



**RULES FOR THE RESOLUTION OF COMMERCIAL DISPUTES**  
Effective August 1, 2007

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## INTRODUCTION

### THE NATIONAL CENTER FOR DISPUTE SETTLEMENT

The National Center for Dispute Settlement [NCDS] is an independent, private, full-service organization that provides mediation, arbitration, and election services throughout the United States. In business since 1968, NCDS offers a variety of services, including ADR systems design, for parties in conflict.

NCDS neutrals are specialists in dispute settlement from a wide variety of backgrounds in both the public and private sectors. NCDS clients include individuals, government agencies, unions, and corporations located both in the United States and abroad.

Parties who are interested in employing pre-dispute arbitration should refer to the recommended clauses below. These are standard clauses which can be crafted to suit a party's special circumstances.

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#### Arbitration Clause Incorporating NCDS Standard Commercial Rules

*Any dispute, claim, or controversy arising out of or relating to this Agreement, its interpretation, breach, termination, enforcement or validity, including whether or not the arbitration clause applies, shall be determined by arbitration in {insert locale} before a single arbitrator {panel of arbitrators}. The arbitration shall be administered by the National Center for Dispute Settlement {NCDS} pursuant to its Commercial Arbitration Rules. Judgment on the award may be entered in any court having jurisdiction.*

#### Arbitration Clause Incorporating NCDS Expedited Commercial Rules

*Any dispute, claim, or controversy arising out of or relating to this Agreement, its interpretation, breach, termination, enforcement or validity, including whether or not the arbitration clause applies, shall be determined by arbitration in {insert locale} before a single arbitrator. The arbitration shall be administered by the National Center for Dispute Settlement {NCDS} pursuant to its Expedited Commercial Arbitration Rules. Judgment on the award may be entered in any court having jurisdiction.*

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## **COMMERCIAL ARBITRATION PROCEDURES – STANDARD**

### **1. Agreement of Parties**

Parties may submit their dispute to arbitration if they have provided for arbitration in their contract, or if they stipulate to the use of arbitration post-dispute. The applicable Rules governing the arbitration are the Rules in effect at the time arbitration is demanded.

### **2. Role of Administrator**

When parties agree to arbitrate under the Rules of the National Center for Dispute Settlement they authorize NCDS to administer the dispute. The authority of NCDS, as it relates specifically to case administration functions, is prescribed in the Rules. In its capacity as administrator, NCDS is not authorized to make decisions with respect to the merits of any case, or offer advice or suggestions on how to resolve a case. Administrators serve to facilitate the case administration process by appointing arbitrators, transmitting information between the parties, and scheduling the arbitration hearing. NCDS reserves the right to transfer the administration of a case to any of its offices.

### **3. Initiation Under a Contract Provision**

A. Arbitration is initiated by the filing of a Demand for Arbitration with NCDS in accordance with the agreement of the parties.

B. The initiating party shall:

1. Prepare a written notice to the other party that states its intention to arbitrate (“Demand”), which notice shall contain a statement setting forth the nature of the dispute, the amount involved (if any), and the remedy sought; *and*,

File two (2) copies of the Demand, together with two (2) copies of the governing document and the appropriate administrative fee as provided in the Administrative Fee Schedule. These documents must be filed by mailing to NCDS offices located at 43230 Garfield Road, Suite 130, Clinton Township, MI 48038. Arbitration forms are available on the website: [www.ncdsusa.org](http://www.ncdsusa.org).

#### **4. Initiation Under a Submission**

Parties not operating under a prior agreement to arbitrate may submit a current dispute to arbitration, providing they complete and sign a Submission Agreement. The Submission Agreement shall contain a statement setting forth the nature of the dispute, the amount involved (if any), and the remedy sought.

#### **5. Initiation Under Court Order**

NCDS may initiate a case by court order, provided the order names NCDS as the appointing agency, or absent a specific agency, the parties separately agree in writing to submit the dispute to arbitration under NCDS Commercial Rules.

#### **6. Changes of Claim/Counter-claim**

A party may at any time prior to the appointment of the arbitrator increase or decrease the amount of the claim or counterclaim. Any new or different claim shall be in writing and submitted to the other party at the same time as it is submitted to NCDS. The other party shall have a period of ten (10) days within which to respond to the filing of the new or different claim. After the appointment of the arbitrator, no new or different claim may be filed unless it complies with all pre-arbitration notice requirements, and all parties and the arbitrator consent.

## **7. Joinder and Consolidation**

If the parties' agreement or the law provides for consolidation or joinder of related arbitrations, parties will first attempt to agree on the protocol for either consolidation or joinder. Failing agreement, NCDS will appoint a single arbitrator who shall determine the propriety of the consolidation or joinder request, and whose decision on the subject will be final.

## **8. Mediation**

A. At any stage of the arbitration, the parties may agree to conduct a mediation session, without removing the case from arbitration. The mediator assigned to conduct the mediation session shall not be the arbitrator appointed to the case. If the parties agree to mediate before the appointment of an arbitrator, the mediator assigned to conduct the mediation shall not later serve as the arbitrator, should the case fail to settle.

B. The parties will be responsible for the fees and expenses associated with invoking mediation.

## **9. Appointment of Arbitrator**

A. The appointment of the arbitrator shall take place in the following manner: Immediately after the filing of the Demand for Arbitration or the Submission Agreement, NCDS shall submit simultaneously to each party to the dispute an identical list containing an odd number of names of persons from the National Panel. The number shall be determined by the number of parties. Each party to the dispute shall have ten (10) days from the mailing date in which to strike one name, number the remaining names to indicate the specific order of preference, and return the list to NCDS.

B. If a party does not return the list within the time specified, all persons designated on the list shall be deemed acceptable. From among the persons who have been approved on all lists, and in accordance with the designated order of mutual preference, NCDS shall invite the acceptance of an arbitrator to serve. If acceptable arbitrators are unable or unwilling to act, for any reason, NCDS shall submit simultaneously another identical list of names chosen from the National Panel, allowing the parties an additional ten (10) days to strike one name, number the

remaining names to indicate the order of preference and return the list to NCDS. If the parties fail to agree to any of the persons named or if acceptable arbitrators are unable or unwilling to act, for any reason, after the second selection process, NCDS shall have the power to make the appointment from among other members of its National Panel, without the submission of another list.

## **10. Arbitral Disclosures**

A. An arbitrator selected to serve under these Rules must, at the time of appointment or as soon afterwards conduct an investigation and, as it becomes known, disclose any information that is likely to create an appearance of partiality or bias. Such information includes past and present financial, business, personal or professional relationships with the attorneys, parties, or witnesses.

B. The obligation to make disclosures remains in effect throughout the arbitration, including the period of time between the evidentiary hearing and the award.

C. Upon receipt of any disclosure, NCDS shall communicate the disclosure to the parties for review and comment.

D. Nothing in this Rule shall preclude a party in arbitration from filing a statement that discloses potentially disqualifying information with respect to the appointed arbitrator. If such information is received, NCDS shall forward the statement to the other party for comments. The initial statement and the response, if any, shall be provided to the arbitrator for review, if NCDS deems appropriate.

## **11. Disqualification of Arbitrator**

A. Arbitrators serving under these Rules shall be impartial, independent, and perform their responsibilities in good faith.

B. An arbitrator may be disqualified from serving in any of the following circumstances:

1. Upon objection of both or all parties;

2. Upon objection from one party, after due consideration of comments from the remaining parties, or,
3. On the initiative of NCDS.

C. The decision of NCDS with respect to the disqualification of an arbitrator shall be communicated to the parties, and shall be deemed conclusive.

## **12. Vacancies**

If an arbitrator dies, resigns, or is otherwise unable to fulfill the duties of office, NCDS shall appoint a successor, in the same manner as the initial arbitrator.

## **13. Communication with Arbitrator Outside of Hearing**

No party and no one acting on behalf of any party shall communicate *ex-parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, at any time and for any reason, once the arbitrator has been appointed.

## **14. Oaths**

An arbitrator who accepts appointment must complete an oath of fidelity to the arbitral process. This oath shall be signed by the arbitrator and returned to NCDS before NCDS will confirm the appointment of the arbitrator.

## **15. Hearing Logistics**

A. NCDS shall submit a ninety (90) day calendar to the parties and the arbitrator, requesting each person to strike the dates they are unavailable. Upon receiving the calendars from the parties, the arbitrator shall determine the date, time and location of the hearing, notice of which must be given to the parties at least fourteen (14) days in advance unless waived by the parties in writing.

B. The hearing will be held at a neutral location.

## 16. Representation

- A. Any party to the proceeding may attend the hearing or be represented at the hearing by another person. Non-attorney representation is limited to those states that permit such representation.
- B. In the case of representation by an attorney, in the interest of fairness to all parties, the party retaining counsel or their attorney must advise NCDS and the other parties of the identity of their representative at least five (5) days prior to the date of the hearing. Failure to follow this Rule with regard to notice may result in an adjournment of the scheduling hearing with any costs associated with the postponement to be borne by the party failing to give timely notice.
- C. Parties are strongly encouraged to retain legal counsel, as arbitration is a complete substitute for litigation, resulting in a final and binding determination upon the parties.

## 17. Postponement Requests

- A. For good cause shown, the arbitrator may postpone the arbitration, upon agreement of the parties, upon request of a party, or upon the arbitrator's own initiative. Arbitrations that are postponed by both parties, or at the request of one party, will be subject to a postponement fee. *See* Rule 35 – **Fees and Expenses (Postponement Fees)**.
- B. All requests for postponement must be communicated to NCDS.

## 18. Stenographic Record

- A. There shall be no stenographic record of any portion of the proceedings, unless the parties agree, in writing, in advance of the commencement of the evidentiary hearing. In that instance, it will be the parties' responsibility to secure the services of a stenographer, and must so notify NCDS that such a stenographer has been retained.
- B. The record produced by the stenographer will constitute an unofficial transcript of the proceedings unless the arbitrator determines otherwise.

C. If the arbitrator determines that a stenographic record is appropriate, the parties, at their expense, will make a copy of the transcript available to the arbitrator.

## **19. Pre-Hearing Remedies**

A. The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

B. Such interim measures may be taken in the form of an interim award, and the arbitrator may require security for the costs of such measures.

C. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

## **20. Attendance at Hearings**

All persons who are parties to the arbitration agreement, as well as representatives and witnesses, are entitled to attend hearings. The arbitrator shall determine whether any other person may attend the hearing. The arbitrator's authority under this Rule also extends to include the sequestration of witnesses.

## **21. Evidence**

The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing or as directed by the arbitrator provided a copy is simultaneously transmitted to all other parties and to NCDS for transmittal to the arbitrator.

## **22. Evidence by Documents Only**

At the discretion of the arbitrator or by agreement of the parties, parties may submit their entire case by documents, without convening an evidentiary hearing.

## **23. Pre-Hearing Exchange of Information**

- A. At the request of any party or at the discretion of the arbitrator or NCDS, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives.
- B. At the discretion of the arbitrator, the preliminary hearing may be conducted by telephone.
- C. During the preliminary hearing, the parties and the arbitrator should discuss how they intend to present their case, including any arbitrability issues, the number of witnesses, the schedule for the hearings, the form of the award, and any other preliminary matters the parties deem appropriate.

## **24. Conduct of Hearing**

- A. The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. The hearing shall be completed in one day but the arbitrator may, for good cause, schedule an additional hearing, normally within five (5) days of the initial hearing.
- B. A hearing shall be opened by the arbitrator noting the place, time and date of the hearing, the presence of the arbitrator and parties, and counsel, if any, and by the receipt by the arbitrator of the statement of the claim and answer, if any. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. The complaining party shall then present its claim and proofs and its witnesses, who shall submit to questions or other examination.
- C. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material and relevant proofs. Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and a list of exhibits in the order received shall be made a part of the record.
- D. The parties agree to protect the arbitrator(s) from involuntary communications or testimony, other than at the actual hearing.

## **25. Closing of Hearing**

- A. When satisfied that the presentation of the parties is complete, and parties have no further proofs to offer, the arbitrator shall declare the hearing closed.
- B. If documents or responses are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for their receipt.
- C. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties and the arbitrator, upon closing of the hearing.

## **26. Re-opening of Hearing**

The hearing may be re-opened on the arbitrator's initiative, or by direction of the arbitrator upon application of a party, at any time before the award is made. If re-opening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be re-opened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have thirty (30) calendar days from the closing of the re-opened hearing within which to make an award.

## **27. Form of Award**

The award shall be in writing and shall be signed by the arbitrator(s). It shall be executed in the manner required by law.

## **28. Time of Award**

The award shall be rendered promptly by the arbitrator(s) and, unless otherwise agreed by the parties in writing, not later than thirty (30) days from the date of the closing of the hearing.

## **29. Scope of Award**

The arbitrator may make any award that is just and equitable and within the scope of the parties' agreement. The arbitrator, in the award, may also allocate or assess the arbitration fees and expenses against any party but only in accordance with the parties' agreement. In the event that any

administrative fees or expenses are due to NCDS, the arbitrator, in the award, may provide for payment to NCDS. The arbitrator also may award attorneys' fees, provided such fees are authorized either by agreement or by law in the jurisdiction in which the arbitration proceeding is held.

### **30. Extensions of Time**

The parties may modify any period of time specified in these Rules by agreement in writing. NCDS or the arbitrator may extend any period of time, except the time for making the award, for good cause shown, and so notify the parties.

### **31. Interpretation of Rules**

Except where the Rules specifically state otherwise, the arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties. All other Rules shall be interpreted and applied by NCDS.

If the parties' contract contains any term that contradicts any provision of these Rules, the term specified in the contract, not the provision in the Rules, shall govern.

### **32. Conflict of Law**

In the event a provision in the parties' contract conflicts with governing law, the governing law will prevail.

### **33. Confidentiality and Privacy**

A. The proceedings, from the onset of case administration to case closure, when the arbitral award is rendered, are confidential.

B. Information respecting any aspect of the proceeding shall not be disclosed by the arbitrator or NCDS personnel, unless otherwise directed to do so by court order.

### **34. Applications to Court and Exclusion of Liability**

By agreeing to these Rules or proceeding in any manner under these Rules, the parties agree:

1. Neither NCDS, its officers, directors or employees, nor the arbitrator is a necessary party in judicial proceedings relating to any arbitration conducted under these Rules;
2. Neither NCDS, its officers, directors or employees, nor the arbitrator shall be liable to any party for any act or omission relating to any arbitration conducted under these Rules.

### **35. Fees and Expenses**

#### **Case Filing Fees**

The filing party will pay to NCDS a fee based on the schedule below. This fee is intended to compensate NCDS for the administration of the case, including the scheduling of all hearings, and in recruiting and training competent neutrals. A separate fee will be assessed for the professional service rendered by the arbitrator, including travel and other ancillary expenses.

Claims or counter-claims between \$1 and \$15,000	\$ 750
Claims or counter-claims between \$15,001 and \$50,000	\$1,000
Claims or counter-claims between \$50,001 and \$100,000	\$1,250
Claims or counter-claims between \$100,001 and \$300,000	\$1,500
Claims or counter-claims between \$300,001 and \$500,000	\$1,750
Claims or counter-claims between \$500,001 and \$750,000	\$2,000
Claims or counter-claims between \$750,001 and \$1,000,000	\$2,500

Claims in excess of \$1,000,000 will be subject to a negotiated case filing fee.

Claims involving a three-person panel, or claims involving more than two (2) parties will be subject to a separate fee schedule.

#### **Postponement Fees**

Any party causing a postponement will be assessed an administrative fee payable to NCDS in the amount of \$100. An administrative fee payable to NCDS in the amount of \$300 will be assessed if the postponement occurs at or less than forty-eight (48) hours before any scheduled hearing.

The requesting party also shall pay any reasonably incurred expenses of the arbitrator in connection with the postponement of the previously scheduled hearing, in addition to the postponement fee specified by the arbitrator.

### **Other Expenses**

The expenses of any witnesses, if any, will be borne by the party producing such witnesses.

## **COMMERCIAL ARBITRATION RULES - EXPEDITED**

### **Exp-1. Changes of Claims/Counter-claim**

If a new or different claim, or a counter-claim, is filed, that exceeds \$50,000, the standard rules will apply, including the administrative and neutral compensation fees.

### **Exp-2. Appointment of Arbitrator**

NCDS will appoint an arbitrator qualified and available to serve from its National Panel. This appointment will be subject to factual objections, *i.e.*, objection for cause only.

### **Exp-3. Hearing Logistics**

The arbitrator will set the time, date, and place of hearing within thirty (30) days of his/her appointment. The hearing shall be concluded within sixty (60) days of the arbitrator's appointment, except in extraordinary circumstances.

### **Exp-4. Evidence by Documents Only**

All claims filed up to \$3,000 shall be handled by documents only, without convening an evidentiary hearing, unless all parties agree otherwise in writing.

#### **Exp-5. Pre-Hearing Exchange of Exhibits**

All hearing documents shall be exchanged between the parties and NCDS within four (4) days of the scheduled hearing.

#### **Exp-6. Conduct of Hearing**

The hearing shall not exceed one day, *i.e.*, up to eight (8) hours.

#### **Exp-7. Form of Award**

The award, which shall be in writing and signed by the arbitrator, will not be accompanied by written findings of fact or a supportive opinion.

#### **Exp-8. Time of Award**

The award shall be rendered not later than ten (10) days from the date of the close of the hearing.

#### **Exp-9. Extensions of Time**

Parties are not able to extend any time limits, including the time for making of the award, except in extraordinary circumstances. All extension requests shall be decided by the arbitrator, except if related to the filing of any responses to the Demand for Arbitration, which shall be decided by NCDS.

#### **Exp-10. Serving of Notices**

Parties shall accept notice by telephone. NCDS will make every effort to confirm telephonic arrangements in writing. A failure by NCDS to provide a confirmation shall not affect the validity of the notice.

#### **Exp-11. Arbitrator Compensation**

Arbitrator compensation is integrated into the administrative fee schedule.

## **Exp-12. Fees and Expenses**

### **Case Filing Fees**

A non-refundable administration fee, which also includes the arbitrator's fixed fee, shall be paid by the party requesting arbitration or asserting a counter-claim based on the following schedule:

Claims or counter-claims under \$3,000 (decision on documents only)	\$ 250
Claims or counter-claims under \$3,000 (oral hearing)	\$ 650
Claims or counter-claims between \$3,000 and \$10,000	\$ 800
Claims or counter-claims between \$10,001 and \$15,000	\$1,000
Claims or counter-claims between \$15,001 and \$25,000	\$1,250
Claims or counter-claims between \$25,001 and \$50,000	\$1,500
Claims or counter-claims over \$50,000	\$2,000

### **Postponement Fees**

Any party causing a postponement will be assessed an administrative fee payable to NCDS in the amount of \$100. An administrative fee payable to NCDS in the amount of \$300 will be assessed if the postponement occurs at or less than forty-eight (48) hours before any scheduled hearing.

The requesting party also shall pay any reasonably incurred expenses of the arbitrator in connection with the postponement of the previously scheduled hearing, in addition to the postponement fee specified by the arbitrator.

### **Other Expenses**

The expenses of any witnesses, if any, will be borne by the party producing such witnesses.