2,000 deposit for multiple contracts between the same parties.

c. \$750 deposit for a counterclaim brought by a member; \$1,000 deposit for multiple contracts between the same parties.

d. \$1,500 deposit for a counterclaim brought by a non-member; \$2,000 deposit for multiple contracts between the same parties.

2. At the discretion of the arbitrators, hearings may be adjourned and charged for at the same rates and are to be covered by deposits in advance at the time of each adjournment.

3. Prior to the first hearing, the party bringing arbitration shall make payment of the appropriate fee to the President of the Association. This fee will be used to defray the cost of the arbitration. If the party bringing the arbitration is successful in the arbitration, an amount equal to the arbitration fee will be added to the award.

4. The arbitrators may also assess against either party, or both, any expenses incurred in the course of the arbitration.

5. Where a postponement of the initial hearing extends beyond forty-five (45) days, at the request a party, as a condition to the granting thereof, such party must pay to the Association the sum of \$750. The Association will not grant postponements beyond ninety (90) days from the date of the initial hearing without the consent of the other party. In disputes involving a foreign party, postponements will not be granted beyond 90 days of the date of the initial hearing or the date of the next scheduled international dispute hearings, whichever is soonest.

6. In case of withdrawal of the Demand for Arbitration or counterclaim prior to the hearing, one half of the prescribed fee shall be paid by the party who had presented the withdrawn claim. In case of withdrawal by mutual

consent or by settlement of the dispute after the arbitrators have been appointed, each party shall pay one half of the prescribed fee.

7. Where an arbitration on one contract involves two or more shipments or invoices or where it involves large quantities of merchandise under two or more marks or separable parcels or where a separate decision is required on two or more marks or parcels, the Association shall charge for each such invoice, mark, parcel or award a fee equal to that stipulated in the rules for a first hearing. The question as to what constitutes a "large quantity," "two or more shipments or invoices," "two or more marks," "separable parcels," and "separate decisions" within the meanings of this paragraph, shall, in each case, rest within the discretion of the Arbitration Board.

## **SECTION XI Expenses of Witnesses**

1. The compensation and expenses of any expert or other witnesses for either side shall be paid by the party presenting such witnesses; but the compensation and expenses of any witness and the cost of any proof presented or obtained at the direct request of the arbitrators shall be assessed against either of the parties, or both, at the discretion of the arbitrators.

## **SECTION XII Rules a Part of the Arbitration Agreement**

1. Parties agreeing to arbitrate under the rules of this Association shall be deemed to have accepted these rules as governing such arbitration.

## **SECTION XIII Waiver of Personal Service**

1. Each party to a submission or other agreement which provides for arbitration under these Rules, shall be deemed to have consented that any papers, notices or process necessary or proper for the institution or continuation of an arbitration proceeding under these Rules or for the confirmation of an award and entry of judgment on an award made thereunder, including appeals in connection therewith, may be served upon such party (a) by mail addressed to such party's last known address or (b) by personal service, within or without the state wherein the arbitration is to be held, or within or without the limits of the jurisdiction of the Court having jurisdiction in the premises (whether such party be within or without the United States of America) or (c) where a party to a controversy is not located in the City of New York, by mail or personally, as provided in (a) and (b) hereof, upon his agent or broker through whom the contract was made; provided that a reasonable time shall be allowed such party to appear and defend himself.

## **SECTION XIV Alterations and Amendments**

1. Under the Association's Constitution, the right to alter and amend these rules from time to time is conferred

upon the Association's Board of Directors; all such alterations and amendments shall be recognized as and be deemed to be a part of these rules from and after the date of their formal adoption by the said Board of Directors.

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**ADDENDUM**

**Recommended Arbitration Clause**

The following clause is recommended for use on contracts by all members of this Association:

**ARBITRATION:** Any controversy or claim arising out of this contract shall be settled in binding arbitration by the Association of Food Industries, Inc., of New Jersey in accordance with its rules then obtaining and judgment may be entered upon the award by any court having jurisdiction. The parties understand that this agreement waives their right to present their controversy or claim in a trial in court or before a jury.

Any controversy between a party hereto and the broker or agent, solely relating to the payment of brokerage or commission hereunder, shall be settled by arbitration under

the State of New York law by the Association of Food Industries, Inc., of New Jersey, in accordance with its rules, then obtaining, and judgment may be entered upon the award.

Each party to this contract shall be deemed to have consented that any papers, notices or process necessary or proper for the institution or continuation of an arbitration proceeding or for the confirmation of an award and entry of judgment on an award made thereunder, including appeal in connection therewith, may be served upon such party (a) by mail addressed to such party's last known address or (b) by personal service, within or without the state wherein the arbitration is to be held, or within or without the limits of the jurisdiction of the Court having jurisdiction in the premises (whether such party be within or without the United States of America) or (c) where a party to a controversy is not located in the City of New York, by mail or personally as provided in (a) and (b) hereof, upon his agent or broker through whom this contract was made.

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