



Arbitration Society  
of England & Wales, Ltd.

## Regular Track Arbitration

Rules and Procedures

## 1. INTERPRETATION

Regular Track Arbitration Rules and Procedures shall be interpreted liberally with the object that (a) all disputes that could be covered by the arbitration Rules are subject to arbitration; and (b) the arbitration will be as inexpensive and expeditious as reasonably possible, consistent with a process that is deemed by the arbitrator as fair and suitable to the circumstances of the particular case. Any procedural question or controversy on which the parties are not agreed shall be resolved in the absolute discretion of the arbitrator.

## 2. AGREEMENT OF PARTIES AND APPLICATION OF THE RULES

2.1 These Regular Track Rules and Procedures apply to arbitration administered by the Arbitration Society of England and Wales, Ltd., when all parties have elected, in a signed writing to Regular Track Arbitration. In the event the parties' agreement is silent on whether they prefer Regular Track Arbitration, then automatically, Fast Track Rules of arbitration shall conclusively apply. In the absence of a written agreement to the contrary, any party may request Fast Track arbitration and such election shall be binding on all parties. The Arbitration Society of England and Wales, Ltd. full well understands that it can be fatal to the successful conduct of commercial transactions when commercial disputes are permitted to fester for many months.

2.2 The arbitration shall be conducted under the Law of England and Wales. In the event that any provision of these Rules, or the agreement of the parties, with respect to the conduct of the arbitration, or legal principles to be applied, is in conflict with any provisions of the Law of England and Wales, the provisions of the parties' agreement shall control.

2.3 Any procedural question or controversy on which the parties are not agreed shall be resolved in the absolute discretion of the arbitrator.

2.4 These Rules may be amended by the Arbitration Society of England and Wales, Ltd. in its sole discretion and all amendments shall be effective immediately and retroactive in application.

## 3. COMMENCEMENT OF ARBITRATION

### Notice of Arbitration

3.1 The party commencing arbitration (the "Petitioner") shall deliver a Notice of Arbitration ("Petition") to the opposing party (the "Respondent") and shall at the same time deliver a copy of the Petition and all underlying written agreements among the parties to the Arbitration Society of England and Wales, Ltd. The Petition shall contain:

- a. a demand that the dispute be referred to arbitration;
- b. the names, addresses and detailed contact information, including e-mail, of the parties and any representatives;
- c. a copy of the agreement out of which the dispute arises;
- d. a reference to the arbitration clause or agreement that is invoked;
- e. a detailed statement of the nature of the dispute, the material facts being relied upon and the issues being raised. The Petition shall be set forth in individually numbered paragraphs, with short plain statements of ultimate fact, rather than a lengthy narrative, and conclusions. Each paragraph shall confine itself to a single allegation; and
- f. the relief that is claimed.

3.2 Arbitration proceedings shall be deemed to commence on the day the Arbitration Society of England and Wales, Ltd. is sent the Petition.

3.3 The Arbitration Society of England and Wales, Ltd. shall communicate to the parties a written acknowledgement of receipt of the Petition, indicating the date of receipt, and invite the Respondent to submit a detailed response (“Response”) fairly, and directly, meeting each allegation of the Petition. The Response shall track, by paragraph number, the individual allegations contained in the Petition so that the allegations of the Petition, and the Response to each allegation, match by paragraph number.

3.4 The Respondent shall file its detailed Response, and any Counter-Petition (“Counter Petition”) with the Arbitration Society of England and Wales, Ltd., and send a copy to the Petitioner, within five (5) business days after Petitioner’s transmission of its Petition to the Arbitration Society of England and Wales, Ltd. The Petition and the Response serve as an introduction to the arbitral proceedings, and do not prejudice a parties’ rights to submit further written pleadings as provided in these Rules, or as agreed between the parties, or as authorized by the arbitrator.

3.5 Amendments may be made to the Petition, or the Respondent’s Response, at any time prior to the appointment of the arbitrator. Thereafter, amendments may be made only with consent of the arbitrator.

#### **4. APPOINTMENT OF THE ARBITRATOR**

The Arbitration Society of England and Wales, Ltd. shall, in its sole discretion, immediately appoint a single arbitrator.

#### **5. CHALLENGES TO THE JURISDICTION OF THE ARBITRATOR**

5.1 The arbitrator shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

5.2 The arbitrator shall have the power to determine the existence, scope or validity of the contract of which an arbitration clause forms a part. For the purpose of challenges to the jurisdiction of the arbitrator, the arbitration clause shall be considered as separable from any contract of which it forms a part.

5.3 Any challenges to the jurisdiction of the arbitrator shall be made no later than the Respondent’s Response.

#### **6. NOTIFICATION TO THE PARTIES**

Any notification or communication from the Arbitration Society of England and Wales, Ltd. or the arbitrator to a party or its representative may be delivered to its last known address by hand delivery, registered mail, courier, facsimile transmission, e-mail, or any other means of communication that provides a record of the sending thereof. Such notification or communication shall be deemed, and assumed, to have been delivered on the date sent.

#### **7. COMMUNICATIONS WITH THE ARBITRATOR**

No party or person acting on behalf of a party may communicate ex parte with the arbitrator other than with regard to administrative matters.

#### **8. PRELIMINARY HEARINGS**

8.1 The arbitrator may, if in its sole discretion it deems it advisable, convene a preliminary hearing to resolve procedural issues and establish a timetable. A preliminary hearing agenda may include points for discussion leading to identification, narrowing, and clarification of issues in dispute.

8.2 A preliminary hearing may take place by conference telephone call or other electronic means identified by arbitrator.

8.3 At or about the time arbitration is invoked, the arbitrator will send Terms of Appointment to the Parties for signature. The Terms of Appointment will be accompanied by a requirement of deposits to cover the estimated cost of the arbitrator's fees and expenses.

8.4 In the event that the Arbitration Society of England and Wales, Ltd. does not receive the signed Terms of Appointment from a party within five (5) business days of sending the Terms of Appointment, the arbitrator may assume that that party has accepted the content of the Terms of Appointment and the arbitration will proceed.

8.5 In the event that the arbitrator does not receive the deposits required, within ten (10) business days of the arbitrator's request, the party in violation of its obligations shall be deemed to have consented to arbitration, proceeding without that parties' input, and that party shall be deemed to be in a default posture.

## **9. CONDUCT OF PROCEEDINGS; EVIDENCE**

9.1 Subject to these Regular Track Rules, the arbitrator may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are given a full and fair opportunity to present its case and to respond to the other party's case. Regular Track Rules permit the arbitrator to allow a limited amount of discovery, and the filing of memoranda of law to set forth the parties' basis for any relief, interim and otherwise, sought by that party. The parties are advised that to provide for an orderly evidentiary hearing:

- a. Limitations may be imposed upon duplicative or cumulative evidence;
- b. Cross-examination may be limited to the amount of time of a witness' direct examination.

9.2 Any party may be represented by counsel or other authorized representative. All parties shall notify the arbitrator, no less than ten (10) business days prior to any evidentiary hearing, the identity of its counsel or representative.

9.3 The arbitrator may dispense with an oral evidentiary hearing if it determines, after hearing submissions of the parties, that oral evidence is not necessary given the factual issues in dispute or, not warranted given amounts in dispute.

9.4 In the event of an oral hearing, witnesses may be required to swear an oath or affirm oral evidence.

9.5 The arbitrator may allow for the presentation of evidence by alternative means, such as using Skype or other electronic means. If other such technology is used, a full opportunity must be afforded for all Parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination. The arbitrator may define conditions under which a witness may appear by electronic means as to assure the integrity of the process.

9.6 All documents or information supplied to the arbitrator by one party shall at the same time be communicated by that party to the other party, unless ordered otherwise by the arbitrator.

9.7 Each party shall have the burden of proving the facts relied on to support his or her claim or defense. The arbitrator shall determine the admissibility, relevance, materiality, and weight of the evidence offered.

9.8 The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

## **10. INTERIM MEASURES OF PROTECTION**

10.1 At the request of any party and on notice to all the other parties, the arbitrator may order whatever interim measures, and undertakings, it deems necessary, including injunctive relief, measures for the protection or conservation of property, and security for costs, expenses, attorney's fees and damages.

10.2 Such interim measures may take the form of an interim award which shall be deemed Final, and non-appealable, for purposes of enforcement.

10.3 A request for interim measures addressed by a party to a court shall not be deemed incompatible with the Agreement to Arbitrate or a waiver of the right to arbitrate.

10.4 The arbitrator may in its discretion apportion costs associated with the applications for interim relief in any interim award or in the final award.

## **11. FAILURE TO COMPLY WITH RULES**

Where a party fails to comply with these Regular Track Rules, or any order of the arbitrator, in a manner deemed material by the arbitrator, the arbitrator may fix a reasonable period of time for compliance and, if the party does not comply within said period, the arbitrator may impose a remedy it deems just, including an award on default or monetary sanction. Prior to entering an award on default, the arbitrator may invite the non-defaulting party to produce evidence and legal argument in support of its contentions as the arbitrator may deem appropriate. The arbitrator may receive such evidence and argument without the defaulting party's presence or participation.

## **12. PRIVACY AND CONFIDENTIALITY OF ARBITRATION**

All arbitrations held under these Rules are private and confidential. The parties and their Representatives may attend at the arbitration. Other persons may attend only with the consent of the arbitrator. The arbitrator may require the sequestering of any witness or witnesses during the testimony of other witnesses.

## **13. THE AWARD**

13.1 The arbitrator will render its award no later than at the close of the proceedings, or within twenty (20) business days thereafter, provided that the arbitrator, for good reason, may extend that time after consultation with the parties.

13.2 The award may be held and not released to the parties until all outstanding charges of the arbitration for fees and disbursements relating to the arbitration and all arbitrator's fees and expenses have been paid.

13.3 The award shall set out: the nature of the claim; the decision; and the relief awarded.

13.4 An award or interim award made under the provisions of these Regular Track Rules shall be treated as a final award for the purposes of recognition and enforcement by a judicial authority and shall not be subject to any appeal to the courts or otherwise unless the parties have otherwise agreed or the Law of the arbitration requires.

## **14. AMENDMENTS AND CORRECTIONS TO THE AWARD**

Within ten (10) business days after an award has been released, on the application of a party or on its own initiative, the arbitrator may amend an award to correct:

- a. a clerical or typographical error;
- b. an accidental error, slip, omission or similar mistake;

- c. an arithmetical error made in a computation; or
- d. a claim on which the arbitrator failed to adjudicate.

## **15. INTEREST**

The arbitrator may order the payment of simple or compound interest, including pre-award and post-award interest.

## **16. PLACE OF ARBITRATION; HEARING VENUE**

16.1 The venue for arbitration shall be determined by the arbitrator, in its sole discretion, having regard to the circumstances of the arbitration. The arbitrator may determine the venue of the arbitration within the place agreed upon by the parties or fixed by the arbitrator. It may hear witnesses and hold meetings any place it deems appropriate, having regard to the circumstances of the arbitration. The award shall be deemed to have been made at the venue of arbitration.

16.2 None of the Arbitration Society of England and Wales, Ltd., its staff, and no arbitrator, shall be liable to any party or any lawyer, officer, director, employee or witness for any party for any act or omission in connection with arbitration. The parties shall jointly and severally indemnify and hold harmless the Arbitration Society of England and Wales, Ltd., along with the arbitrator, in respect of all such claims. The members of the arbitrator and the Arbitration Society of England and Wales, Ltd., and arbitrator, shall have the same protections and immunities as a judge.

## **17. THE COSTS OF THE ARBITRATION**

The costs of the arbitration, including arbitrators' fees and disbursements, and any charges by the Arbitration Society of England and Wales, Ltd., will be fixed by the arbitrator and allocated between or among the parties in its final award on the merits of the dispute or in a separate award after receiving further submissions from the parties. The arbitrator will have the power, in its discretion, to modify the division of the arbitration fees and to award legal costs in addition to the foregoing fees and disbursements. If the arbitrator does not make a costs award, the arbitrators' fees and disbursements will be billed equally between or among the parties.

## **18. ARBITRATION FEES AND DEPOSITS**

18.1 The fees for the Regular Track Arbitration shall operate as follows:

- a. Upon filing its Petition, a one-time administrative fee in the amount of \$1,750.00 must be paid by Petitioner to the Arbitration Society of England and Wales, Ltd., which payment may later be credited in part by the arbitrator in his/her final award.
- b. The selected arbitrator's hourly fee for arbitration services, split equally between Petitioner and Respondent;
- c. Petitioner shall provide an initial estimate of the number of days expected for arbitration upon filing its Petition;
- d. Respondent shall provide its own estimate of the number of days expected for arbitration upon filing its Response; and
- e. The Arbitrator shall, in its sole discretion, make the determination of the number of days the arbitration will take, and an estimate of the number of hours reasonably expected for pre-trial matters.

18.2 Notwithstanding any other provision of the Regular Track Rules, the parties will be jointly and severally responsible for the payment of all accounts rendered by the Arbitration Society of England and Wales, Ltd.

unless the parties and the Arbitration Society of England and Wales, Ltd. have otherwise agreed and have confirmed those arrangements in writing with the Arbitration Society of England and Wales, Ltd.

18.3 A deposit on account of fees, anticipated costs and applicable taxes will be required for each day reserved for the arbitration and the time estimated by the arbitrator for preparation for hearings, the review of evidence, the writing of the award, disbursements, and taxes, if any. The amount and timing of deposits will be communicated to the parties by the arbitrator, from time to time and are subject to change.

18.4 Arbitration hearing days will have a minimum charge of eight hours per day charged for the arbitrator's time for that day.

## **19. LANGUAGE**

Proceeding shall be conducted in English. A party requiring an interpreter shall request an interpreter a reasonable period of time ahead of any proceeding at which the interpreter is needed, and the party so requesting the interpreter shall bear the expense. The arbitrator shall hire the interpreter.

## **20. ADJOURNMENT, CANCELLATION OR SETTLEMENT**

If the arbitration is cancelled or adjourned within ten (10) business days prior to a scheduled hearing, the cancellation fee will be half of the amount required for deposit, plus fees for any time spent by the arbitrator.

Notification to the arbitrator of any cancellation, request for adjournment or settlement must be confirmed in writing by fax or e-mail, and requires consent of all parties.