

Grain Contracts

Dispute Resolution & Arbitration Process

Over 95% of all grain contracts written in Australia rely on the GTA Trade Rules. GTA contracts and Trade Rules contain agreements to refer disputes to the GTA Dispute Resolution Process. Parties to contracts that incorporate GTA Trade Rules are obliged to refer any unresolved contractual disputes to GTA for settlement through the GTA Dispute Resolution Process.

This fact sheet covers answers to some of the key questions asked about the GTA Dispute Resolution Process.

Further, the following key documents are available on the GTA website;

- GTA Trade Rules
- GTA Dispute Resolution Rules

Why have a Dispute Resolution Process?

Dispute Resolution is a way of resolving agreements without going through a court. It is a good first step in trying to reach agreement. There are many forms of Dispute Resolution, including Negotiation, Mediation, Conciliation and Arbitration. GTA Dispute Resolution involves an Arbitration Process.

What does Arbitration involve?

Arbitration is a formal process in which the parties in dispute present their case to an independent third person (the arbitrator) and are bound by that person's decision. Whereas, mediation, facilitation and conciliation provide information and advice, but does not impose a decision about how the dispute should be resolved.

Why does industry typically favour arbitration as the process?

The advantages of arbitration compared to attending court include:

- Arbitration typically provides a speedier resolution;

- The arbitration process is more flexible than a court proceeding;
- Arbitration is often less costly than court litigation; and
- Arbitrators are chosen from a pool of professional; industry experts

Is GTA Arbitration compulsory? Is it binding?

If you are party to a contract referring disputes to GTA Arbitration, then yes, it is binding. This will also be the case if your contract incorporates the GTA Trade Rules. If you change your mind and you don't want to arbitrate, you must obtain the agreement of the other party. Similarly, even if there is no reference to a dispute resolution process in your contract, you may still decide to ask GTA to conduct the Arbitration, however you will again need the consent of the other party.

A GTA Arbitration Award is binding and enforceable. It is as enforceable as a judgment by the Court. GTA Arbitration Awards have been upheld and enforced by the Courts.

Can GTA give me advice about my rights and obligations under the GTA Trade & Dispute Resolution Rules?

GTA can provide information about the Dispute Resolution Process. However, GTA is not able to give advice about how the Trade Rules will be applied and what



your rights might be under a GTA contract or Arbitration.

As the administrator, GTA must remain impartial. Because the GTA Trade and Dispute Resolution Rules become part of your contract, a solicitor will be able to advise you on specifics.

Is GTA neutral/independent? Will I get a fair go?

GTA is a non-political organisation established to ensure that commercial transactions across the supply chain (be they a grain producer, merchant, end user or an exporter) occur in an efficient and fair manner, for both parties to the contract.

GTA members include Grain Producers Australia, Grain Growers Limited and various State Farmer Associations with a number of grain producers approved as GTA Arbitrators and sitting on Tribunals.

I haven't signed anything; can there still be a contract?

If you're in doubt, you should consult a lawyer. That said, the fact that you haven't signed anything does not necessarily mean that you don't have a binding contract.

The word "contract" refers to a legally enforceable agreement between two or more parties, rather than a piece of paper with signatures on it. A binding contract may be wholly in writing, wholly verbal or a combination of oral and written terms.

A binding contract can (for example) be created over the telephone. In this case, it is customary for the buyer to send a document called a "Contract Confirmation" to the seller, intending to confirm the details of the agreement reached over the phone. The fact that such a document is not signed does not mean that a contract has not come into existence.

Any party who receives a Contract Confirmation should check the details to ensure that they reflect those agreed during the conversation (including by telephone, e-mail, SMS). If you notice any discrepancies, contact the buyer IMMEDIATELY to resolve the issue.

In the absence of notification from the Seller, the Buyer is entitled to assume the contract is as written in the Contract Confirmation.

Reference *GTA Trade Rule 1.0* (See also *GTA Fact Sheet 07 – A Guide to Selling Grain using Grain Contracts*).

Where / to whom do I turn for independent advice about GTA Trade Rules?

Grain contracts are legal agreements; therefore, professional legal advice should be sought where clarification on an issue is required. Independent grain marketing advisers may also be of assistance for issues not requiring legal advice.

Please note that GTA is not in a position to give advice in relation to disputes or the implementation of the Trade Rules.

What is the legal standing of the GTA Dispute Resolution Process? Is a GTA Award recognised by the Courts?

GTA Arbitrations are subject to the provisions of the GTA Dispute Resolution Rules and the Commercial Arbitration Act (NSW) 2010.

Key points

- **Arbitration** is a formal process in which the parties in dispute present their case to an independent third person (the arbitrator)
- If you are a party to a contract which incorporates the GTA Trade and/or Dispute Resolution Rules, disputes must be referred to GTA Arbitration
- A GTA Arbitration Award is binding and enforceable
- GTA Arbitrations Awards have been upheld and enforced by the Courts
- Parties can be bound by a contract even if it has not been signed
- Grain contracts are legal agreements therefore professional legal advice may need to be sought for clarification

Arbitration Awards are as enforceable as a judgment of the Courts.

Do I have to go to Arbitration if I haven't signed anything?

Once again, this is really something you should discuss with your solicitor. An agreement to arbitrate disputes is binding and enforceable in a Court. As detailed above, the contract may stand even without the provision of signatures on the Contract Confirmation from one or both of the parties.

If the Contract references the GTA Trade Rules, then disputes must be referred to GTA in the first instance. By not participating in an Arbitration your argument is not able to be heard by the Arbitration Tribunal.

It is also possible to go to Arbitration without admitting that you have a contract. It is possible to ask the Arbitration Tribunal to dismiss any claim on the basis that you didn't enter into a contract in the first place.

Is Arbitration expensive?

There are fees associated with GTA Arbitration. GTA tries to ensure that overall cost of GTA Arbitration is no more expensive than going through the Courts. We also try to ensure GTA Arbitrations are reasonably quick, which can be a distinct advantage over the Court process. GTA Arbitration is "peer" Arbitration conducted by participants in the grain trade.

Can I recover my Arbitration costs if I'm successful in Arbitration?

YES. Most parties in their submission to the Arbitration Tribunal claim recovery of legal and Arbitration costs incurred.

FURTHER INFORMATION

For further information refer to the GTA website
http://www.graintrade.org.au/dispute_resolution