
A Guide to Arbitration



THE AMERICAN SPICE TRADE ASSOCIATION

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Disclaimer

The American Spice Trade Association (ASTA) provides this Arbitration Program to be used voluntarily at the option of the parties to a spice trade transaction. ASTA provides this program without warranties of any kind, either express or implied, including but not limited to warranties of (1) merchantability, (2) fitness for a particular purpose, (3) accuracy, (4) design, (5) usage, (6) quality, (7) performance, (8) compatibility, or (9) title. ASTA does not warrant the accuracy or completeness of the information contained in this document. The users of this document agree that their use of it and the information contained therein is at the users' sole risk and that ASTA shall have no liability to any person for any loss or damage arising out of their participation in the ASTA Arbitration Program. ASTA encourages users of the ASTA Arbitration Program to consult with appropriate legal counsel before participating in the program.

A GUIDE TO ARBITRATION

Introduction

Arbitrations under the Arbitration Program of the American Spice Trade Association (ASTA) resulting in an enforceable award must be conducted consistent with Article 75, Sections 7501 to 7514 of the New York Civil Practice Law and Rules (CPLR). This is commonly known as the New York Arbitration Law. The New York Arbitration Law, among other provisions, requires a fair hearing, giving equal opportunity to claimant and defendant, the right of cross examination of witnesses, and impartial arbitrators who have no material or personal interest in the outcome of the arbitration.

ASTA is merely a facilitator for arbitrations. ASTA plays no role in the enforcement or judicial appeal of awards made through the ASTA Arbitration Program.

To participate in an arbitration conducted under the ASTA Arbitration Program, at least one party must be a member in good standing of the American Spice Trade Association.

To have a controversy settled by arbitration conducted under the ASTA Arbitration Program requires the written agreement of both parties. This is given by the voluntary use in the transaction of one of the contracts of the American Spice Trade Association, or by a written submission to ASTA that the parties, one of whom must be an ASTA member, wish to submit to arbitration under the ASTA Arbitration Program.

If an ASTA contract is voluntarily used by the parties, the following arbitration clause incorporated in an accepted Broker's Confirmation Sales Note or Purchase Order is required:

This instrument constitutes a contract between the above-named seller and buyer. All Rules printed on the presently effective Standard _____ Contract of the American Spice Trade Association are made a part of this contract. All questions, controversies and claims arising out of or in connection with this contract and any controversies between a party hereto and the broker or agent relating to the payment of brokerage or commissions hereunder shall be submitted to arbitration under the auspices of the American Spice Trade Association. The arbitration shall be conducted under the Arbitration Rules and the provisions for Waiver of Personal Service as printed on the standard contracts of the American Spice Trade Association, in effect on date hereof and same are deemed incorporated herein.

Any alteration in the arbitration clause, as stated above, may result in the denial of a request for arbitration under the ASTA Arbitration Program.

A contract or broker's signed confirmation must be in writing and accepted by the defendant (it need not be returned). Signature of all parties is not necessarily required. Whenever a claimant submits a contract with a valid arbitration clause and requests arbitration, ASTA will proceed to initiate the arbitration even if the contract is not signed by the defendant.

The validity of a contract may be contested before a court (consult with an attorney), or the defendant called to arbitration may present his objections to directly to the arbitrators during arbitration proceedings.

Where there is no contract containing a valid arbitration clause or no agreement providing settlement of a dispute by arbitration, the parties to a controversy may request the settlement of the dispute through the ASTA Arbitration Program by submitting a signed "Submission." A Submission must be in writing and

signed by the parties. ASTA requires that the Submission be signed by both parties so as to assure that there is no misunderstanding regarding the rules governing arbitration. A sample Submission is in Appendix 1. This Submission, when signed by the parties, must be filed with ASTA, and the applicable fee paid, as provided in the rules, in order to institute proceedings.

Rules Governing the ASTA Arbitration Program

The following rules shall govern all arbitrations conducted pursuant to contracts providing for arbitration under the rules of the American Spice Trade Association (ASTA), and for arbitrations not arising from the use of an ASTA contract when both parties have consented to participate in arbitration by filing a valid Submission (See Appendix 1 for a sample form).

A. Initiation of Arbitration

A party demanding arbitration (claimant) shall make a demand for arbitration upon the adverse party (defendant) by a notice in writing submitted to the defendant by registered or certified mail (return receipt requested when possible), facsimile, email, or by personal service identifying the contract and setting forth the nature of the dispute, and the provision of the contract alleged to have been breached. If the demand for arbitration is made by email or facsimile, the claimant shall provide evidence that the demand was received by the defendant. The amount claimed, to the extent ascertainable, shall also be set forth in writing.

A claimant shall file with the American Spice Trade Association:

- a. A copy of the executed contract providing for arbitration under the rules of the American Spice Trade Association or in the case of a transaction not performed under an ASTA contract, a Submission indicating both parties' consent to arbitration.
- b. A copy of the demand sent to the defendant.
- c. The required fee as specified in Section I of these rules.

The defendant may file an answer with ASTA to be submitted by mail, facsimile, or email with a copy thereof also sent to the claimant. If no answer is filed, the claim made by the claimant may be considered by the arbitrators to be valid and the arbitrators may determine an arbitration award.

The arbitrators may allow amendments of the demand for arbitration and/or the answer.

B. Arbitrations for Quality

Unless it can be shown that it was impossible to do so:

1. Arbitration of all disputes as to quality of merchandise and/or claims for allowances in price shall be demanded not later than fifteen (15) calendar days after the parcel is landed, stripped (if containerized), and FDA release notice issued, and/or from the date of the Certificate of Analysis or delivery order, whichever is applicable. Samples shall be drawn from the parcel within the same fifteen (15) calendar days.
2. In sampling merchandise for arbitration, the number of samples drawn shall be the same as the number required under ASTA Import Specifications in effect on the date of the contract.
3. Individual samples for arbitration shall be drawn from each applicable chop or invoice and sealed by a public sampler in the presence of representatives of both parties to the contract. Failure promptly to

appoint a representative to supervise sampling shall be considered as a waiver of the privilege and samples drawn in good faith by order of the other party shall be used by the arbitrator(s).

Sealed samples shall be properly stored by the public sampler and retained until notified by ASTA of the date for the arbitration at which time the samples will be delivered to the location designated by ASTA.

C. Arbitrations for Default

Whenever it shall be decided by arbitration that either party has failed to fulfill the terms of the contract, that party shall be deemed to be in default.

The arbitrators shall award the actual damages resulting from the default. When these damages are not ascertainable with exactness, the arbitrators may award against the party in default the difference between the contract price and the market value on the date of default (on the basis of contract weight without leeway), plus a sum not in excess of ten percent (10%) of the market value of the merchandise as established on the date of default.

The party in default shall not be permitted to benefit therefrom, and no award shall be rendered in favor of the defaulting party.

The decision of the arbitrators shall be based on the evidence submitted and testimony given. However, the market value on the date of default may be determined at the discretion of the arbitrators.

D. Arbitrators

All arbitrations shall be conducted by a panel of three arbitrators. If ASTA cannot identify three arbitrators to serve on the panel then the parties shall be informed that the arbitration will not go forward and any fees paid to ASTA for the arbitration shall be refunded. ASTA has no obligation to conduct an arbitration if an appropriate panel of three arbitrators cannot be identified by ASTA.

Arbitrators conducting ASTA arbitrations shall be held harmless by the parties to an arbitration for any actions or decisions taken or made during an arbitration pursuant to a written agreement to be executed by the parties and the arbitrators prior to the initiation of arbitration proceedings. If the parties decline to execute such agreements then the arbitration shall not proceed and any fees paid to ASTA for the arbitration shall be retained by ASTA.

Promptly upon receipt of a demand for arbitration, the ASTA office shall notify the Chairman of the Arbitration Board. The Chairman shall determine that the provisions of Paragraph A. have been met, identify potential arbitrators within thirty (30) days of notification of an arbitration request, and then direct the ASTA office to inform both parties of the identity of potential arbitrators.

The ASTA Arbitration Coordinator shall work with the Chairman of the Arbitration Board to assure that the potential arbitrators have no potential conflict of interest regarding both parties to the arbitration.

Each of the parties may strike one proposed member of the arbitration panel 'without cause' and any number of persons 'with reasonable cause' which must be described in writing and approved by the ASTA Arbitration Board Chairman.

Upon the identification of potential arbitrators, each party may indicate the order of preference among the persons not challenged.

Upon the identification of the three-person arbitration panel, the Arbitration Board Chairman shall

appoint a Chairman of the Arbitration Panel who shall conduct the arbitration proceedings.

E. Duties and Jurisdiction of the Arbitration Board Chairman and Its Members

The Arbitration Board Chairman shall, in addition to selecting arbitrators and naming the Chairman of an arbitration panel, rule on the validity of challenges 'with cause', as per Paragraph D., interpret the arbitration rules, and determine all questions of jurisdiction in connection with arbitrations, provided that the Chairman shall not determine or decide any controversy or claim which the parties are submitting to arbitration.

The Arbitration Board Chairman also may, in his discretion, refer to the arbitrators any questions or issues which in his judgment should properly be so referred.

F. Evidence

The parties may submit evidence, including documents, to be considered by the arbitrators to the ASTA office. Such evidence shall be submitted at least fourteen (14) days prior to the date set for arbitration proceedings.

The ASTA staff shall assure that all relevant documents and evidence to be used in the arbitration are provided to both parties at least five (5) days prior to the arbitration.

Evidence not submitted to the ASTA office at least fourteen (14) days prior to the date set for arbitration proceedings may be considered by the arbitrators and made a part of the record of the proceedings only by the mutual consent of the parties. If one party is not present at the arbitration, no new evidence may be submitted or considered.

G. Hearings

The Arbitration Board Chairman shall appoint a time and place for the hearing, and the ASTA office shall notify the parties by registered or certified mail, facsimile or email, confirmed in writing by registered or certified mail, facsimile or email not less than fourteen (14) calendar days before the hearing.

The party filing for arbitration shall attend the arbitration hearing. Participation in arbitration hearing shall be in person only – participation by conference call is not permitted.

All arbitration hearings shall be conducted at a neutral site determined by ASTA.

Upon written request of either of the parties an official stenographic record of the evidentiary portion of the hearing shall be permitted. The party requesting stenographic services shall arrange for such services and bear the costs associated with such services. A copy of the record shall upon request be made available to the other party for half the cost of the stenographic record.

In all arbitrations the arbitrators and members of the Arbitration Board shall, before acting, subscribe to the usual legal oath of office. In all arbitration hearings all principals, representatives, and witnesses giving oral evidence shall be duly sworn in the usual manner.

H. Awards

The announcement of an award shall be mailed by ASTA to the parties by registered or certified mail. The award shall be final and appeals of the award to ASTA are not permitted. ASTA does not enforce arbitration awards – enforcement is a matter solely for the prevailing party. The parties may pursue other actions to enforce or appeal arbitration awards made by ASTA.

I. Fees and Expenses

The fee for each arbitration shall be:

Arbitration award request of up to \$25,000

ASTA Member \$2,000

Non-member \$4,000

Arbitration award request > \$25,000 to \$50,000

ASTA Member \$3,000

Non-member \$6,000

Arbitration award request > \$50,000 to \$100,000

ASTA Member \$4,000

Non-member \$8,000

Arbitration award request > \$100,000 to \$250,000

ASTA Member \$5,000

Non-member \$10,000

Arbitration award request > \$250,000 to \$500,000

ASTA Member \$7,000

Non-member \$14,000

Arbitration award request > \$500,000 to \$1,000,000

ASTA Member \$10,000

Non-member \$20,000

Arbitration award request > \$1,000,000

ASTA Member \$20,000

Non-member \$40,000

The fee for an arbitration that was paid by the party filing for the arbitration shall be assessed against the losing party at the time the arbitration award is granted. When the losing party has offered in writing, prior to the hearing, a settlement that is found by the arbitrators to be fair and sufficient, but which was refused, the fee shall be paid by the refusing party.

Where a demand for an arbitration is withdrawn by letter, facsimile, or email received by ASTA prior to the expiration of the time for the return of the panel, the fee paid shall be refunded less fifty percent (50%). In the event of the withdrawal of an arbitration any time prior to four (4) calendar days before the scheduled date of the first hearing, the fee paid shall be refunded less seventy-five percent (75%), which is to be retained by ASTA. Withdrawal thereafter will result in forfeiture of the entire fee. In all instances of withdrawal the filing party shall be liable for all expenses incurred by ASTA in preparation for the arbitration.

The party filing for an arbitration shall reimburse ASTA within fourteen (14) days of the conduct of the arbitration session for all expenses incurred by ASTA in the conduct of the arbitration including but not limited to expenses for staff time and travel (including legal expenses), and expenses associated with securing a neutral site for the arbitration, most often a hotel conference room. Failure to reimburse ASTA for such expenses in a timely manner shall result in a prohibition from future participation in the ASTA Arbitration Program. Arbitration expenses shall be assessed against the losing party at the time the

arbitration award is granted together with the fees for arbitration described in this section.

Appendix 1 - Sample Forms

1. Sample Form for Submission When Parties Did Not Use an ASTA Contract

AMERICAN SPICE TRADE ASSOCIATION

 In the Matter of the Arbitration between :
 : SUBMISSION
 _____:

WE, THE UNDERSIGNED PARTIES, hereby agree to submit to arbitration under the Rules of the American Spice Trade Association the following controversy:

WE further agree that the above controversy shall be submitted to the arbitrator(s) selected in accordance with the Rules as described in the ASTA document "A Guide to Arbitration."

WE further agree that we will faithfully observe this agreement and the Rules and that we will abide by and perform any Award rendered pursuant to this Agreement (and that a judgment of the Supreme Court of the State of New York may be entered upon the Award).

WE further agree that our use of and participation in this arbitration is at our sole risk and that ASTA shall have no liability to any person for any loss or damage arising out of our use of the arbitration process. We acknowledge that ASTA encourages users of this arbitration process to consult with appropriate legal counsel before engaging in arbitration.

Each party to this contract hereby consents that any papers, notices or process necessary or proper for the continuation of an arbitration proceeding, for the confirmation of an award, for the entry of judgment on an award made, or otherwise required to be given by law or under the rules hereinabove described, including notices as to reviews, may be given or served upon such party (a) by ordinary, certified or registered mail (air mail if destination is outside the Continental United States), addressed to such parties: last known address; or (b) by personal service within or without the State of New York, or within or without the limits of the jurisdiction of the Court having jurisdiction in the premises (whether such party be within or without the United States of America); or (c) where a party to a controversy is not located in the City of New York, by mail or personally, as provided in (a) and (b) hereof, upon his agent or broker through whom the contract was made; provided that a reasonable time shall be allowed such party to appear and defend.

(Name of Party) Signed: _____
 By: _____
 Address: _____

DATED:
 Signed: _____
 (Name of Party)

By: _____
 Address: _____

2. Sample Form for Submission for Arbitration on Default Regarding Adverse Party Seller

To be provided to the adverse party when that party is a **SELLER** and a claim of default is made.

Date _____

Name and Address of Adverse Party

Gentlemen:

We purchased from you, as per Contract No. ___ dated ___, covering _____ tons of _____ at _____ cents per lb., shipment _____ from _____.

As no shipment was made under this contract, you are in default. We claim arbitration under the arbitration clause in this contract and demand an amount of \$____. We have asked the American Spice Trade Association to proceed with the arbitration as provided in the Rules for as described in the ASTA document "A Guide to Arbitration."

You are hereby notified that, unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503, you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Very truly yours,
(Signed:) Party demanding arbitration

cc: ASTA

3. Sample Form for Submission for Arbitration on Default Regarding Adverse Party Buyer

To be provided to the adverse party when that party is a **BUYER** and a claim of default is made.

Date _____

Name and-Address of Adverse Party

Gentlemen:

We sold you, as per Contract No. ____ dated ____ covering ____ tons of ____ at ____ cents per lb., shipment/delivery _____ during _____.

As (no Letter of Credit was opened)(no payment was made) in accordance with the terms of this contract, we are declaring you in default of same. We claim arbitration under the arbitration clause in this contract and demand an amount of \$____. We have asked the American Spice Trade Association to proceed with the arbitration as provided in the Rules as described in the ASTA document "A Guide to Arbitration."

You are hereby notified that unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503 you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Very truly yours,
(Signed:) Party demanding arbitration

cc: ASTA

4. Sample Letter to Advise ASTA Regarding an Arbitration for Default

Sample letter to be written to the American Spice Trade Association where a claim of default is made.

Date _____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

We enclose a copy of our letter to _____, dated _____, advising that we have filed an application for arbitration, sent them by registered (or certified) mail. We have proof of mailing.

Also enclosed is a copy of Contract No. ___ dated ___ as well as our check in the amount of \$____, and we request that you proceed with the necessary requirements under the Rules **as described** in the ASTA document "A Guide to Arbitration."

Very truly yours,
(Signed:) Party demanding arbitration

cc: Adverse Party

5. Sample Form for Submission for Arbitration Regarding Quality

NOTE: Please see Section B of the Rules regarding requests for arbitration involving quality.

Sample letter to the SELLER whenever the controversy involves quality.

Date _____

Name and Address of Adverse Party

Gentlemen:

We refer to Contract No. ____ dated ____ covering the purchase of ____ tons of ____.

Upon arrival and after examination, we find that the merchandise delivered is not of the quality described in the contract. We are therefore entering a claim against you and are demanding arbitration under the terms of the contract before the American Spice Trade Association and are asking it to set a date and time for the hearing of this controversy. We have appointed _____ to draw the necessary samples. Please have your representative contact them, if you wish to arrange for supervision of sampling.

You are hereby notified that unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503, you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Our claim is for \$____ representing the difference in price between _____ and _____.

Very truly yours,

(Signed:) Party demanding arbitration

cc: ASTA

6. Sample Letter to Advise ASTA Regarding an Arbitration for Quality

Sample letter to be written to the American Spice Trade Association if quality is involved.

Date_____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

We attach herewith a copy of ASTA Contract No. _____, dated _____, copy of a letter addressed to the seller demanding arbitration, and a check in the amount of \$____, as provided for under the Rules for arbitration. The letter enclosed was sent by registered (or certified) mail, and we have proof of mailing.

The seller supplied _____ tons against the aforesaid contract the quality of which is considered to be inferior to the quality described in the contract. We therefore demand arbitration, and we ask that you appoint the arbitrators and set the date and time for arbitration. Official Samples were drawn and sealed by _____.

Very truly yours,
(Signed:) Party demanding arbitration

cc: Adverse Party