

## **BRITISH COFFEE ASSOCIATION LONDON ARBITRATION RULES 2012**

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## **BRITISH COFFEE ASSOCIATION LONDON ARBITRATION RULES 2012**

### **PART 1 - INTRODUCTION**

1. All disputes referred to the British Coffee Association (“the BCA”) for arbitration on or after 1 February 2012:
  - (a) shall be determined subject to English law including the provisions of the Arbitration Act 1996 and of any statutory re-enactment, modification or amendment for the time being in force (“the Act”); and
  - (b) shall be determined subject to these Arbitration Rules (“these Rules”) which may be cited as “the British Coffee Association London Arbitration Rules 2012”; and
  - (c) shall be determined by a Tribunal of three arbitrators (a “Tribunal”) one of whom shall sit as chairman; and
  - (d) if there is an appeal under these Rules (an “Appeal”) shall be determined by a Board of Appeal of five arbitrators (a “Board of Appeal”) one of whom shall sit as chairman.
2. Proceedings before a Tribunal are referred to in these Rules as “First Tier proceedings” and proceedings before a Board of Appeal are referred to in these Rules as “Appeal proceedings” and all and any such proceedings are referred to in these Rules as “arbitral proceedings” or “arbitration”.
3. The seat of all arbitral proceedings shall be London, England.
4. The appointment of all arbitrators and chairmen shall be made by the BCA from members of the BCA Panel of Arbitrators.

### **PART 2 – COMMENCING AN ARBITRATION AND STANDARD TIMETABLE**

#### **Commencing an arbitration**

5. A party wishing to commence an arbitration (“a Claimant”) shall ensure receipt by the BCA of:
  - (a) a non-returnable fee payable to the BCA in the amount published by the BCA from time to time; and
  - (b) a written application for First Tier proceedings to be commenced (the “Application for Arbitration”).
6. The Application for Arbitration shall:
  - (a) name the other party or parties (each a “Respondent”) to the dispute which the Claimant wishes to refer to arbitration; and
  - (b) provide the dates and reference numbers of any contract to which the dispute is said to relate; and
  - (c) state the quantity (tonnage) of any coffee to which the dispute is said to relate; and
  - (d) insofar as possible quantify each and every claim; and

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- (e) describe any coffee to which the dispute is said to relate as roasted and/or soluble and/or green arabica and/or green robusta; and
  - (f) request the BCA to appoint a Tribunal.
- 7. The Application for Arbitration shall be accompanied by the contact details of each Respondent and evidence that the Claimant has transmitted a copy of the Application for Arbitration to each Respondent.
- 8. Upon receipt by the BCA of both the non-returnable fee and the Application for Arbitration the First Tier proceedings shall thereupon be deemed to have been commenced.
- 9. In circumstances where:
  - (a) the Claimant wishes to bring more than one claim at the same time and against the same Respondent(s); and
  - (b) if to do so it will be necessary to commence more than one set of arbitral proceedings; and
  - (c) if the Claimant considers that those arbitral proceedings can be consolidated conveniently into one set of consolidated arbitral proceedings;
  - (d) the Claimant shall be entitled to use a single Application for Arbitration to start all such proceedings and the proceedings shall thereafter be deemed to be consolidated pursuant to Rule 41(a) below, subject always to the right of a Respondent to object, and subject always to the power of the Tribunal or Board of Appeal to set aside such consolidation in whole or in part.
- 10. A Claimant who issues an Application for Arbitration in respect of more than one set of arbitral proceedings shall be deemed to have commenced each of those arbitral proceedings upon compliance with Rule 9 whether or not the consolidation is subsequently set aside in whole or in part.
- 11. After the First Tier proceedings have been commenced the BCA shall:
  - (a) forward a copy of the Application for Arbitration to each Respondent; and
  - (b) appoint three arbitrators to form a Tribunal and forward a copy of the Application for Arbitration to the Tribunal; and
  - (c) notify all parties of the identity of the arbitrators who have been appointed.
- 12. In all circumstances:
  - (a) each party shall have the right upon application in writing to the BCA to require the BCA to remove from any Tribunal one arbitrator only in which event a substitute arbitrator shall be appointed by the BCA. A party seeking to exercise this right is not required to give reasons for doing so. This right must be exercised within 3 London working days of the date of the appointment of the arbitrator which that party seeks to have removed; and
  - (b) if any arbitrator appointed to a Tribunal dies the BCA shall appoint a substitute arbitrator; and
  - (c) if any arbitrator appointed to a Tribunal becomes physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so the BCA shall remove that arbitrator and appoint a substitute arbitrator.

Except in the above circumstances, once an arbitrator is appointed to a Tribunal the authority of that arbitrator may not be revoked except by the parties acting jointly and that arbitrator may be removed only by court order.

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13. After the First Tier proceedings have been commenced:
- (a) all correspondence and documentation received by the BCA from any party shall be forwarded by the BCA to all other parties and to the Tribunal; and
  - (b) unless the Tribunal directs otherwise, all correspondence and documentation which any party wishes to send to the Tribunal shall be addressed to the BCA for onward transmission to the Tribunal.

### **Standard timetable for First Tier proceedings**

14. Claimants and Respondents shall ensure receipt by the BCA of five copies of their submissions, which shall include supporting evidence, within the following deadlines.
- (a) The Claimant's claim submissions: within 21 days from the date the First Tier proceedings were commenced.
  - (b) The Respondent's defence submissions and counterclaim submissions (if any): within 21 days from the date the Respondent received the Claimant's claim submissions from the BCA.
  - (c) The Claimant's reply submissions and defence to counterclaim submissions (if any): within 21 days from the date the Claimant received the Respondent's defence submissions and counterclaim submissions (if any) from the BCA.
  - (d) The Respondent's reply to defence to counterclaim submissions: within 21 days from the date the Respondent received the Claimant's reply submissions and defence to counterclaim submissions from the BCA.
15. A Tribunal may vary the above timetable in accordance with its general duty under Rule 48 below.

### **Provision of samples**

16. If a Claimant wishes a Tribunal to examine any sample the Claimant shall ensure receipt by the BCA of the sample, together with a concise statement of the purpose for which the sample is being provided, at the same time as receipt by the BCA of the Claimant's Application for Arbitration.
17. If a Respondent wishes a Tribunal to examine a sample the Respondent shall ensure receipt by the BCA of the sample, together with a concise statement of the purpose for which the sample is being provided, no later than at the same time as receipt by the BCA of the Respondent's Defence submissions.
18. If a party wishes to submit a sample at a later stage in First Tier proceedings for examination by a Tribunal that party shall do so only with the permission of the Tribunal.
19. All samples received by the BCA shall become, upon receipt by the BCA, the property of the BCA and the BCA shall not be liable to any party if any sample is lost, damaged or destroyed.

### **Awards made by a Tribunal**

20. A Tribunal may make one final award on all matters to be determined.
21. Alternatively a Tribunal may make more than one final award on different aspects of the matters to be determined, pursuant to Section 47 of the Act, including but not limited to separate awards on interest, costs and jurisdiction.
22. In addition a Tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

**PART 3 – COMMENCING APPEAL PROCEEDINGS AND STANDARD  
TIMETABLE**

**Commencing Appeal proceedings**

23. A party wishing to commence Appeal proceedings (the “Appellant”) shall ensure receipt by the BCA within 28 days from the date of the Tribunal’s award against which the Appellant wishes to appeal of:
- (a) a non-returnable fee payable to the BCA in the amount published by the BCA from time to time; and
  - (b) a written application for Appeal proceedings to be commenced (the “Application for Appeal”)
  - (c) failing which the right to commence Appeal proceedings shall be time barred.
24. If a party wishing to commence Appeal proceedings wishes to apply for an extension of time in which to do so the BCA shall appoint five arbitrators to form a Board of Appeal which shall hear the application. The Board of Appeal shall have the power to grant extensions of time only if it is satisfied that the party wishing to commence Appeal proceedings was unable using best endeavours to commence Appeal proceedings within the above time limit and that to refuse to grant an extension of time will cause undue hardship to the party wishing to commence Appeal proceedings.
25. The Application for Appeal shall:
- (a) name the other party or parties (each a “Respondent”) to the intended Appeal proceedings; and
  - (b) identify the Tribunal’s award against which the Appellant wishes to appeal; and
  - (c) request the BCA to appoint a Board of Appeal.
26. The Application for Appeal shall be accompanied by:
- (a) evidence that the Appellant has transmitted a copy of the Application for Appeal to each Respondent; and
  - (b) a copy of the Tribunal’s award against which the Appellant wishes to appeal.
27. Upon receipt by the BCA of both the non-returnable fee and the Application for Appeal the Appeal proceedings shall be deemed to have been commenced.
28. After the Appeal proceedings have been commenced the BCA shall:
- (a) forward a copy of the Application for Appeal to each Respondent; and
  - (b) appoint five arbitrators to form a Board of Appeal (unless already appointed under Rule 24 above); and
  - (c) forward to the Board of Appeal:
    - (i) a copy of the Application for Appeal; and
    - (ii) a copy of the Tribunal’s award against which the Appellant wishes to appeal.
29. In all circumstances:
- (a) each party shall have the right upon application in writing to the BCA to require the BCA to remove from any Board of Appeal one arbitrator only in

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which event a substitute arbitrator shall be appointed by the BCA. A party seeking to exercise this right is not required to give reasons for doing so. This right must be exercised within 3 London working days of the date of the appointment of the arbitrator which that party seeks to have removed; and

- (b) if any arbitrator appointed to a Board of Appeal dies the BCA shall appoint a substitute arbitrator; and
- (c) if any arbitrator appointed to a Board of Appeal becomes physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so the BCA shall remove that arbitrator and appoint a substitute arbitrator.

Except in the above circumstances, once an arbitrator is appointed to a Board of Appeal the authority of that arbitrator may not be revoked except by the parties acting jointly and that arbitrator may be removed only by court order.

30. After the Appeal proceedings have been commenced:
- (a) all correspondence and documentation received by the BCA from any party shall be forwarded by the BCA to all other parties and to the Board of Appeal; and
  - (b) unless the Board of Appeal directs otherwise, all correspondence and documentation which any party wishes to send to the Board of Appeal shall be addressed to the BCA for onward transmission to the Board of Appeal.

### **Standard timetable for Appeal proceedings**

31. Appellants and Respondents shall ensure receipt by the BCA of seven copies of their submissions, which shall include supporting evidence, within the following deadlines.
- (a) The Appellant's claim submissions: within 21 days from the date the Appeal proceedings were commenced.
  - (b) The Respondent's defence submissions and counterclaim submissions (if any): within 21 days from the date the Respondent received the Appellant's claim submissions from the BCA.
  - (c) The Appellant's reply submissions and defence to counterclaim submissions (if any): within 21 days from the date the Appellant received the Respondent's defence submissions and counterclaim submissions (if any) from the BCA.
  - (d) The Respondent's reply to defence to counterclaim submissions: within 21 days from the date the Respondent received the Appellant's reply submissions and defence to counterclaim submissions from the BCA.
32. A Board of Appeal may vary the above timetable in accordance with its general duty under Rule 48 below.
33. Appeal proceedings are new proceedings in which the parties may submit new submissions and new supporting evidence to the Board of Appeal.
34. A Board of Appeal may consider:
- (a) submissions or supporting evidence submitted to the Tribunal in the First Tier proceedings; and
  - (b) correspondence or documents generated during the First Tier proceedings
- only if copies of the same are provided to it by a party in the Appeal proceedings in accordance with the above timetable.

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### **Provision of samples**

35. If a party wishes the Board of Appeal to examine a sample not submitted for examination during the First Tier proceedings that party shall do so only with the permission of the Board of Appeal.
36. All samples received by the BCA shall become, upon receipt by the BCA, the property of the BCA and the BCA shall not be liable to any party if any sample is lost, damaged or destroyed.

### **Awards made by a Board of Appeal**

37. A Board of Appeal may:
  - (a) confirm the Tribunal's award; or
  - (b) vary the Tribunal's award; or
  - (c) set aside the Tribunal's award in whole or in part.
38. A Board of Appeal may make one final award on all matters to be determined.
39. Alternatively Board of Appeal may make more than one final award on different aspects of the matters to be determined, pursuant to Section 47 of the Act, including but not limited to separate awards on interest, costs and jurisdiction.
40. In addition a Board of Appeal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

## **PART 4 – CONSOLIDATION / CONCURRENT HEARINGS**

### **Consolidation of proceedings and concurrent hearings**

41. In accordance with its general duty a Tribunal or Board of Appeal shall have the power to order on its own initiative or on the application of a party:
  - (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings; or
  - (b) that concurrent hearings shall be held;on such terms as it thinks fit.

## **PART 5 – PROCEDURAL AND EVIDENTIAL MATTERS AND STANDARD DIRECTIONS**

42. The following standard directions shall apply.
  - (a) All written submissions shall be in English.
  - (b) Any party adducing documentary supporting evidence which is in a language other than English shall provide an accompanying translation into English.
  - (c) If a Tribunal or Board of Appeal orders that oral evidence and/or oral submissions are to be heard, which it may do on the application of a party or on its own initiative, it shall fix a hearing date for this purpose.
    - (i) If the order is made on the application of a party a non-returnable booking fee shall be payable by that party; and the expenses of

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hiring a venue for such a hearing (including incidentals such as transcription services, translation services and catering) shall be payable in the first instance by that party.

- (ii) If the order is made on the initiative of a Tribunal or Board of Appeal a non-returnable booking fee shall be payable by the Claimant and the expenses of hiring a venue for such a hearing (including incidentals such as transcription services, translation services and catering) shall be payable in the first instance by the Claimant.
  - (iii) A schedule of non-returnable booking fees shall be published by the BCA from time to time.
- (d) A party may be represented in the arbitral proceedings by a representative (which expression shall include legal practitioners) except that:
- (i) at a hearing of oral evidence and/or oral submissions a party may not be represented by one or more legal practitioners unless permitted by the Tribunal or Board of Appeal; and
  - (ii) at a hearing of oral evidence a natural person ordered or permitted to give oral evidence may not give that oral evidence by way of a representative and must give that oral evidence in person.
43. Otherwise it shall be for a Tribunal or Board of Appeal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.
44. Procedural and evidential matters include but are not limited to:
- (a) whether any documentary evidence which is in a language other than English shall be translated into English by an independent professional translator;
  - (b) whether and if so to what extent any party's submissions may be later amended by that party;
  - (c) whether any and if so which documents or classes of documents shall be ordered to be disclosed by any party. Applications to a Tribunal or Board of Appeal for an order for disclosure of documents must always be accompanied by reasons why the disclosure is sought;
  - (d) whether to apply strict rules of evidence (or any other rules of evidence) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
  - (e) whether or not and if so to what extent a Tribunal or Board of Appeal should itself take the initiative in ascertaining the facts and the law;
  - (f) whether or not and if so to what extent there should be oral or written evidence;
  - (g) whether or not and if so to what extent there should be oral or written submissions;
  - (h) when and where any part of the proceedings, including the hearing of any oral evidence or oral submissions, is to be held;
  - (i) whether or not and if so to what extent the services of translators and/or transcribers are required at any hearing of oral evidence and/or oral submissions;
  - (j) whether or not any witness of fact should give evidence in writing or orally and whether or not any such evidence should be given under oath.
45. The Tribunal or the Board of Appeal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).



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### **PART 6 – DUTIES AND FUNCTIONS OF PARTIES AND ARBITRATORS**

#### **General duty of the parties**

46. It shall be the general duty of a party to do all things necessary for the proper and expeditious conduct of the arbitral proceedings. This includes:
- (a) complying without delay with any determination of a Tribunal or Board of Appeal, as to procedural or evidential matters, or with any order or directions of a Tribunal or Board of Appeal; and
  - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction under Section 32 of the Act or law under Section 45 of the Act.
47. If any parties settle a dispute which has been referred to arbitration each of those parties shall be under an obligation promptly to notify the same to the BCA.

#### **General duty of Tribunals and Boards of Appeal**

48. It shall be the general duty of a Tribunal or Board of Appeal to:
- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of its opponent; and
  - (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

A Tribunal or Board of Appeal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

49. No arbitrator shall act as a representative of any party.

#### **Functions of the Chairman**

50. Decisions, orders and awards shall be made by all or a majority of the arbitrators (including the Chairman) sitting on a Tribunal or Board of Appeal.
51. The opinion of the Chairman shall prevail if there is no majority.
52. The Chairman of a Tribunal or Board of Appeal may sign awards on behalf of that Tribunal or Board of Appeal.

#### **Power to appoint experts, legal advisers or assessors**

53. A Tribunal or Board of Appeal may:
- (a) seek legal advice from an independent legal adviser and/or allow an independent legal adviser to attend at the hearing of any oral evidence or oral submissions for the purpose of providing legal advice to the Tribunal or Board of Appeal. A Tribunal or Board of Appeal shall be under no obligation to make available to any party any such legal advice. A party shall have no right to have made available to it or to comment upon any such legal advice;
  - (b) seek expert opinion from an independent expert or assessor and/or allow an independent expert or assessor to attend at the hearing of any oral evidence or oral submissions for the purpose of providing expert opinion to a Tribunal or Board of Appeal. A Tribunal or Board of Appeal shall be under no obligation to make available to any party any such expert opinion. A party shall have no right to have made available to it or to comment upon any such expert opinion.

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54. Section 37.1 of the Act shall not apply.
55. The fees and expenses of an expert, legal adviser or assessor appointed by a Tribunal or Board of Appeal are expenses of any such Tribunal or Board of Appeal.

### **PART 7 – SECURITY FOR THE COSTS OF THE ARBITRATION**

#### **Security for costs of the arbitration**

56. Without prejudice to
- (a) any award as to the liability of each party for any costs of the arbitration which may be made by a Tribunal or Board of Appeal and
  - (b) the parties' joint and several liability for the fees and expenses of the arbitrators and the fees and expenses of the BCA
  - (c) a Tribunal or Board of Appeal may order a party to provide security for
    - (i) the fees and expenses of the Tribunal or Board of Appeal and/or
    - (ii) the fees and expenses of the BCA and/or
    - (iii) the legal or other costs of any of the other parties.
57. This power shall not be exercised on the ground that the party is:
- (a) an individual ordinarily resident outside the United Kingdom; or
  - (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.
58. Orders for security for costs may be made at any stage of the arbitral proceedings.
- (a) In First Tier proceedings orders for security for costs may be made only against a Claimant or against a Respondent who is making a counterclaim.
  - (b) In Appeal proceedings orders for security for costs may be made against either an Appellant and/or a Respondent in the absolute discretion of the Board of Appeal.
59. Orders for security for costs may be made on the application of a party or on the initiative of a Tribunal or Board of Appeal.

### **PART 8 – DEFAULT BY A PARTY AND PEREMPTORY ORDERS**

#### **Failure by a party to comply with these directions or orders of the Tribunal or Board of Appeal**

60. If without showing sufficient cause a party:
- (a) fails to attend or be represented at an oral hearing of which due notice was given; or
  - (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions;

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- (c) a Tribunal or Board of Appeal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on that party's behalf, and may make an award on the basis of the evidence before it.
61. If without showing sufficient cause a party fails to comply with any order or direction of a Tribunal or Board of Appeal then that Tribunal or Board of Appeal may make a Peremptory Order in the same terms as the order or direction which has not been complied with.
62. If a Tribunal or Board of Appeal makes a Peremptory Order it must:
- (a) specify a deadline within which that party must comply, and
  - (b) specify the sanction which will be imposed upon that party if that party does not comply; and
  - (c) describe that order expressly as a "Peremptory Order".
63. In determining the sanction to be imposed for failure to comply with a Peremptory Order, and subject always to its general duty:
- (a) If a party fails to comply with a peremptory order of a Tribunal or Board of Appeal to provide security for costs, the Tribunal or Board of Appeal may make an award dismissing his claim.
  - (b) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 42 (enforcement by the court of peremptory orders), the Tribunal or Board of Appeal may do any of the following:
    - (i) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
    - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify;
    - (iii) proceed to an award on the basis of such materials as have been properly provided to it;
    - (iv) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

### **PART 9 – AWARDS**

#### **Awards on jurisdiction**

64. A Tribunal or Board of Appeal has the power to and shall rule on its own substantive jurisdiction, that is, as to:
- (a) whether there is a valid arbitration agreement;
  - (b) whether the Tribunal or Board of Appeal is properly constituted;
  - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
65. A party may challenge the substantive jurisdiction of a Tribunal or Board of Appeal.
66. An objection that a Tribunal lacks substantive jurisdiction at the outset of First Tier proceedings must be made by a party not later than the time that party takes the first step in the First Tier proceedings to contest the merits of any matter in relation to

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which that party challenges the Tribunal's jurisdiction. A party is not precluded from making such an objection by having appointed or participated in the appointment of an arbitrator.

67. An objection that a Tribunal lacked substantive jurisdiction at the outset of the First Tier proceedings may not be made in subsequent Appeal proceedings unless it was made in the First Tier proceedings in accordance with Rule 66 above.
68. Any objection during the course of arbitral proceedings that a Tribunal or Board of Appeal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.
69. A Tribunal or Board of Appeal may allow an objection to be made later than the time specified in Rules 66 to 68 above if it considers the delay justified.
70. Where an objection is duly made to the substantive jurisdiction of a Tribunal or Board of Appeal it shall:
- (a) rule on the matter in an award as to jurisdiction; or
  - (b) deal with the objection in its award on the merits.
71. A Tribunal or Board of Appeal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 32 of the Act (for a determination of a preliminary point of jurisdiction by the court).

### **Awards of interest**

72. A Tribunal or Board of Appeal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case:
- (a) on the whole or part of any amount awarded by a Tribunal or Board of Appeal in respect of any period up to the date of the award;
  - (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment;
  - (c) from the date of the award (or any later date) until payment on the outstanding amount of any award (including any award of interest under (a) above and any award as to costs).
  - (d) The above provisions do not affect any other power of a Tribunal or Board of Appeal to award interest.

### **Awards of costs of the arbitration**

73. A Tribunal or Board of Appeal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
74. The expression "costs of the arbitration" shall mean:
- (a) the fees and expenses of Tribunals and Boards of Appeal; and
  - (b) the fees and expenses of the BCA; and
  - (c) the legal or other costs of the parties.
75. Unless the parties otherwise agree, a Tribunal or Board of Appeal shall award costs on the general principle that costs should follow the event except where it appears to the Tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

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### **PART 10 – CORRECTION OF AWARDS AND ADDITIONAL AWARDS**

#### **Correction of Awards or additional Awards**

76. A Tribunal or Board of Appeal may on its own initiative or on the application of a party:
- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award; or
  - (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the Tribunal or Board of Appeal but was not dealt with in the award.
  - (c) These powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the Tribunal or Board of Appeal.
77. Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.
78. Any correction of an award shall be made within 28 days of the date the application was received by the Tribunal or Board of Appeal or, where the correction is made by the Tribunal or Board of Appeal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.
79. Any additional award shall be made within 28 days of the date of the original award or such longer period as the parties may agree.
80. Any correction of an award shall form part of the award.

### **PART 11 – THE PARTIES’ LIABILITIES FOR THE COSTS OF THE ARBITRATION**

#### **The parties’ liability to the BCA and to a Tribunal or Board of Appeal for the fees and expenses of the Tribunal or Board of Appeal and for the fees and expenses of the BCA**

81. The parties are jointly and severally liable to the BCA and to the Tribunal or Board of Appeal for the fees and expenses of the BCA and for the fees and expenses of the Tribunal or Board of Appeal.
82. The BCA and a Tribunal or Board of Appeal may refuse to deliver an award to the parties unless and until all the fees and expenses of the Tribunal or Board of Appeal and all the fees and expenses of the BCA have been paid in full.
83. In any arbitral proceedings the BCA may refuse to appoint a Tribunal or Board of Appeal if the party seeking such appointment has failed to discharge any liability for the fees or expenses of the BCA or the fees or expenses of any Tribunal or Board of Appeal whether arising out of those or any other arbitral proceedings.
84. The parties shall not be relieved of this joint and several liability to the BCA and to the Tribunal or Board of Appeal unless and until all the fees and expenses of the Tribunal or Board of Appeal and all the fees and expenses of the BCA have been paid in full. In particular but without limitation the parties shall not be relieved of this joint and several liability:
- (a) by reason of any award allocating liability for the costs of the arbitration as between the parties which may be made by a Tribunal or Board of Appeal;
  - (b) by reason of the arbitral proceedings being stayed or abandoned by one or more parties or subject to settlement between any of the parties or have otherwise come to an end.

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85. The fees and expenses of the Tribunal or Board of Appeal and the fees and expenses of the BCA shall be calculated and become payable:
- (a) at the time any final award is made; or
  - (b) upon the Tribunal or Board of Appeal staying the proceeding or becoming aware that the arbitral proceedings have been abandoned by one or more parties or are subject to settlement between any of the parties or have otherwise come to an end;
  - (c) and the sum calculated shall be notified to the parties.
86. After all the fees and expenses of the Tribunal or Board of Appeal and all the fees and expenses of the BCA have been paid in full the BCA will give credit for any surplus payments and surplus security for the costs of the arbitration which may have been received by the BCA.

### **PART 12 – MISCELLANEOUS**

#### **Transmission of correspondence**

87. All written correspondence (including but not limited to the Notice of Arbitration and all written submissions and all supporting documentary evidence) shall be transmitted by the parties to each other and to the BCA in legible form by a prompt method of communication.
88. Prompt methods of communication for the purposes of these Rules shall include email or fax unless otherwise directed by a Tribunal or Board of Appeal.
89. The burden shall be upon the sender of any written correspondence to the BCA to confirm/ensure receipt by the BCA and if any such written correspondence must be received by the BCA within a deadline either established under these Rules or as directed by a Tribunal or Board of Appeal the burden shall be upon the sender to confirm/ensure receipt by the BCA within such deadline.

#### **Immunity of an arbitrator and of the British Coffee Association**

90. If a party applies to the English courts on notice to the Tribunal or Board of Appeal it shall provide the Tribunal or Board of Appeal with a copy of that application, give notice of any hearing, and provide a copy of any judgment.
91. Pursuant to Section 29 of the Act:
- (a) an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith; and
  - (b) the above provision applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.
92. Pursuant to Section 74 of the Act:
- (a) the BCA, designated under these Rules to appoint all arbitrators, is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith; and
  - (b) the BCA is not liable, by reason of having appointed an arbitrator, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator; and
  - (c) the above provisions apply to an officer, employee or agent of the BCA as they apply to the BCA.

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93. Furthermore, the BCA is not liable for anything done or omitted in the discharge or purported discharge of any of the functions or purported functions of the BCA in relation to these Rules and/or any arbitral proceedings and/or any awards made pursuant to these Rules. This provision applies to an officer, employee or agent of the BCA as it applies to the BCA.
94. Any and all disputes arising between a party and the BCA (including an officer, employee or agent of the BCA) and/or an arbitrator (including his employees or agents) shall be subject to English law and to the exclusive jurisdiction of the English courts.
95. If any party seeks to make the BCA and/or any arbitrator party to English court proceedings that party shall put up security for the legal and other costs of the BCA and any such arbitrator in those proceedings and agrees to the English courts so ordering in an amount to be determined by the English courts if not agreed.

### **Posting of defaulters**

96. A Tribunal or Board of Appeal shall if requested by a party find in an award whether or not any party defaulting upon that award has agreed to be posted as a defaulter in accordance with any posting procedure which the Tribunal or Board of Appeal finds was agreed between the parties.

End