

Rules and Procedures for the Final and Binding Determination of Automotive Disputes

1. Agreement of Parties

These Rules shall apply whenever the parties have agreed to utilize them, or under any warranty, disclosure agreement, sales contract, lease or other program providing for Final and Binding arbitration administered by the National Center for Dispute Settlement (NCDS). The parties shall be deemed to have agreed to these rules in the form in effect when the request for arbitration is received by NCDS. The parties shall also be deemed to have agreed that judgment on any Award rendered hereunder may be entered in any court of competent jurisdiction.

2. Initiation of Proceedings

Arbitration is initiated by the filing of a request for final and binding arbitration with NCDS in accordance with the directions contained in the documents under which the dispute has arisen. After initiation of the proceeding, no new or different claim may be added without compliance with all pre-arbitration notice requirements, written agreement of all parties and the consent of the arbitrator. All parties shall be deemed to have consented to the joinder of all claims arising out of the same transaction where all parties have agreed to arbitrate under these rules.

3. Appointment of Arbitrator

(a) NCDS shall appoint a single arbitrator from its panel of qualified, independent arbitrators.

(b) Unless waived, the arbitrator shall be appointed in the following manner: Immediately after the filing of the demand or submission, NCDS shall submit simultaneously to each party to the dispute an identical list containing an odd number of names of persons chosen from the panel. The number shall be determined by the number of parties to the dispute. Each party to the dispute shall have ten (10) calendar days from the mailing date in which to strike one name, number the remaining names to indicate the order of preference, and return the list to NCDS. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From the persons 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 the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable or unwilling to act, for any reason, NCDS shall have the power to make the appointment from among other members of the panel without the submission of any additional list.

4. Qualifications of an Arbitrator

A person appointed as arbitrator shall disclose to NCDS any circumstances likely to affect impartiality, including any bias, any financial or personal interest in the outcome of the proceeding, any past or present relationship with the parties or their counsel. Upon receipt of such information from the arbitrator or any other source, NCDS shall communicate the information to the parties and, if it deems appropriate, to the arbitrator. Upon objection of a party to the service of an arbitrator, NCDS shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

5. Vacancy

NCDS is authorized to appoint another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly. The arbitrator so appointed shall be subject to disqualification for the same reasons specified in Section 4.

6. Time and Place of Hearing

The arbitrator shall fix the date, time, and place of hearing, notice of which shall be given to the parties at least ten (10) calendar days in advance, unless the time period is waived by all parties.

7. Representation

Any party to the proceeding may attend the hearing or be represented at the hearing by another person. 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) calendar days prior to the date of the hearing. Failure to follow this rule with regard to notice

may result in an adjournment of the scheduled hearing.

8. Attendance at Hearing

All parties to the dispute, as well as their representatives are entitled to attend the hearing. Unless excused by the arbitrator, the registered owner of the vehicle shall be present. Witnesses may attend the hearing subject to the arbitrator's authority to limit attendance or sequester witnesses during all or part of the hearing. The arbitrator shall determine whether any other person may attend the hearing.

9. Postponements

Hearings shall be postponed by the arbitrator only for good cause.

10. Confidentiality

To the extent permitted by law, the proceedings are deemed to be private and the statements of all participants are deemed to be confidential. The parties may make appropriate notes of the proceedings but audio or video recordings by the parties, witnesses or observers are strictly prohibited.

11. Stenographic Record

A stenographic record of the hearing is not required. Any party who wishes to, may make provision for a certified court stenographer at that party's own expense. A copy of the transcript must be provided to each Arbitrator and a copy made available for the review of the other party. The transcript is agreed by the parties to be confidential.

12. Proceedings and Communication with the Arbitrator

(a) The parties shall copy all of the written evidence they intend to offer and deliver it to NCDS for transmittal to all parties and to the arbitrator, no less than ten (10) business days prior to the hearing. Failure to abide by this rule may result in preclusion of any evidence not transmitted timely.

(b) Any party may prepare a Subpoena, submit it to NCDS and request that the arbitrator sign the Subpoena for the

production of witnesses or evidence at the hearing. The arbitrator shall determine if the witnesses or evidence is reasonably required to afford a full and fair hearing and will issue the Subpoena, refuse to issue the Subpoena or issue a modified Subpoena limited to witnesses or evidence reasonably required. The Subpoena shall be in accordance with the Laws of the State in which it is issued. The party requesting the Subpoena shall be responsible for any expenses associated with its issuance and shall be responsible for its service and enforcement.

(c) The hearing shall be conducted by the arbitrator in any manner that will permit full and expeditious presentations of the case by all parties. There shall be no direct communications between any parties or representative of a party and the arbitrator other than at the hearing except when initiated by the arbitrator pursuant to Section 6 and limited to the time or place of the hearing. The parties or their representatives may speak with any other party or that party's representative at any time.

(d) All witnesses shall be placed under oath and subject to the penalties of perjury.

13. Arbitration in the Absence of a Party

The arbitration hearing may proceed in the absence of any party or representative who has received notice of the hearing and fails to be present or fails to obtain an adjournment. A decision shall not be made solely on the default of a party. The arbitrator shall require any party who is present to submit such evidence as the arbitrator may require for the making of a decision.

14. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity with the legal rules of evidence shall not be necessary. The expense of witnesses, expert witnesses, or reports submitted by any party shall be paid by the

party producing such witnesses or reports subject to Rule 19. Unless excused by the arbitrator, the vehicle which is the subject of the dispute shall be available at the hearing. Any party may, in an appropriate case, request a test drive. A test drive in such cases is a part of the proceeding and shall be conducted in a manner consistent with these rules. The arbitrator shall not operate the vehicle during the test drive.

(b) The arbitrator shall apply established principles regarding privileged communications or similar rules of evidentiary exclusion.

15. Evidence by Filing of Documents

The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator and not produced at the hearing shall, in all cases, be submitted to NCDS prior to the hearing or as directed by the arbitrator.

16. Closing of Hearings

The arbitrator shall ask whether the parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or when satisfied that the record is complete, the arbitrator shall declare the hearings closed.

17. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections thereto in writing shall be deemed to have waived the right to object.

18. Time of Decision

The decision shall be rendered promptly by the arbitrator and unless otherwise agreed by the parties, no later than ten (10) calendar days from the date of the closing of the hearing.

19. Form of Decision

(a) The decision shall be in writing and shall be signed by the arbitrator.

(b) In an appropriate case, if requested by the vehicle owner, the arbitrator may award any applicable remedy

available under state or federal law including reasonable and customary attorney's fees and/or expert witness fees to a vehicle owner who prevails.

20. Delivery of Decision to Parties

Parties shall accept as legal delivery of the decision the placing of the decision or a true copy thereof in the mail addressed to the party or its legal representative at the last known address, by personal service of the decision, or by the filing of the decision or any other manner that may be permitted by law.

21. Applications to Court and Exclusion of Liability

By agreeing to these rules or proceeding in any manner under these rules, each party agrees:

(a) Neither NCDS, its officers, directors or employees nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration; and

(b) Neither NCDS, its officers, directors or employees nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(c) Transactions under this Program involve interstate commerce. The Federal Arbitration Act (FAA) (9 U.S.C. § 2 et seq.) shall govern the interpretation, enforcement, and proceedings of or related to the arbitration. The decision of the arbitrator is final and binding on both Parties and is not subject to appeal except as otherwise provided in the FAA. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator, and the parties agree to be bound by such award. All other substantive rights will be determined by the law of the state in which delivery of the vehicle was taken.

22. Hearing of Documents

Under certain programs administered by NCDS, the party initiating arbitration may select a hearing based upon the submission of documents only. The provisions of the Rules

shall apply only to the extent they are consistent with that process.

23. Interpretation and Application 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, as administrator.

24. Modification and/or Clarification

Within twenty (20) calendar days of the date of mailing of the Decision, any party may request modification and/or clarification of the Decision. Applications for modification and/or clarification must be received by NCDS for transmittal to the arbitrator and all other parties within the twenty (20) calendar day period. A request for modification and/or clarification must set forth the specific portion or portions of the Decision, which are subject to the request. The arbitrator is not empowered to redetermine the merits of any claim already decided, but may modify the Decision if the arbitrator finds that the Decision is not within the scope of the warranty or its coverage or has improperly identified a party or made an error not otherwise affecting the merits of the case. Written objections to modification and/or clarification must be delivered to NCDS for transmittal to the arbitrator(s) and simultaneously sent to all parties within ten (10) calendar days of the application. The arbitrator shall rule on the application for modification and/or clarification within ten (10) calendar days from receipt of an objection or the expiration of time to make objections, whichever is earlier.

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