



# GTA DISPUTE RESOLUTION RULES

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 **GRAIN TRADE  
AUSTRALIA**

# GTA Dispute Resolution Rules

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# Section 1: General

## Article 1: Purpose and Description

1. Through its Dispute Resolution Process (“Process”), Grain Trade Australia Ltd (GTA) works to avoid litigation and reduce friction among GTA Members and other industry participants by encouraging dispute resolution through peer review. The Process will be conducted in a manner that promotes the saving of time and expense while providing an efficient, fair and equitable means to settle disputes related to commercial transactions.
2. These GTA Dispute Resolution Rules (“Rules”) shall govern the resolution of any disputes falling within the jurisdiction of the GTA Process.
3. The Process consists of:
  - a. Expert Determination
  - b. Small Claims
  - c. Fast Track Arbitration and
  - d. Full Arbitration.Each Process is governed by a particular section of these Rules (Sections 2 and 3). Sections 1 and 4 apply to each Process.
4. Based on the nature of the dispute (including the amount in issue) the Party(s) shall nominate their preferred Process. GTA retains discretion in relation to the appropriate Process and is available to discuss the various alternatives with a Party prior to commencing a Process.
5. Each reference shall be administered by GTA through its Chief Executive Officer (“CEO”) or nominee (hereafter collectively referred to as “GTA”).
6. Each Tribunal may be supported by a professional Secretariat (appointed by GTA on behalf of the Tribunal) who may provide private and confidential assistance and advice to the Tribunal on administrative matters including preparation of directions and award.

## Article 2: Jurisdiction

1. GTA has jurisdiction through the incorporation of the GTA Trade Rules or these Dispute Resolution Rules into a contract, by separate agreement of the Parties.
2. A Member or Non-Member, who incorporates the GTA Trade Rules or these Rules into its contract or agreement, agrees to resolve any disputes arising out of the inception, negotiation, formation, performance or any other aspect of the contract or contractual relationship, pursuant to these Rules.
3. Members and Non-Members incorporating these Rules agree not to apply to any Court unless the dispute has been finalised pursuant to these Rules or the dispute falls outside the scope of these Rules.

## Article 3: Commencing a Process

1. A Request must be lodged with GTA and the filing fee or Small Claim Fee paid by the Claimant, on or before twelve (12) months after the expiration date for performance of the contract(s) otherwise any claim is deemed to be waived and absolutely barred unless a GTA Arbitration Tribunal exercises its discretion to extend the time for commencing arbitration.
2. A Party wishing to commence a Process under these Rules (“the Claimant”) shall send to GTA (with copy to the other party(s) to the dispute) a written Request containing or accompanied by the following:
  - a. The type of Process requested;
  - b. The names, addresses (postal and email), telephone numbers (if known) of the Parties to the dispute and of their legal representatives (if known);
  - c. A brief statement describing the nature and circumstances of the dispute and specifying the claims advanced by the Claimant against another Party to the dispute (“the Respondent”), including the amount involved;
  - d. A copy of the contractual documentation which demonstrates the incorporation of the GTA Trade Rules or Dispute Resolution Rules;
  - e. Any agreement between the Parties or proposal regarding the procedure for Arbitration or other Process;
3. Unless otherwise stated in these Rules, the date of receipt by GTA of the Filing Fees or Small Claim Fee shall for all purposes be the date on which the Process has commenced.
4. Following receipt of the Request, GTA will issue a Notice of Dispute, tax invoices if applicable for Administration and Process Fees and for Full arbitrations a list of the GTA Approved Arbitrators.
5. Following receipt of the relevant fees and a signed Contract for Arbitration from:
  - a. both Parties in the case of a Voluntary Fast Track Arbitration; or
  - b. the Claimant (in the case of an Expert Determination, Small Claims, Mandatory Fast Track or Full Arbitration)
6. GTA will administer the Process pursuant to the Rules of the relevant Process.
7. GTA reserves the right not to progress a Process where a party is in default of payment of any fees due to GTA, including payment of fees for the current or any other reference.

#### Article 4: Dispute Resolution Fees

1. The fees payable by each Party shall be determined by GTA from time to time and published in Schedule 1. These fees are subject to change and review by the GTA Board of Directors, at its discretion. Any amendments will be published in Schedule 1 to these Rules.
2. The Parties must pay the relevant Fees published in Schedule 1. The fees are payable upon notification by GTA.
3. If the Parties commence more than one Process, for whatever reason, separate fees are payable for each Process.
4. Where the Claimant has not paid the Administration or Small Claim Fee within twelve (12) months of invoice, GTA will consider the Process as abandoned and close its file.
5. In administering a Process, GTA may incur expenses including but not limited to administration, secretariat, travel, communication, room hire, legal fees, support services and other expenses which will be invoiced to the Parties at GTA's discretion and at cost to be borne by the Parties jointly and severally.
6. GTA or a GTA Arbitration Tribunal may at its discretion seek such legal advice or assistance as it requires in the administration of a Process generally or in respect of legal issues arising in relation to any Process and the costs of the legal advice will be borne equally by the Parties and may be the subject of an Award.
7. The Parties in an Expert Determination, Fast Track or Full Arbitration are jointly and severally liable to GTA for the fees and costs of the Process chosen (other than the legal or other costs incurred by the Parties themselves). The Claimant in a Small Claim is required to pay GTA for the Small Claim fee. Any fees and costs owed to GTA which remain unpaid may be included in a published Award as fees payable to GTA as if GTA was a Party to the Award.
8. An Award or opinion may be withheld and the administration of any Process is suspended until any outstanding amounts payable to GTA (including, without limitation, Administration, Process and/or legal fees) are paid.

#### Article 5: Exclusion of Liability and Indemnity

1. Except in the case of fraud, the Expert, Arbitrator, GTA, its Directors, Officers and Agents (including legal advisors) shall not be liable to any Party for any loss, damage or claims arising (directly or indirectly) from any act or omission (including negligent acts or omissions) in connection with the Process or in the performance of or failure to perform any obligation under these Rules.
2. The Parties to a Process jointly and severally indemnify GTA, its Directors, Officers and Agents (including legal advisors) and the Expert/s and/or Arbitrator/s in respect of all claims related to any act or omission of GTA, its Directors, Officers and Agents (including legal advisors), the Expert/s and/or Arbitrator/s in the performance of or failure to perform any obligation under these Rules.
3. Articles 5.1 and 5.2 apply to all Dispute Resolution Processes offered by GTA and Article 5 cannot be varied by the Parties.

#### Article 6: GTA Arbitrators

1. GTA shall maintain a list of Arbitrators approved by the GTA Board (the "GTA Approved Arbitrators List") which shall be reviewed at least annually by the GTA Board. The list shall be available upon request.
2. Only those Arbitrators appearing on the GTA List may be nominated as Arbitrators in a Process governed by these Rules.
3. Upon receipt of a nomination of an Arbitrator from a Party to a Process, GTA will contact the nominated Arbitrator and seek that nominee's consent to act as Arbitrator. Upon receipt of consent, and subject to any challenge under Article 24, GTA will notify the Parties and the nominee(s) will be deemed to have entered into the reference as Arbitrator(s).
4. If a nominee is unavailable, a Party, after notification from GTA, shall have 5 business days to provide GTA with a revised nomination.

#### Article 7: Confidentiality

1. All proceedings and submissions relating to the Process shall be privileged and remain confidential between the Parties and the Expert or Arbitrator and any documents exchanged and generated for the purposes of an expert opinion or Arbitration should not be used for any other ulterior purpose. Neither Party nor Expert or Arbitrator nor GTA may disclose the Opinion or information released during the Process unless required by law and except as provided by Article 40.

# Section 2: Expert Determination

## Article 8: Purpose

1. Expert Determination is a non-binding Process where GTA appoints an Expert to review the Parties' submissions and issue an opinion to the Parties. GTA will use its best endeavours to provide this within five 5 business days of receiving the final submission.
2. Expert Determination does not require the consent of both Parties and may be requested solely or jointly. An Expert Determination is non-binding whether or not a single Party or all Parties participate.
3. The Parties agree to participate in good faith in the Expert Determination.

## Article 9: Appointment of the Expert

1. To commence a GTA expert determination, Parties must notify GTA in accordance with the requirements of Article 3 and the Rules below.
2. GTA will appoint an Expert and each Party shall have 5 business days to notify GTA, in writing, of any challenge to the appointment on the basis of apprehended or actual bias or prejudice. If a challenge is upheld, GTA will make a new nomination within 5 business days.
3. Unless otherwise agreed by the Parties, an Expert shall not be interested in the transaction nor directly interested as a member or financially associated with any Party to the Process. Where the Expert has made a disclosure or where a Party independently knows of circumstances likely to give rise to justified doubts as to his or her impartiality or independence, a Party shall be at liberty to object to his or her appointment.

## Article 10: Submissions

1. Within 10 business days of the Expert being appointed, the Claimant shall lodge with GTA a written statement detailing the nature of the dispute, any agreed statement of facts and agreed issues, and submissions in fact and law in support. The statement is to be no longer than 3 pages with no more than 10 pages of supporting documentation.
2. GTA shall forward a copy of the statement to the Respondent and Expert within 5 business days.
3. Within 10 business days after receiving the statement, the Respondent shall lodge with GTA a written statement in response. The statement is to be no longer than 3 pages with no more than 10 pages of supporting documentation.
4. GTA shall forward a copy of the statement to the Claimant and Expert within 5 business days.
5. The timetable for statements may be varied by agreement between the Parties and the Expert, if appointed.
6. If the Expert determines that further information or documentation is required to reasonably form an opinion on the merits of the matter, the Expert may forward the request to GTA. GTA will immediately inform the Parties of the request. The Parties will have 5 business days to respond to the request in writing.
7. If appropriate, the Expert may request a conference with the Parties. If the Parties agree to the conference, GTA will administer the conference. The Parties shall bear the costs of the conference equally.

## Article 11: Opinion

1. The Expert must form his or her opinion based on the submissions made by the Parties and the Expert's own knowledge and expertise. The Expert is not bound by the rules of evidence and may receive any information as the Expert thinks fit.
2. The Expert must disclose all information and documentation received in the submission, or otherwise, to all Parties.
3. The Expert shall attempt to provide a written Opinion to the Parties within 10 business days of the final conference or submission. The Opinion shall be in writing and provide a brief statement of reasons for that opinion. A copy of the Opinion shall be lodged with GTA.

## Article 12: Costs

1. Each Party will bear its own costs and will share equally the Article 4 fees, expenses, costs of the Expert and the Process.

# Section 3: Arbitration

## Article 13: Governing Legislation

1. Unless a Small Claim, Fast Track or Full Arbitration Process is governed by the International Arbitration Act 1974 (Cth), the provisions of the Commercial Arbitration Act 2010 (NSW) and any statutory amendments in force, shall apply, save insofar as such provisions are expressly modified by, or are inconsistent with, these Rules.
2. The seat of each GTA arbitration is Sydney, New South Wales and the law of the arbitration will be the law of New South Wales.

## Article 14: Expedited Arbitration

1. The Parties may apply to GTA to expedite a Fast Track or Full Arbitration. Expedition requires the consent of both Parties and the agreement is to be lodged with GTA which will include a statement of agreed facts and issues in dispute and the proposed abbreviated timetable.
2. GTA will determine whether an expedited Arbitration is possible based on the complexity of issues in dispute and whether Arbitrators are available to comply with the timetable. GTA may amend the proposed timetable prior to approval of the request for expedition.

## Article 15: Small Claims

1. The Small Claims Process is compulsory for disputes with a claim value of less than \$15,000 (exclusive of interest and costs).
2. The Small Claims Process is a binding Process where GTA appoints an Arbitrator to review the Parties' submissions and publish an award.
3. The Small Claims Process does not require the consent of both Parties and may be requested solely or jointly.
4. The Parties agree to participate in good faith in the Small Claims Process.

## Article 16: Appointment of the Arbitrator (Small Claims)

1. To commence a GTA Small Claims Process, Parties must notify GTA in accordance with the requirements of Article 3 and the Rules below.
2. GTA will appoint an Arbitrator and notify the parties and each Party shall have 5 business days from receipt of that notice to advise GTA, in writing, of any challenge to the appointment on the basis of justifiable doubts as to the person's impartiality or independence for the purposes of section 12 of the Commercial Arbitration Act NSW 2010. If a challenge is upheld, GTA will make a new nomination within 5 business days.

## Article 17: Submissions (Small Claims)

1. The Claimant shall, at the time of initiating its dispute, lodge with GTA online;
  - (a) Points of Claim detailing the nature of the claim and submissions of fact and law in support;
  - (b) Any agreed statement of facts and agreed issues, and
  - (c) proof/s of evidence.
2. Points of Claim are to be no longer than 3 A4 pages (single spaced) with no more than 10 pages of supporting documentation (including proof/s of evidence).
3. Within 10 business days after receiving the Notice of Dispute and Points of Claim, the Respondent shall lodge with GTA Points of Defence which shall be no longer than 3 A4 pages (single spaced) with no more than 10 pages of supporting documentation (including proof of evidence).
4. Within 5 business days after receiving the Points of Defence, the Claimant may lodge Points of Reply addressing only those matters raised in the Points of Defence which shall be no longer than 2 A4 pages (single spaced) with no more than 5 pages of supporting documentation (including proof of evidence).
5. Page limits will be strictly applied and the arbitrator is under no obligation to consider submissions in excess of the page limits.
6. The timetable for submission may be varied by agreement between the Parties and the arbitrator, if appointed.

7. The Arbitrator may at their discretion request further information or documentation to be produced. The Parties will have 5 business days to respond to the request in writing. The Claimant shall pay any additional costs, including GTA's costs (which may be apportioned under the award).
8. The Arbitrator has discretion to request a conference with the Parties. GTA will administer the conference, The Claimant shall pay any additional costs, including GTA's costs (which may be apportioned under the award).
9. The arbitrator shall attempt to publish their award within 10 business days of the final conference or submission. The award shall be in writing and provide a brief statement of reasons. A copy of the award shall be lodged with GTA.
10. The Award is final and binding. The District Court of New South Wales has jurisdiction.

## Article 18: Costs (Small Claims)

1. Each Party will bear its own legal costs if any, and legal costs will not form part of the Award in the Small Claims process.

## Article 19: Fast Track Arbitration

1. Except where in conflict with this Article, all Rules contained in Section 3 apply to Fast Track Arbitration.
2. Fast Track Arbitration is compulsory for disputes with a claim value between \$15,000 and \$50,000 (exclusive of interest and costs).
3. GTA may at its sole discretion permit the Parties to proceed with Fast Track Arbitration for claims in excess of \$50,000. In these circumstances, both Parties must sign and return a GTA Contract for Fast Track Arbitration.
4. GTA may at any time and at its sole discretion direct that a Fast Track arbitration be converted to a Full Arbitration and require payment of additional fees as appropriate.

## Article 20: Appointment of the Arbitrator (Fast Track)

1. GTA will appoint a sole Arbitrator and notify the parties. The Parties shall have 5 business days from the date of notification from GTA to challenge GTA's appointment on the basis of justifiable doubts as to the person's impartiality or independence for the purposes of section 12 of the Commercial Arbitration Act NSW 2010. If there is no challenge, the nominee will be deemed to have entered into the reference as the Arbitrator.

## Article 21: Conduct of Proceedings (Fast Track)

1. Within 10 business days of the Arbitrator being appointed under Article 20.1, or the determination of any challenge under Article 20.1, the Claimant must submit Points of Claim to GTA.
2. Within 10 business days of receiving the Points of Claim the Respondent must submit Points of Defence to GTA.
3. Points of Claim and Points of Defence shall be no longer than 5 pages with no more than 20 pages of supporting documentation.
4. Within 5 business days of receiving the Points of Defence, the Claimant may lodge Points of Reply which shall be no longer than 2 pages with no more than 5 pages of supporting documentation (including proof of evidence).
5. Page limits will be strictly applied and the arbitrator is under no obligation to consider submissions in excess of the page limits.
6. The Arbitrator may at their discretion require further information or documentation to be produced and may forward the request to GTA. GTA will immediately inform the Parties of the request. The Parties will have 5 business days to respond to the request in writing. The Parties shall pay the additional costs (including GTA's costs) of the request.

7. GTA will use its best endeavours to publish the Award within 30 days of receipt of final submissions, or as agreed by the Parties. The Award shall include a brief statement of reasons for the Award.
8. Upon written application of a party, the Arbitrator may grant a Party an extension of time for taking a step in the proceedings under these Rules.
9. The Award is final and binding. The District Court of New South Wales has jurisdiction.

## Article 22: Commencing Full Arbitration

1. To commence a Full Arbitration, Parties must notify GTA in accordance with Article 3.
2. The Respondent must lodge the Response to the Notice of Dispute (NOD) (including fees and nomination of an Arbitrator) with GTA within 10 business days of receipt of the NOD and as required by Article 3.
3. Notice of any intention to claim by the Respondent against the Claimant arising from the same facts ("Cross-Claim") must be submitted to GTA within 10 business days of receipt of the Notice of Dispute. Unless the Parties agree otherwise, the Claim and Cross-Claim shall be heard together. Cross-Claim submissions shall be submitted at the same time as the submissions in accordance with Article 26.3 unless otherwise agreed by the Parties in writing.
4. Unless Article 27 (String Arbitrations) applies, any claim against a third Party (including a claim for indemnity) arising from the same or similar facts must be commenced as a new Arbitration under Article 3. The Respondent may make an application to GTA to consolidate the Arbitrations.

### Article 23: Formation of a Full Arbitration Tribunal

1. The Tribunal shall consist of three Arbitrators, two of whom shall be nominated from the GTA Approved Arbitrators List in writing as follows:
  - a. The Claimant shall nominate one Arbitrator (see Article 3.4 and 6.3);
  - b. The Respondent shall nominate one Arbitrator (see Article 21.2 and 22.3);
2. Following the above nominations, GTA shall appoint the Chair.
3. An Arbitrator shall not be interested in the transaction nor directly interested as a member or financially associated with any Party to the Arbitration. Where a nominee Arbitrator has made a disclosure or where a Party independently knows of circumstances likely to give rise to justified doubts as to his or her impartiality or independence, a Party shall be at liberty to object to his or her nomination, in which case GTA shall nominate another Arbitrator.
4. GTA will process the nominations in accordance with Article 6.4.
5. Upon confirmation of a nominee Arbitrator's availability to act, GTA shall notify the Parties of each appointed Arbitrator's name, company and role.
6. If either Party fails to nominate an Arbitrator or fails to give notice in accordance with Article 22.2, the other Party may apply to GTA for the appointment of an Arbitrator. Notice of the application shall be given to the Party that failed to appoint an Arbitrator. Upon receipt of the application GTA will appoint an Arbitrator on behalf of the Party that failed to do so and give notice to the Parties of the name of the Arbitrator appointed.

### Article 24: Challenge/Revocation of Arbitrator's Appointment

1. Upon receipt of an Article 23.5 notification, each Party shall have 5 business days to notify GTA, in writing, of any challenge to the appointment on the basis of apprehended or actual bias or prejudice. If a challenge is upheld, the nominating Party shall make a new nomination and GTA shall replace the Arbitrator within 5 business days.
2. A Party must provide reasons, in writing, for the challenge to an Arbitrator's appointment. A Party may challenge the appointment of a subsequent Arbitrator in accordance with this Article.
3. If an Arbitrator withdraws or becomes unfit to act for any reason as outlined in Article 23.3 or Article 25, GTA may revoke the appointment and appoint another Arbitrator.

### Article 25: Nomination and Replacement of Arbitrators

1. In the event of death, absence, resignation, refusal to act, or disqualification pursuant to Article 24 of an Arbitrator(s), GTA shall within 5 business days nominate an eligible Arbitrator who consents to serve and meets the criteria of Article 23. The Parties shall have the opportunity to challenge the nomination in accordance with Article 24. The approved replacement Arbitrator shall have the same power and duties as the Tribunal.

### Article 26: Conduct of Proceedings (Full Arbitration)

1. All communications between the Tribunal and the Parties shall be made through GTA and shall be in writing (see Article 3). All communications between a Party and GTA must be copied to all other Parties. Any communications sent by GTA will be copied to all Parties and the appointed Arbitrators.
2. Unless otherwise agreed by the Parties, the Tribunal shall have the widest discretion to discharge its duties allowed under the applicable laws, and at all times the Parties shall do everything necessary for the fair, efficient and expeditious conduct of the Arbitration.
3. Unless otherwise agreed by the Parties, following notice of the constitution of the Tribunal, submissions (which shall include any supporting evidence by way of statements, affidavits or documents) will be exchanged in accordance with the following timetable and Article 26.4:
  - a. Claimant to submit Points of Claim within 15 business days of said notice;
  - b. Respondent to submit Points of Defence within 15 business days of receipt of Points of Claim;
  - c. Claimant to submit any Points of Reply within 10 business days of receipt of Points of Defence;
  - d. Respondent to lodge any Points of Reply within 10 business days of receipt of the Claimant's Points of Reply.
4. GTA will distribute each submission and annexed documents within 5 business days of receipt, to each Party and the Arbitrators.
5. No Party is obliged to lodge a Reply. If a Party decides not to lodge a Reply, it must notify GTA within the above time limit.
6. If the Arbitrator decides that further information or documentation is required to reasonably reach a decision, the Arbitrator may request further submissions or documentation from either or both Parties, giving each Party a reasonable opportunity to respond.
7. The Chair is authorised to issue procedural directions and deal with preliminary issues for the efficient conduct of the Arbitration.



## Article 27: String Arbitrations

1. With the agreement of all Parties to any dispute involving multiple contracts in a “String Trade”, a single Arbitration may be held between the first Claimant and final Respondent as though they had contracted with each other.
2. The Claimant is responsible for procuring the agreement of all the intermediate Parties in the “String”.
3. If requested by a Party, Party(s) in a String must submit documents requested of them in an expeditious manner. In such circumstances, a Party may seek directions from the Tribunal to secure these documents.
4. An Award shall be binding on all Parties in the “String” and may be enforced by an intermediate Party against their immediate contracting Party as though a separate Award had been made.
5. The participating Claimant and Respondent will release the intermediate Parties from participating in the Arbitration.

## Article 28: Consolidation

1. The Tribunal has the power to consolidate Arbitrations.
2. If the Tribunal consolidates the Arbitrations each Party shall pay the appropriate Administration Fee. The Process Fee shall be payable only by the ultimate Claimant and Respondent unless, for whatever reason, the intermediate Parties are actively involved in the Arbitration. If this occurs, the liability to pay the Arbitration Fee shall be at GTA’s discretion.
3. GTA will provide information exchanged as part of the Arbitration (including submissions and administration) to all Parties in the consolidated Arbitration, whether they are an active Party or not.

## Article 29: Lapse of Claim

1. If neither Party submits any documentary evidence or submissions or pays any fees, in accordance with a GTA request or the timetable above, then the Claimant’s Request shall be deemed to have lapsed on the expiry of the said period unless fees are paid, renewed by a notice served by either Party or by the lodgement of documentary evidence.
2. Requests cannot be renewed for any more than 3 consecutive years from the date of the initial Request.
3. If the Arbitration is abandoned, suspended or concluded by agreement or otherwise, before the final Award is made, the Parties shall be jointly and severally liable to pay GTA’s outstanding fees, costs and expenses as outlined in Article 4 and Article 39 and the Tribunal may, at GTA’s request, issue an Award in respect of any outstanding fees, costs and expenses.

## Article 30: Default/Extensions of Time

1. A Party is in default if it fails to submit its Points of Claim, Defence or Reply within the time permitted. If the Parties cannot reach agreement on an extension of time, they may apply to The Chair of the Tribunal in writing to extend the time limit upon application by the Party, where good cause is shown, for no longer than 15 business days. Any extension must be granted in writing and a copy sent to all Parties.
2. Where a Claimant is in default the Tribunal may issue an order for the termination of the Arbitration. Where the Respondent is in default the Tribunal may proceed to issue its Award.
3. If one of the Parties, duly notified under these Rules, fails to appear at an oral hearing without showing good cause for such failure, the Tribunal may proceed with the Arbitration.
4. If one of the Parties, duly invited to produce documentary evidence, fails to do so within the relevant time, without showing good cause for such failure, the Tribunal may proceed to issue its Award based on the evidence before it.

## Article 31: Jurisdiction of Arbitration Tribunal

1. The jurisdiction of the Tribunal shall include the power to rule on its own jurisdiction, the validity and construction of the Arbitration Agreement, including any objection to the initial or continuing validity or effectiveness of the Arbitration Agreement, whether the Tribunal is properly constituted and what matters have been submitted to Arbitration in accordance with the Arbitration Agreement.
2. A challenge to the jurisdiction of the Tribunal shall be deemed irrevocably waived unless it is raised no later than the submission of the Points of Defence. A plea that the Tribunal is exceeding its scope of authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged by any Party to be beyond the scope of authority, failing which such challenge shall also be deemed to be waived irrevocably. The Tribunal may nevertheless admit an untimely plea if it considers the delay justified in the particular circumstances.
3. On application by a Party, or if considered appropriate by the Tribunal, any dispute as to jurisdiction will be determined as a preliminary matter.
4. In the event that the Tribunal determines it has no jurisdiction, GTA will notify the Parties of the Tribunal's decision. Such a decision will be final and binding upon the Parties subject to any right of appeal to the Courts.

## Article 32: Power of Arbitration Tribunal

1. Unless the Parties at any time agree otherwise in writing, the Tribunal shall have the power to do anything, on the application of any Party or of its own motion, but in either case only after giving the Parties a reasonable opportunity to state their views, including:
  - a. To allow any Party, upon such terms as it shall determine (as to costs and otherwise), to amend any claim, counter-claim, defence or reply;
  - b. To extend or abbreviate any time-limit provided by the Arbitration Agreement, these Rules or the Tribunal's own orders and whether or not any such time limit has expired;
  - c. To conduct such enquiries as may appear to the Tribunal to be necessary or expedient including identifying the issues and ascertaining relevant facts and the law(s) or rules applicable to the Arbitration, the merits of the Parties' dispute and the Arbitration Agreement;
  - d. To order a Party to provide security for costs in accordance with Article 32;
  - e. To order any Party to produce to the Tribunal, and any other Parties for inspection, and to supply copies of, any documents or classes of documents in their possession, custody or power which the Tribunal determines to be relevant;
  - f. To decide whether or not to apply strict rules of evidence as to admissibility, relevance or weight of any material tendered by a Party on any matter of fact or expert opinion; and to determine the time, manner and form in such material should be exchanged between the Parties and presented to the Tribunal;
  - g. To order the rectification of any contract between the Parties or the Arbitration Agreement, but only to the extent required to rectify any mistake which the Tribunal determines to be common to the Parties and then only if and to the extent to which the law(s) or rules of law applicable to the contract or Arbitration Agreement permit such rectification;
  - h. To allow, only upon the application of a Party, one or more third persons to be joined to the Arbitration as a Party provided any such third person and the applicant Party have consented thereto in writing and thereafter to make a single final Award, or separate Awards, in respect of all Parties so joined in the Arbitration;
  - i. To impose appropriate terms on a Party who has not complied with any interim or final Award or order;
  - j. To dismiss any Claim or Cross-Claim, on the application of a Party, if the Tribunal decides there has been inordinate or inexcusable delay by a Party;
  - k. To render an Award, on application by the Claimant, where the Respondent has failed to respond or lodge Points of Defence within the time limits, or has declined or failed to attend an oral hearing.
2. The powers of the Tribunal in Article 32.1 may be exercised by the Chair or by GTA on the Tribunal's authority or prior to the Tribunal being in session.

## Article 33: Security for Costs

1. The Tribunal shall have the power, unless otherwise agreed by the Parties in writing, on the application of a Party to order any Party to provide security for the legal or other costs of any other Party by way of deposit or bank guarantee or in any other manner and upon such terms as the Tribunal considers appropriate.
2. The Tribunal may stay a Party's claims or counterclaims or dismiss them in an Award if the Party does not comply with any order to provide security.
3. The power under Article 33 shall not prejudice a Party's right to apply to any state court or other judicial authority for interim or conservatory measures.

## Article 34: Oral Hearing (Full Arbitration only)

1. A hearing may only be held upon application of either Party or by joint application by the Parties, unless the Parties have agreed to Arbitration on documents alone. The request shall be made on or before the submission of the Claimants Points of Reply.
2. GTA shall administer any hearing and set the date, time and physical location of any meetings and hearings and shall give the Parties at least 15 business days' notice thereof. Neither Party shall seek to postpone the hearing longer than 10 days after the set date, unless good cause is shown to the Tribunal. A request for postponement shall be made at least 5 business days prior of the hearing date.
3. Subject to Article 39 only the Parties and witnesses shall be permitted to attend the hearing.
4. Each Arbitrator shall be paid a sitting fee for each day or part thereof of the hearing, to be paid by the Party(s) requesting the oral hearing. The sitting fee shall be at GTA's discretion and GTA shall notify the Parties of the amount of the sitting fee in accordance with Article 34.2.
5. The Tribunal, GTA management and GTA's legal counsel, if required to attend by the Tribunal or GTA, shall receive the amount of their actual travelling, accommodation expenses and legal fees when attending meetings to consider the dispute or hearings where appropriate.
6. All meetings and hearings shall be in private unless the Parties agree otherwise in writing or the Tribunal otherwise directs.
7. The Tribunal shall have full authority to establish time limits for submissions, meetings and hearings.
8. To ensure that the hearing is conducted as efficiently as possible the Tribunal will require the following documentation be prepared by the parties:
  - a. Agreed chronology
  - b. Agreed statement of facts
  - c. Agreed expert evidence
  - d. Agreed tender bundle in paginated form
9. Directions will be given regarding the numbers of copies and the date the documents are required.
10. GTA will circulate a draft hearing timetable and the parties will be asked to complete the timetable identifying the time required for opening & closing submissions as well as the names of any witnesses & expert witnesses.
11. Oral submissions shall be confined to facts and evidence previously submitted by each Party.

## Article 35: Witnesses

1. Before any hearing, the Tribunal may require any Party to give notice of the identity of each witness that Party intends to call as well as the subject matter of that witness's testimony, its content and its relevance to the issues in Arbitration.
2. The Tribunal may also determine the time manner and form in which such materials should be exchanged between the Parties and presented to the Tribunal. The Tribunal has a discretion to allow, refuse or limit the appearance of witnesses (whether a witness of fact or expert witness).
3. Subject to any order otherwise by the Tribunal, the testimony of a witness may be presented by a Party in written form, either as a signed statement or sworn affidavit.
4. Subject to the above, any Party may request that a witness, on whose testimony a Party seeks to rely, should attend for oral questioning at a hearing before the Tribunal. If the Tribunal orders that other Party to produce the witness and the witness fails to attend the oral hearing without good cause, the Tribunal may place such weight on the written testimony (or exclude the same altogether) as it considers appropriate in the circumstances.
5. Any witness who attends and presents evidence at an oral hearing shall be available for cross-examination by the other Parties to the Arbitration.
6. The Tribunal may question an expert or witness during the Arbitration.
12. The requesting Party/s shall pay the amount necessary to cover the additional expenses of GTA and the Tribunal for the hearing. GTA shall estimate the expenses and notify the requesting Party within 5 business days of the request for hearing. If both Parties request a hearing, the additional costs shall be borne equally by the Parties. The estimated amount of hearing expenses shall be paid to GTA no later than 30 days before the hearing. Failure to pay the expenses may be grounds for denying the request for hearing or rendering the non-complying Party in default. Following the hearing, GTA shall determine the actual hearing expenses and shall invoice or rebate the difference as it considers appropriate.
13. GTA shall arrange for a transcript recording to be made of the hearing. The Party/s requesting the hearing shall bear the cost of the transcript.

## Article 36: Experts

1. Upon application by the Parties the Tribunal has the power to permit the Parties to rely on expert evidence. The Tribunal shall determine the number of experts permitted to be used by the Parties and the reports shall be exchanged prior to the oral hearing or submission of the Points of Reply.
2. The Tribunal may order that a “without prejudice” meeting of the experts take place for the purpose of identifying the parts of the evidence which are in issue.
3. Unless otherwise agreed by the Parties in writing, the Tribunal:
  - a. May appoint one or more experts (who shall remain impartial and independent of the Parties throughout the Arbitration proceedings) to advise the Tribunal on specific issues (including legal issues), which are outside the scope of its own expertise, the fees of which shall be borne by the Parties;
  - b. May require a Party to give the expert any relevant information or to provide access to any relevant documents, goods, samples, property or site for inspection by the expert.
4. Any expert appointed pursuant to Article 36 shall be made available for questioning at an oral hearing, if an oral hearing is requested by the Parties.
5. Each appointed expert has an obligation to the Tribunal contained in the Expert Witness Code of Conduct annexed at Schedule 2. Each appointed expert shall be provided with a copy of the Expert's Code of Conduct.

## Article 37: The Award

1. The Award, where possible, shall be issued by the Tribunal within 60 days of receipt of the final submissions or within 60 days of the final hearing. The Award shall be lodged with GTA for distribution to each Party within 5 business days of its receipt.
2. The decision of the Tribunal may be by majority vote.
3. The Award shall be in writing and be signed by all Arbitrators and may be signed in counterparts.
4. If any Arbitrator refuses or fails to sign the Award, the signatures of the majority or the Chair shall be sufficient, provided the reason for the omitted signature is stated in the Award by the majority or the Chair.
5. The Award shall be signed and dated. The date of the Award is the date the Chair signs the Award, that being the final signature.
6. The Award shall state the reasons upon which it is based and include a concise statement as to the facts, issues and submissions of the Parties and the conclusions of the Tribunal.

7. The Tribunal shall have the power to assess and award the costs of and connected with the reference, including the fees and/or expenses of GTA and also the fees and/or expenses of the Tribunal including legal advice. The Tribunal may assess and award costs at the conclusion of the Arbitration regardless of whether either party has claimed costs in any submission.
8. Parties must comply with the terms of the Award within 10 business days of its receipt.
9. GTA may withhold the distribution of an Award until all outstanding fees are paid.
10. The Award shall be final and binding.
11. Upon the request of the Parties, the Tribunal may issue a consent Award recording the agreement of the Parties. A consent Award need not contain reasons.

## Article 38: Corrections and Additional Awards

1. Within 10 days of receipt of any Award a Party may, by written notice to GTA, request the Tribunal to correct any errors in computation, clerical or typographical errors or any errors of a similar nature. If the Tribunal considers the request justified, it shall make the corrections within 10 days of receipt of the request by issuing a memorandum dated and signed by the Tribunal and the memorandum shall form part of the Award.
2. The Tribunal may correct any error of the nature described above on its own initiative within 10 days of the date of the Award.
3. Within 10 days of receipt of the final Award, a Party may by written notice to GTA, request the Tribunal to make an additional Award as to claims or counter-claims presented in the Arbitration not determined in any Award. If the Tribunal considers the request justified, it shall make an additional Award within 60 days of receipt of the request. Article 36 shall apply to any additional Award.

## Section 4: Administration

### Article 39: Legal Representation and Costs

1. Any Party may be represented by a legal practitioner or any other representative. At a hearing, the Parties may only be legally represented with the consent of the Parties and the Tribunal.
2. The Tribunal shall specify in the Award the total amount of costs of the Arbitration, the proportion to be paid by each Party; and state the right to recover costs from another Party. The Tribunal shall have the power to order in the Award the payment of legal costs incurred by a Party to be paid by another Party, unless the Parties agree otherwise in writing.
3. If the Parties cannot otherwise agree as to costs, the Tribunal will assess and Award costs.
4. If the Arbitration is abandoned, suspended or concluded by agreement or otherwise, before an Award is made, the Parties shall remain jointly and severally liable to pay GTA the costs of the Arbitration as determined by GTA. If a Dispute is settled prior to the request for the Claimant to lodge its Points of Reply, the Parties may receive a rebate of up to 50% of the submitted process fees as determined by GTA. If a Dispute is settled after the submission of the Claimant's Points of Reply, the fees are non-refundable.

### Article 40: Publication

1. A bulletin shall be published as frequently as necessary to provide details of cases arbitrated, Awards made, the scope of the Award and any other information that may be deemed of interest to GTA Members and the industry at large.
2. Copies of the bulletin shall be lodged on the GTA website and members notified.
3. The bulletin shall contain the Award of any Arbitration, the nature of the case, the decision and the scope of the Award. The bulletin shall not include the names of the Parties
4. The bulletin may also include records of the following instances:
  - a. Notice of refusals to arbitrate and reasons for said refusal;
  - b. Notice of failure to answer correspondence relative to the Arbitration;
  - c. Failure to pay the costs, fees or expenses of the Arbitration or appeal when called upon to do so by GTA;
  - d. Any notice of failure to comply with the terms of an Award.

### Article 41: Notices

1. Any notice, consent or other communication required to be given by these Rules shall be in writing, signed and shall be delivered to the addressee by hand, mail, e-mail or any other form of communication. A record of transmission must be produced if requested by GTA.
2. A Party's last known residence or place of business during the Arbitration shall be a valid address for the purpose of any notice or other such communication in the absence of any notification of a change of address by that Party to the other Parties and to GTA.
3. Any notice or documents lodged pursuant to these Rules shall be legible and in English, signed by the Party giving it or its authorised officer.
4. Any notice or document required to be lodged or lodged in submission that is not in English must be accompanied by a translation and a certification of the translation.
5. Unless otherwise agreed by the Parties, notices to and from GTA can be sent by email.

### Article 42: Time

1. To calculate time: A period of 5 business days or less includes calendar days. A period longer than 5 business days includes business days and weekends. Public holidays shall not be included when calculating time.
2. If the first or last day of a period falls on a Saturday, Sunday or a national legal holiday, then the next business day shall be considered the first or last day.
3. Unless otherwise agreed by the Parties, any notices pursuant to Article 41, received after 1700 hours Sydney NSW time on a business day shall be deemed to have been received on the following business day.
4. The time of filing or receipt means the time at which the document:
  - a. By hand, was left at the address of the addressee;
  - b. By mail, three working days after it is posted;
  - c. By express mail, the date on which the document was sent;
  - d. By electronic mail, the date on which it is received;
5. All time limits placed on GTA shall begin on the date GTA receives the documents or request.
6. If any time limit imposed by these Rules is not complied with, that Party shall be deemed in default except when the Tribunal or GTA may, for good cause shown, extend the time limit specified as appropriate. Any extension must be in writing and a copy sent to both Parties.

#### Article 43: Documents to be lodged with GTA

1. When documents or pleadings are to be lodged with GTA, unless stated otherwise by these Rules, the Party shall electronically lodge with GTA via email.

#### Article 44: Interpretation

1. The following definitions apply in these Rules:
  - a. "Arbitration" is defined as set out in the Commercial Arbitration Act 2010 (NSW) or the International Arbitration Act 1974 (Commonwealth) as appropriate.
  - b. "Arbitration Agreement" means the agreement between the Parties to resolve any disputes by Arbitration.
  - c. "Arbitrator" means an independent person acting as Arbitrator pursuant to the Commercial Arbitration Act 2010 (NSW) or the International Arbitration Act 1974 (Commonwealth) and these Dispute Resolution.
  - d. "Business Days" means any day, 0800 hours until 1700 hours Sydney NSW time, Monday through Friday, except Public Holidays within NSW.
  - e. "Cross-Claim" means a claim against the Claimant, or any other Party to the Arbitration. It excludes a third Party that is not a Party to the Dispute Resolution Agreement.
  - f. "Days" means business days, Public Holidays and weekends.
  - g. "Dispute" means the original Request as lodged by the Claimant and also any Cross-Complaint, counter-claim, or offset as set forth by the Respondent, but in no instance shall the matters submitted by the Respondent be any other than those directly related to the transaction on which the original Request is made.

- h. "Member(s)" as used in these Rules means a member of GTA in any category of Member as defined in the GTA Constitution.
- i. "GTA" means Grain Trade Australia Ltd, its Directors and Officers, its CEO and/or its agent.
- j. "GTA List" means the list of Arbitrators maintained by GTA under Article 6.1;
- k. "Non-Member(s)" means any individual or firm that is not a Member in any category as defined in the GTA Constitution.
- l. "Notice of Dispute", or "NOD" means the information sent by GTA to the Parties following receipt of the Request and that the Process has commenced. The Notice may include a list of experts or Arbitrators and may include a copy of the Request.
- m. "Party" means a party to the relevant Process established pursuant to these Rules.
- n. "Points of Claim" means the statement of argument lodged by the Claimant in the Process.
- o. "Points of Defence" means the statement of argument lodged by the Respondent in the Process
- p. "Request" means the first notification to GTA by a Party wishing to initiate a GTA Dispute Resolution Process.
- q. "Rules" means these Dispute Resolution Rules.
- r. The 'Rule of Evidence' is a rule of law whereby any alleged matter of fact that is submitted for investigation at a judicial trial is established or disproved

- s. "String Trade" means a sequence of contracts in which the same parcel of goods, or part thereof, is bought and sold.
- t. "Tribunal" means the panel of Arbitrators established to determine Arbitration.

2. A reference to the singular includes the plural; to a gender includes all genders and companies, corporations and other legal persons; a document includes all amended, supplemented or replaced versions of a document.



*The development of the Grain Industry Dispute Resolution Rules has been undertaken by Grain Trade Australia.*

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