



**Arbitration Rules of the
German Coffee Association at
the Hamburg Chamber of Commerce**

Effective as of 01.01.2006

Article 1

Scope of Arbitration Rules

In accordance with the following regulations, these Arbitration Rules shall apply to disputes which do not concern the execution of a quality arbitration, provided that the Arbitration Board of the Association is appealed to and that it is competent in accordance with Article 2. The Arbitration Rules are supplemented by the provisions regarding arbitration proceedings contained in the Deutsche Zivilprozessordnung [*German Code of Civil Procedure* - hereinafter referred to as ZPO] unless said Arbitration Rules contain regulations to the contrary.

Article 2

Competence of the Arbitration Board of the Association

1. Without recourse to courts of law, the Arbitration Board of the Association is competent for disputes arising from coffee transactions when such transactions have been made
 - a) between members of the Association, unless said competence has been excluded expressly;
 - b) between members of the Association on one side and merchants not belonging to the Association on the other as well as between parties who are not members of the Association, or, if the contract has been concluded on the basis of the European Contract for Coffee (E.C.C.) or a version thereof, or if, otherwise, the Arbitration Board of the Association has been agreed upon, or if the contracting parties agree upon the Arbitration Board of the Association after conclusion of the contract.
2. Without recourse to courts of law, the Arbitration Board of the Association shall also be competent for all disputes between members of the Association, provided that such disputes are connected with the business of the parties in their capacity as coffee firms.
3. If the Arbitration Board is competent, this also establishes the competence for ruling in disputes between the parties or between one party on one side and the intermediary on the other side.
4. The Arbitration Board shall be entitled, at any time, to refuse ruling in a pending dispute without stating reasons and to refer the parties to the due process of law. This resolution is incontestable

Article 3

Seat of the Arbitration Board

The Seat of the Arbitration Board is at the Hamburg Chamber of Commerce [*Handelskammer Hamburg*]. It shall be entitled to sit at any other place.

Article 4
Composition of the Arbitration Board

The Arbitration Board shall consist of the umpire and two further arbitrators, unless it is extended according to Article 7 of these Arbitration Rules.

Article 5
Statement of Claim, Formation of Arbitration Board

1. The plaintiff files his statement of claim with the office of administration, together with the name and address of the arbitrator the plaintiff has appointed and with the declaration of assent of the said arbitrator. The address is:

Schiedsgericht des Deutschen Kaffeeverbandes e.V.
c/o Handelskammer Hamburg
Postfach 11 15 47, D-20414 Hamburg
or
Handelskammer Hamburg
Adolphsplatz 1, D-20457 Hamburg

2. The statement of claim shall state the grounds for the dispute, a precise claim and, where applicable, proof of agreement regarding the competence of the Arbitration Board. The arbitration proceedings shall commence on receipt of the properly constituted statement of claim at the office.
3. The office of administration shall submit, without delay, one copy of the statement of claim and the name and address of the arbitrator appointed by the plaintiff to the defendant with the request to comment on the complaint within a reasonable period of time to be fixed by the office of administration, and inform the office of the name and address of the arbitrator appointed by the defendant, and furnish the declaration of assent of said arbitrator. The office of administration shall at the same time inform the defendant that if no comment is made within the time limit stipulated, it will be assumed that the defendant has no comments to make and that, in such a case, a compulsory arbitrator will be appointed for the defendant in accordance with the regulations of these Arbitration Rules.
4. If the whereabouts of one of the parties or of a person entitled to receive the communication is unknown, written communications shall be regarded as having been received on that day on which they could have been received at the last known address following due transmission by registered mail with receipt of delivery or by courier service or by another means of transmission insofar as this ensures proof of delivery.
5. The defendant's compulsory arbitrator referred to in Paragraph 3 will be appointed by the Hamburg Chamber of Commerce.

6. Only such persons may be appointed as arbitrators who are owners, members of the board of directors, managing directors, personally liable partners, fully authorised signatories or duly authorized employees of firms which are registered in a Commercial Register or Cooperative Societies Register of the Federal Republic of Germany.
7. The arbitrators shall agree on an umpire. This umpire needs not to belong to the persons referred to in Paragraph 6 of this Article. If no agreement is reached regarding the person of the umpire within a reasonable period of time, then an umpire will be appointed by the Hamburg Chamber of Commerce.

Article 6 **Written Declarations, Exchange of Declarations**

1. The statement of claim, the answer to claim and all contingent declarations plus supporting documents shall be submitted in fivefold to the office of administration which will ensure their forwarding to the opposite party and Arbitration Board without delay.
2. If the Arbitration Board consists of the umpire and four further arbitrators, according to Article 7, then seven copies of the documents referred to in Paragraph 1 of this Article shall be submitted.
3. If the Arbitration Board is enlarged in accordance with Article 7, paragraph 1, each party must submit immediately two further copies of all written declarations and annexes submitted by that party so far.
4. In general, there shall not be more than two exchanges of declarations. Every written submission shall be forwarded by the office of administration to the opposite party and subject to reply by a given time.
5. If a party does not answer by the time stipulated it will be assumed that the party no longer intends to make written comments on the matter.

Article 7 **Enlarged Arbitration Board**

1. Each party shall have the right to demand an enlargement of the Arbitration Board by two arbitrators from the beginning or during the course of the proceedings and up to completion of the oral pleading. The same right shall apply to the Arbitration Board, composed in accordance with Article 4, at any stage of the proceedings if the Arbitration Board deems such enlargement necessary on account of the fundamental importance of the ruling to be given or for any other reason. In such cases the two arbitrators already acting shall agree on two further arbitrators. If no agreement is reached, the Arbitration

Board is to be enlarged by the Hamburg Chamber of Commerce, at the request of the umpire.

1. In proceedings between members and non-members where the two acting arbitrators cannot agree on the further arbitrators, the umpire shall apply to the Hamburg Chamber of Commerce to appoint said arbitrators to enlarge the Arbitration Board.

Article 8

Exclusion and Rejection of a Member of the Arbitration Board

1. The umpire or an arbitrator can be rejected for the reasons stated in the ZPO regarding disqualification of a judge from exercising judicial functions by operation of law and also on the grounds of suspected prejudice. Applications for rejection, which must be substantiated, shall be filed with the Chamber of Commerce. The latter will decide after hearing the parties concerned. Following the decision of the Chamber of Commerce the parties may resort to the process of law provided for by the ZPO.
2. If a member of the Arbitration Board leaves for the reasons stated in Paragraph 1 of this Article or for any other reason then a substitute shall be appointed. If the umpire has left, the arbitrators shall agree on a new umpire. Article 5, Paragraph 7 shall be applied accordingly. If the retired arbitrator has been appointed according to Article 7 of these Arbitration Rules, the arbitrators appointed by the parties shall agree on a substitute arbitrator. If no agreement is reached, the procedure outlined in Article 7 shall be applied.
3. If an arbitrator has to leave for the reasons stated in Paragraph 1 of this Article or for any other reason after appointment of the umpire the other members of the Arbitration Board remain in office unless an important reason prevents them from continuation in this office.

Article 9

Third-Party Notice

1. A party who believes, in case of defeat, to be in a position to put forward a claim for warranty or indemnification against a third party or who fears a claim from a third party may issue a third-party notice up to the end of the last oral pleading on which the ruling is effected.
2. The third party is entitled to issue notice to a further party.
3. The notice to third party is effected by delivery of a declaration in which the reason for the notice to third party and the situation of the case shall be stated. The declaration shall be submitted to the office in sixfold by the party giving notice to the third party and the office will effect delivery to the third party.

4. The third party is entitled but not obliged to join the dispute. If he joins the office of administration shall deliver to him one copy each of all declarations exchanged up to the date of his joining and of all remaining papers making up the records.
5. In case of such joining in support of one party as a result of a third-party notice, the Arbitration Board shall also decide on the amount of costs of the third-party notice.
6. Claims and counterclaims may also be put forward within the framework of the third-party notice, after joining, upon which the Arbitration Board already constituted on the main case may decide to rule, either in the same proceedings or separately, at its discretion. In any case the procedural substance of the third-party notice is subject to the general admissibility requirements and, as regards the costs, has also to be treated as an independent arbitration case.

Article 10

Proceedings of the Arbitration Board

1. The umpire of the Arbitration Board shall conduct the proceedings at reasonable speed and at his discretion.
2. Orders, directions governing the proceedings, summonses and other papers of the Arbitration Board or the umpire will be issued and delivered by the office of administration.
3. Before the Arbitration Board gives its ruling, negotiations will be verbal. The hearing is not public and will be conducted by the umpire. Subject to the agreement of the parties, the Arbitration Board may allow legal trainees and persons who are qualified for appointment as arbitrators in accordance with Article 5, Paragraph 6, to attend hearings and deliberations as guest listeners.¹ The parties shall be summoned for the oral pleading. They shall be granted sufficient juridical hearing. The Arbitration Board may require the parties to submit written declarations. It may require that proofs be furnished at its discretion. The Arbitration Board may hear evidence of witnesses or experts, appearing voluntarily before the Arbitration Board, or it may have them examined by the umpire who has been assigned by the Arbitration Board or by an assigned arbitrator in the presence of a legal consultant.
4. If the Arbitration Board hears evidence after completion of the oral pleading, the parties shall be given an opportunity to give a written comment on the result of the evidence within a reasonable period of time. A new oral pleading shall be fixed if one of the parties applies for this.

¹This provision is intended to assist suitable future arbitrators in making themselves familiar with the activity of an arbitrator.

5. The Arbitration Board will rule as to whether hearing of evidence or swearing in of witnesses or experts shall be carried out by regular courts of law. The Arbitration Board may require a party to file the applications necessary for this purpose with the competent court of law in accordance with the ZPO.
6. At the discretion of the umpire, minutes of the course of the oral pleading and especially of the statements of witnesses and experts shall be taken for the records.
7. If the parties waive the oral pleading or if one party does not appear at the oral pleading despite having been summoned, the Arbitration Board will use the available records and, where applicable, the argumentations of the party which has appeared, as basis for the ruling to be effected in accordance with Article 12 Paragraph 1. If the party that has appeared presents new facts which are of significance to the ruling of the Arbitration Board, then the party that has not appeared must be given an opportunity for comment on such facts within a reasonable period of time.
8. The language in which proceedings with and before the Arbitration Board are to be conducted is determined by the Arbitration Board at its discretion. Generally the German language is to be used. The Arbitration Board may order or admit the use of a foreign language even for single actions of the proceedings, particularly for the hearing of a witness not commanding the German language, and also for the written statement of claim, for other written declarations and for the presentation of any documents written in a foreign language. Costs arising from calling-in a translator may be charged to the party for whose benefit they are incurred.

Article 11 Legal Advice

The Arbitration Board shall call in a legal adviser from the Chamber of Commerce to act as legal consultant in all discussions, meetings and deliberations. This shall apply also if a member of the Arbitration Board has legal knowledge.

Article 12 Rulings

1. When the Arbitration Board deems the facts of the case to be sufficiently clarified, it shall rule without delay within the scope of the filed applications. The Arbitration Board gives its ruling subject to a simple majority. An application for appeal against the ruling to be disaffirmed may be made only for the reasons stated in the ZPO.
2. With all rulings to be given, the arbitrators shall be conscious of the fact that they are not agents of the party who has appointed them, but impartial members of an independent body.

3. The arbitrators, the parties involved, the persons of the Chamber of Commerce and those people involved with arbitration proceedings in the office of the German Coffee Association, as defined in Article 7, shall undertake to maintain confidentiality to any other parties at every stage of the proceedings, and, in particular, with respect to the parties involved, witnesses, experts or other items of evidence. Persons called in by the parties involved in the arbitration proceedings shall be obliged to maintain secrecy. Oral pleadings shall not be public.
4. In the event of an accommodation being reached, the Arbitration Board shall end the proceedings or, at the request of the parties, shall issue an arbitration ruling, with an agreed wording, insofar as the content does not contravene public order.
5. Subject to the provisions of the ZPO the Arbitration Board shall be entitled to rule itself on the validity of an agreement establishing its competence and also regarding its competence in any other manner.
6. The rulings of the Arbitration Board will be given in writing and shall be signed by all members of the Arbitration Board in the number of copies required. The ruling furnished with the date of composition shall contain reasons for the decision. The absence of reasons for the decision shall not constitute an entitlement to challenge the validity of the ruling.
7. The Arbitration Board records will be kept in the office or the archives of the Chamber of Commerce. One copy of the decision will be passed to the office of the German Coffee Association.
8. The Hamburg Hanseatic High Court shall be competent for all judicial rulings and functions required in accordance with the ZPO.

Article 13

Repeal of an Arbitration Board Ruling

1. If an Arbitration Board ruling is disaffirmed or if an application for declaration of enforceability of the Arbitration Board ruling or accommodation is refused by a regular court of law and the arbitration clause is still in force, the Arbitration Board shall remain competent for new proceedings and ruling. This shall not apply if the Arbitration Board ruling has been disaffirmed on account of incompetence of the Arbitration Board.
2. Each party has again to appoint an arbitrator. The arbitrators have to agree on an umpire. Article 5 Paragraphs 1 to 7 are applied accordingly. An arbitrator who has taken part in the disaffirmed Arbitration Board ruling may also be appointed provided the disaffirmation did not take place on account of a reason lying in the person of this arbitrator.

3. If, after disaffirmation of an Arbitration Board ruling, the Arbitration Board is appealed to anew this is to be considered as an independent arbitration procedure also as far as the costs are concerned.

Article 14 Undisputed Claim

If one party merely wants to put forward a claim which is not disputed by the debtor, such party may appeal either to the regular court of law or the Arbitration Board. The process of law once chosen shall be binding.

Article 15 Costs of the Proceedings

1. a) The costs of the arbitration proceedings are made up of the fee according to Paragraph 2 to 6 and 10 of this Article and the other costs. Such costs include the necessary expenditure of the members of the Arbitration Board, the administration and the costs incurred by hearing witnesses and experts, obtaining expert opinions and information and by translations, photocopying, etc.
 - b) The Arbitration Board decides on the amount of the costs of the proceedings and also on whether, apart from the fee, further costs have been incurred, which party has to bear such costs and whether and in what proportion such costs are to be divided between the parties.
 - c) The Arbitration Board may award to an umpire or to an arbitrator who has retired during the course of the proceedings a remuneration corresponding to his activity up to such retirement and, if necessary, it may decide what party has to pay such remuneration or in what proportion the payment of such remuneration is to be divided between the parties.
2. The fee depends on the value of the subject of the dispute which will be fixed by the Arbitration Board. It will be charged by the Chamber of Commerce. On the basis of the value such fee amounts to

Up to and including	€ 10,000.00	Flat rate of € 1,000.00
For the next	€ 5,000.00	Additional 10% of the amount at this grade
For the next	€ 10,000.00	Additional 9% of the amount at this grade
For the next	€ 15,000.00	Additional 8% of the amount at this grade
For the next	€ 25,000.00	Additional 7% of the amount at this grade
For the next	€ 35,000.00	Additional 6% of the amount at this grade
For the next	€ 200,000.00	Additional 5% of the amount at this grade
For the next	€ 700,000.00	Additional 4% of the amount at this grade
For the next	€ 1,000,000.00	Additional 2% of the amount at this grade
For disputed sums over € 2,000,000.00		Additional 0.5% of the amount in excess of € 2,000,000.00

3. In addition to the fee for the arbitration proceedings, the Chamber of Commerce shall charge a flat-rate sum in the amount of 15% of this fee to cover the administration of the arbitration proceedings, this sum not to exceed € 20,000.00.
4. If the Arbitration Board consists of 5 members, the fee shall increase by 20% for each of the two additional arbitrators appointed in accordance with Article 7, i.e. by a total of 40% plus the statutory value-added tax accruing for this amount.
5. If, in isolated cases, dealing with the dispute involves an expenditure of time and work exceeding the normal amount, the Arbitration Board may increase the fee and/or the flat-rate for costs by up to 100 % subject to statement of reasons. In case of an enlargement to five arbitrators according to Article 7, Paragraph 1, the two additional arbitrators are only entitled to demand increased fees if they may also claim compensation for expenditure of time and work exceeding the normal amount.
6. If an accommodation is arrived at in which the Arbitration Board becomes active or if the claim is withdrawn after the oral pleading, there shall be no reduction of the fee. If the proceedings are dealt with in another manner by accommodation, acceptance or withdrawal of the claim, the fee may be reduced by up to half of the amount otherwise levied. If the Arbitration Board has not yet been formed, the Chamber of Commerce shall decide as to whether and to what amount costs have been incurred.
7. On submission of the statement of claim, the plaintiff must pay an advance fee amounting to the anticipated costs of the proceedings according to the Table of Fees applicable on the date of receipt of the statement of claim at the Chamber of Commerce. The Chamber of Commerce shall send the plaintiff an invoice for the advance payment and set a date for payment insofar as payment has not already been made. The Chamber of Commerce shall pass on the statement of claim to the defendant(s) and the arbitrators without delay as soon as the advance payment has been received. If payment is not received within the deadline, which may be extended by an appropriate period, the proceedings shall be terminated without jeopardising the plaintiff's right to re-submit his statement of claim. If further costs and expenses are incurred or can be anticipated in the course of the proceedings, the Arbitration Board may make

continuation dependent on the payment of appropriate additional advance payments. The plaintiff and the defendant may each be requested to pay half of the advance payments in each case. Clause 4 shall be considered accordingly.

8. The Plenary Session of the Chamber of Commerce shall have the right to change the fees at any time. Pending disputes shall not be affected by a change of the rates of fees.
9. The costs shall become due when fixed. The costs shall be paid to the Chamber of Commerce. The Chamber of Commerce shall be entitled to put forward a claim in this respect.
10. Statutory value-added tax will be levied additionally.
11. Each party shall bear its eventual lawyer's fees and out-of court costs.

Article 16 Dividing of the Fee

If the Arbitration Board consists of three arbitrators the umpire shall receive 30% of the fee for the arbitration proceedings, and each of the associate arbitrators 20% of the fee, plus the statutory value-added tax accruing for this amount. The remainder of the fee shall fall to the Chamber of Commerce. Payment of the fee components shall be made on completion of the proceedings.

Article 17 Loss of the right to make a claim, exclusion of liability

1. If any provision of these regulations or any additionally agreed requirement of the arbitration proceedings is not met, no party which does not object to this deficiency immediately may raise an objection at a later date. This shall not apply if the party is unaware of the deficiency.
2. Liability of the arbitrator for his decision-making activity shall be excluded unless he wilfully and knowingly acts in breach of his duty. Liability shall be excluded for any other action or omission in connection with arbitration proceedings on the part of the arbitrators, the Chamber of Commerce, its organs and its employees insofar as they are not wilfully and knowingly or by gross negligence in breach of their duty.

Article 18

The Deutsche Kaffeeverband and the Hamburg Chamber of Commerce may publish rulings of the Arbitration Board in full or in extracts subject to omission of the names of the Parties and may subject such rulings to statistical analysis.