

# THE BRITISH POTATO TRADE ASSOCIATION

## RULES OF ARBITRATION

The following Arbitration Rules were adopted by the Council of the British Potato Trade Association on 23<sup>rd</sup> November 2012 and shall apply to all arbitrations commenced after 31<sup>st</sup> December 2012 and supersede all earlier Arbitration Rules of The British Potato Trade Association, The National Association of Seed Potato Merchants and The Scottish Potato Trade Association.

### 1. PRELIMINARY

1.1. Any dispute arising out of a contract which provides for arbitration in accordance with these Rules shall be referred to arbitration in accordance with the following provisions.

1.2. Unless otherwise agreed, the parties agree that:-

1.2.1. Where Scottish law applies to the Contract, the juridical seat of the arbitration shall be Scotland and the arbitration shall be conducted under Scottish law. The provisions of the Arbitration (Scotland) Act 2010 and of any statutory amendment, modification or re-enactment thereof for the time being in force shall apply save and unless modified by or inconsistent with these Rules.

1.2.2. Where English law applies to the Contract, the juridical seat of the arbitration shall be England and the arbitration shall be conducted under English law. The provisions of the Arbitration Act 1996 and of any statutory amendment, modification or re-enactment thereof for the time being in force shall apply save and unless modified by or inconsistent with these Rules.

1.3. In these Rules:-

1.3.1. "*Arbitration Board*" means the arbitrator or the board of arbitrators appointed as hereinafter provided to determine the dispute between the parties.

1.3.2. "*BPTA*" means The British Potato Trade Association.

1.3.3. "*the Claimant*" means the party to the Contract who claims arbitration.

1.3.4. "*Conditions*" means the conditions for the purchase and sale of seed potatoes adopted by the BPTA.

1.3.5. "*Contract*" means the contract between the parties giving rise to the dispute.

1.3.6. "*NFU*" means the National Farmers' Union of England and Wales.

1.3.7. "*NFUS*" means the National Farmers' Union of Scotland.

1.3.8. "*President*" means the President for the time being of BPTA or, in his absence, his authorised deputy.

1.3.9. "*Relevant Law*" means the law applicable to the Contract.

1.3.10. "*the Respondent*" means the party to the Contract against whom arbitration is claimed.

1.3.11. "*Secretary*" means the secretary for the time being of BPTA or, in his absence, his authorised deputy.

1.3.12. "*Working Day*" excludes Saturdays, Sundays, statutory and other national or local holiday at the juridical seat of the arbitration.

## 2. CLAIMING ARBITRATION AND TIME LIMITS

2.1. Arbitration shall be deemed to have been claimed and commenced on the service of the notices and the making of the payments provided for in Rule 2.2.

2.2. The Claimant shall:-

2.2.1. within the time limit stipulated in the Contract, give notice to the Respondent that the Claimant is claiming arbitration and save where the sum claimed (excluding interest) does not exceed £20,000, at the same time, give the name and address of the arbitrator appointed by the Claimant; and

2.2.2. at the same time as sending such notice to the Respondent, give notice to the Secretary including details of the parties to the dispute and the approximate value of the claim and, at the same time, make payment to BPTA of the non-returnable registration fee and security deposit (in both cases with VAT if appropriate) of such amount as may be prescribed from time to time by BPTA.

2.3. Failure to comply with any time limit in the Contract for commencing arbitration shall result in any claim arising under the Contract being deemed to be waived and absolutely barred unless:-

2.3.1. the Respondent waives such non-compliance; or

2.3.2. the Arbitration Board in its absolute discretion agrees to extend the time limit for commencing arbitration where:-

2.3.2.1. the circumstances are such that are outside the reasonable contemplation of the parties when they agreed the time limit in question and it would be just to extend the time; or

2.3.2.2. the conduct of one party makes it unjust to hold the other party to the strict terms of the time limit in question.

## 3. COMPOSITION AND APPOINTMENT OF THE ARBITRATION BOARD

3.1. Where the sum claimed (excluding interest) does not exceed £20,000 the dispute shall be determined by a sole arbitrator appointed by the President upon receipt of the notice referred to in Rule 2.2.2 above unless, prior to that appointment being made, the President is notified that the parties have appointed an arbitrator by agreement in which case the dispute shall be determined by that person.

3.2. Notwithstanding the sum claimed (excluding interest) does not exceed £20,000 the parties may agree that the dispute shall be determined by an Arbitration Board comprising three arbitrators whereupon:-

- 3.2.1. the Claimant shall within 7 days of such agreement give the Respondent the name and address of the arbitrator appointed by the Claimant and at the same time give such details to the Secretary;
  - 3.2.2. within 7 days thereafter the Respondent shall give the Claimant the name and address of the arbitrator appointed by the Respondent and at the same time give such details to the Secretary;
  - 3.2.3. Rule 3.6 shall apply so far as the appointment of a third arbitrator is concerned
- and thereafter the arbitration shall proceed and these Rules shall apply as if the claim (excluding interest) had at all times been for a sum in excess of £20,000.
- 3.3. Where the sum claimed exceeds the amount mentioned in Rule 3.1 the Respondent shall within 28 days of receipt of the notice referred to in Rule 2.2.1 give notice to the Claimant and to the Secretary:-
    - 3.3.1. concurring in the appointment of the arbitrator nominated by the Claimant to act as sole arbitrator;
    - 3.3.2. joining with the Claimant in appointing some other person to act as sole arbitrator (notwithstanding the sum claimed exceeds the amount referred to in Rule 3.1); or
    - 3.3.3. giving details of the name and address of the arbitrator appointed by the Respondent.
  - 3.4. In default of the Respondent complying with Rule 3.3, the President shall appoint an arbitrator on behalf of the Respondent.
  - 3.5. An arbitrator nominated or appointed under Rule 2.2.1, Rule 3.1, Rule 3.3.3 or Rule 3.4 shall be selected from the panels of arbitrators, from time to time, of any of BPTA, NFU and NFUS.
  - 3.6. The persons appointed under Rule 2.2.1, and Rule 3.3.3 or Rule 3.4 (as the case may be) shall appoint a third arbitrator. In default of agreement, the third arbitrator shall be appointed by the President. The third arbitrator shall be the chairman of the Arbitration Board.
  - 3.7. The arbitrator appointed by agreement between the parties under Rule 3.1 or Rule 3.3.2 or appointed in accordance with Rule 3.6 may, but is not required to be, a member of one of the said panels referred to in Rule 3.5
  - 3.8.
    - 3.8.1. If an arbitrator wishes to resign or refuses to act or becomes incapable of performing his duties as arbitrator his appointment shall be terminated by the President.
    - 3.8.2. The authority of an arbitrator ceases on his death.
    - 3.8.3. Any vacancy arising under Rule 3.8.1 or Rule 3.8.2 shall be filled by the same method as that by which the arbitrator who has ceased to act was originally appointed.

- 3.8.4. The Arbitration Board (when reconstituted) shall determine whether and if so to what extent any previous proceedings shall stand (but without prejudice to any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator in question had ceased to hold office).
- 3.8.5. Any vacancy arising as aforesaid does not affect any appointment by that arbitrator (alone or jointly) of another arbitrator and, in particular, any appointment of a chairman of the Arbitration Board.
- 3.9. An appointment of an arbitrator shall be valid provided that:-
  - 3.9.1. the party making the appointment has notified the arbitrator of his appointment and confirmed that appointment in writing to the arbitrator; and
  - 3.9.2. the arbitrator has signified his acceptance in writing of the appointment to the party appointing him, or to BPTA, as the case may be, prior to the hearing; and
  - 3.9.3. in the case of a third arbitrator, he has signified his acceptance in writing to the two appointed arbitrators, or to BPTA, as the case may be.
4. JURISDICTION
  - 4.1. The Arbitration Board shall rule on its own substantive jurisdiction that is as to:-
    - 4.1.1. whether there is a valid arbitration agreement;
    - 4.1.2. whether the Arbitration Board is properly constituted; and
    - 4.1.3. what matters have been submitted to arbitration in accordance with the Contract.
  - 4.2. Any objection at the outset of the arbitral proceedings that the Arbitration Board lacks substantive jurisdiction must be raised by a party no later than the time that party takes the first step in the proceedings to contest the merits of any matter in relation to which that party challenges the jurisdiction.
  - 4.3. Any objection during the course of the arbitral proceedings that the Arbitration Board is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged beyond its jurisdiction is raised.
5. ARBITRATION PROCEDURE (GENERAL)
  - 5.1. It is for the Arbitration Board to determine all procedural and evidential matters, subject to the right of the parties to agree any matter.
  - 5.2. The Arbitration Board may, with the agreement of the parties in each case, consolidate the arbitration proceedings with other arbitration proceedings or order that there be concurrent hearing of those proceedings.
6. ARBITRATION PROCEDURE (STATEMENTS OF CASE)
  - 6.1. Each party's statement of case and any evidence relied on by that party shall be delivered and served by that party sending to the Secretary:-
    - 6.1.1. one copy for the other or every other party to the dispute;

- 6.1.2. one copy for each member of the Arbitration Board;
  - 6.1.3. one copy for the Secretary.
  - 6.2. Upon receipt of a party's statement of case and any evidence relied on by that party the Secretary shall forthwith send:-
    - 6.2.1. one copy to the other or every other party to the dispute;
    - 6.2.2. one copy to each member of the Arbitration Board.
  - 6.3. Unless the parties, with the approval of the Arbitration Board, agree on any other form of delivery, statements of case shall be sent by prepaid post or by recorded delivery post and shall be deemed to have been delivered no later than the second working day after the same is posted.
  - 6.4. Statements of case shall contain a clear and concise statement of that party's case or that party's response to any other party's statement of case (as the case may be) together with a copy of such documentary evidence as the party intends to rely on.
  - 6.5. The Claimant shall deliver and serve its statement of case no later than three months after:-
    - 6.5.1. the sole arbitrator has signified his acceptance of the appointment to the parties, or to BPTA; or
    - 6.5.2. the third arbitrator (in the case of an Arbitration Board of three arbitrators) has signified his acceptance of the appointment to the two appointed arbitrators, or to BPTA
- and in default of so doing the claim to arbitration shall be deemed to have lapsed and been abandoned.
- 6.6. The Respondent shall deliver and serve its statement of case within 28 days after the Respondent shall have been served with the Claimant's statement of case.
  - 6.7. The Claimant shall have the right to deliver and serve a further statement of case in reply within 14 days after the Claimant shall have been served with the Respondent's statement of case. Such further statement of case in reply shall deal only with those matters raised in the Respondent's statement of case.
  - 6.8. The Arbitration Board may, at any time, order any party to lodge any documents in its possession, custody or power, which the Arbitration Board considers relates either generally or specially to the matters in dispute.
  - 6.9. No party shall, save by agreement or with the leave of the Arbitration Board, raise at the hearing any matters which do not appear from the statements of case.
7. ARBITRATION PROCEDURE (HEARING)
    - 7.1. All arbitration hearings shall be held in private.
    - 7.2. Where either:-
      - 7.2.1. the sum claimed does not exceed the amount mentioned in Rule 3.1; or

7.2.2. the parties, with the approval of the Arbitration Board, agree,

the matters in dispute shall be decided by the Arbitration Board on the basis of the parties' written statements of case and other documentary evidence submitted by the parties.

- 7.3. In all other cases the Arbitration Board shall convene a hearing of the parties, their representatives and/or witnesses at such time and place as the Arbitration Board shall determine and may adjourn the hearing for any period on the application of any party or as the Arbitration Board may think fit.
- 7.4. The Arbitration Board may require witnesses to be examined on oath or affirmation and is empowered to administer oaths and to take affirmations.
- 7.5. If a party fails to appear or to be represented at the hearing and provided that the absent party has had notice of the hearing or the Arbitration Board is satisfied that all reasonable steps have been taken to notify the absent party of the hearing, the Arbitration Board may adjourn the hearing or proceed as it thinks fit.
- 7.6. Save as otherwise mentioned in these Rules, the conduct of the arbitration and the proceedings at the hearing shall be at the sole discretion of the Arbitration Board.
- 7.7. No party shall be permitted, unless with the prior approval of the Arbitration Board, to be legally represented at a hearing, other than by such a legally qualified person who is and has been for not less than twelve months a partner, director or employee of that party. Any party intending to be represented at a hearing by a partner, director or employee so legally qualified shall serve a notice to that effect on both the Arbitration Board and the other party, the said notices to be received by no later than 28 days before the date fixed for the hearing. In that event the other party may be, at the absolute discretion of the Arbitration Board, entitled to be legally represented at a hearing in a comparable manner acceptable to the Arbitration Board. Subject to the foregoing, the parties may however be represented at a hearing by an agent engaged or previously engaged in the agricultural industry always provided that such agent is not a practising lawyer.

## 8. POWER TO APPOINT EXPERTS, LEGAL ADVISERS OR ASSESSORS

8.1. The Arbitration Board may:-

8.1.1. appoint legal, technical or other skilled advisers to report to it;

8.1.2. allow such legal, technical or other skilled advisers to be present at any hearing.

8.2. The parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such legal, technical or other skilled adviser.

## 9. ARBITRATION AWARDS

9.1. All awards of arbitration shall be in writing and shall be signed by the sole arbitrator or by all members of the Arbitration Board (as the case may be).

9.2. The award shall state the seat of the arbitration and the date when the award is made.

- 9.3. The award shall contain a statement of reasons and state whether any sum awarded carries interest and, if so, at what rate.
- 9.4. The Arbitration Board shall have power to issue a proposed award or to make an award on a provisional basis and shall have power to alter the same if the Arbitration Board considers it appropriate so to do.
10. APPEALS
- 10.1. No appeal shall lie from any award save as permitted by the Relevant Law.
11. NOTICES
- 11.1. Any notice under Rule 2.2, Rule 3.2, Rule 3.3 or Rule 3.9 shall be sent by pre-paid post or by recorded delivery post and shall be deemed to have been delivered no later than the second working day after the same is posted.
- 11.2. All other notices in connection with an arbitration under these Rules shall be sent:-
- 11.2.1. as provided in Rule 11.1; or
- 11.2.2. by such other means as the parties, with the approval of the Arbitration Board, agree.
12. TIME LIMITS
- 12.1. For the purposes of any time limit in these Rules, if the last day falls on a day other than a Working Day the time limit shall be extended until the first Working Day following.
- 12.2. The Arbitration Board shall in its absolute discretion have power to extend any time limit mentioned in these Rules at any time and from time to time save that this discretion shall not extend to the time limit stipulated in the contract for commencing arbitration (as to which Rule 2.3 applies).
13. COSTS
- 13.1. For the purposes of this Rule references to the costs of the arbitration are to:-
- 13.1.1. an arbitrator's fees and expenses;
- 13.1.2. the fees and expenses of the Secretary;
- 13.1.3. the fees and expenses of any adviser appointed or to be appointed under Rule 8; and
- 13.1.4. the costs of the parties.
- 13.2.
- 13.2.1. Where the sum claimed (excluding interest) does not exceed £20,000 the costs of the parties shall, unless they have agreed as provided for at Rule 3.2, be limited to any non-returnable registration fee (with VAT if appropriate) provided for by Rule 2.2.2;

- 13.2.2. The limit provided for by Rule 13.2.1 shall not apply in circumstances where the Arbitration Board decides that one party has behaved unreasonably and should bear some or all of the costs of the other party, in which case the costs of the parties shall be in the absolute discretion of the Arbitration Board.
- 13.3. The Arbitration Board may at any time and from time to time, as it thinks fit, require the Claimant to deposit with BPTA such sum or sums as it considers appropriate on account of the costs of the arbitration.
- 13.4. The Arbitration Board may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- 13.5. Unless the parties otherwise agree, the Arbitration Board shall award costs on the general principle that the costs should follow the event except where it appears to the Arbitration Board that in the circumstances this is not appropriate in relation to the whole or part of the costs.

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