

## THE GLAZING ARBITRATION SCHEME

### RULES OF THE INDEPENDENT ARBITRATION SCHEME FOR THE GLASS & GLAZING INDUSTRY

September 2015 Edition

#### 1 Introduction

- 1.1 This Scheme applies to applications for arbitration made to the Centre for Effective Dispute Resolution (CEDR) in respect of disputes between 'traders' (that is, member companies of the Glass & Glazing Federation ("GGF") or registered firms of the Fenestration Self-Assessment Scheme ("FENSA")) and their customers. Prior to the institution of arbitration proceedings the Parties must attempt to settle the dispute through GGF's conciliation procedure (if a GGF member company) or through FENSA's complaint process (if a FENSA registered firm) for at least 40 working days. If the conciliation procedure or complaint process fails to resolve the dispute the Parties may proceed to arbitration.
- 1.2 The Scheme does not apply to disputes where:-
- One or either of the Parties has already initiated legal action, unless that legal action is cancelled by agreement;
  - The claims concern physical injury, illness, nervous shock or their consequences;
  - The claim is frivolous or vexatious;
  - The claim is for compensation in respect of stress, inconvenience or consequential loss;
  - The claim concerns an application for payment of an amount greater than £30,000.
- 1.3 The service is designed for use without the need for legal representation. However, any party may choose to be legally represented, but must do so at their own cost which may not be recovered through the Scheme or any subsequent legal action.
- 1.4 Any arbitration under the scheme will be conducted under the provisions of the United Kingdom Arbitration Act 1996 (the Act), the Laws of England & Wales and these rules. For the purposes of the Act, all arbitrations under these rules will be deemed to take place in London.

## **2 Commencement of arbitration proceedings**

- 2.1 To commence arbitration proceedings, a joint application by the Parties must first be submitted to CEDR through the GGF where the trader is a GGF member company, or through FENSA where the trader is a FENSA registered firm. The application form must be accompanied by the appropriate registration fee from both Parties as well as any evidential documents and/or materials from the Parties required at time of application.
- 2.2 The arbitration commences on the date that CEDR sends a written Notice of Arbitration to the Parties confirming that an arbitrator has been appointed.
- 2.3 On receipt of all forms, fees and evidential documents from both Parties CEDR will appoint an arbitrator and inform the Parties of the arbitrator's name.
- 2.4 If CEDR or the arbitrator believes that the dispute falls outside the scope of the Scheme (ie. that it falls into one of the points listed at Rule 1.2 above), the Parties will be so advised. In that case the arbitrator's appointment shall be cancelled, the application for arbitration treated as withdrawn and the registration fees shall be refunded. The Parties will then be able to pursue the matter either through other appropriate arbitration rules provided by CEDR or through the courts.
- 2.5 Once appointed, the arbitrator will communicate with or issue directions to the Parties through CEDR. Correspondence with the arbitrator must be copied to all Parties.

## **3 Arbitration procedure**

- 3.1 The arbitrator shall have the jurisdiction and power to direct the procedure of the arbitration including the amendment of any time limits and other procedural requirements. The arbitrator shall also have the power to:
  - (a) Allow submission of further evidence and the amendment of claim or defence;
  - (b) Order the Parties to produce goods, documents or property for inspection;
  - (c) Conduct such enquiries as may appear to the arbitrator to be desirable;

- (d) Receive and take into account any oral or written evidence as the arbitrator shall decide to be relevant;
  - (e) Appoint an expert to report on specific issues or take legal advice;
  - (f) Award interest, whether or not claimed;
  - (g) Proceed with the arbitration if either party fails to comply with these rules or with the arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the arbitrator but only after giving that party written notice;
  - (h) Terminate the arbitration if the arbitrator considers the case to be incapable of resolution under the service, or if the parties settle their dispute prior to an award. If the case is settled the Parties must immediately inform the administrator in writing of the terms of the settlement and the arbitrator shall record them in an agreed award enforceable under the Arbitration Act 1996, if requested.
  - (i) Order the customer to pay the trader any outstanding fees.
- 3.2 In addition to the powers conferred by these rules, the arbitrator shall have the widest discretion permitted by law to resolve the dispute and will have regard to any applicable consumer protection legislation and to the GGF Consumer Code of Practice or FENSA Rules as appropriate where there is evidence that it/they have been relied on or where it/they are relevant.
- 3.3 The arbitration will proceed on the basis of written argument and evidence, which must be submitted in accordance with the following procedure.
- 3.4 Upon receipt of the Notice of Arbitration the trader has 15 working days in which to submit a written defence, which may include a counterclaim to the claims made by the customer in the application.
- 3.5 CEDR will send a copy of the defence documents, including any counterclaim and supporting documents to the customer, who is entitled to submit written comments

within a further 10 working days. Such comments must be restricted to points arising from the trader's defence. The customer may not introduce any new matters or evidence or new points of claim.

- 3.6 CEDR will send a copy of the customer's comments to the trader who may provide a response within 5 working days. No further comments can be made following the trader's response, without the arbitrator's express approval.
- 3.7 The arbitrator may request further relevant information or other evidence from the Parties.
- 3.8 The arbitrator will make an award with reasons, normally within 20 working days of receipt by CEDR of all the papers required from the parties, after considering all submissions and evidence.
- 3.9 CEDR will send a copy of the award to each party.
- 3.10 Unless otherwise directed, any amount awarded shall be paid within 20 working days of dispatch of the award to the parties. Such payments shall be made direct to the party entitled to receive it, which may include a payment from the customer to the trader for outstanding fees.
- 3.11 Any award made under this scheme is final and legally binding on all parties, subject to either party's right under the provisions of the Act to seek leave to appeal in the courts. If either Party wishes to appeal against the Award, then they must seek leave to appeal in the High Court, and will have 28 calendar days from the date of publication of the Award in which to do so. It should be noted that the Parties cannot appeal on a point of fact. Neither CEDR nor the arbitrator can advise the Parties on how to seek leave to appeal.
- 3.12 Any party may request the return of its original documents but must do so within 20 working days of the date of dispatch of the award, after which date CEDR will destroy them.

## 4 Content of submissions for arbitration

### 4.1 The claim shall include:

- 4.1.1 The nature and basis of the claim;
- 4.1.2 The amount of payment claimed or other remedy sought;
- 4.1.3 All supporting documents relied on as evidence.

4.2 An award cannot be made for any amount that is more than the total amount claimed on the application form. Compensation for stress and inconvenience or consequential loss cannot be claimed under the scheme. The customer may make a claim for payment to cover the value of the work, and/or the cost of employing another trader to carry out the work required.

4.3 If the customer states in the claim documents that he/she is unable to submit a copy of any original contract, order or evidence of such an arrangement the trader shall submit a copy of that document or evidence with their defence.

### 4.4 The defence shall include:

- 4.4.1 What matters in the opposing documents are accepted or agreed;
- 4.4.2 What matters are disputed, with reasons why;
- 4.4.3 Details of any outstanding amounts which remain unpaid by the customer, and any associated counterclaim for such amounts;
- 4.4.4 Any supporting documents relied on as evidence in support of their response.

### 4.5 The response by the customer to any defence shall include:

- 4.5.1 What matters in the opposing documents are accepted or agreed;
- 4.5.2 What matters are disputed, with reasons why;
- 4.5.3 Any supporting documents relied on as evidence in support of such response.

### 4.6 Any counterclaim shall include:

- 4.6.1 The basis of such counterclaim;
- 4.6.2 What is being claimed (and where a monetary claim, the amount claimed and upon what it is based);

4.6.3 Any other relevant supporting documents.

4.7 The response by the customer to any counterclaim shall include:

4.7.1 Notification of what matters in the opposing document(s) are accepted or agreed;

4.7.2 Notification of what matters are disputed, and reasons why;

4.7.3 Any other relevant supporting documents.

4.8 If any party fails to deliver anything required by these rules and does not supply it within 5 working days of a reminder by CEDR then:

4.8.1 Where a claim is not delivered in accordance with Rule 4.1 it shall be deemed to be abandoned;

4.8.2 Where a claim is abandoned the arbitration will not proceed and the customer's registration fee will be refunded;

4.8.3 Where the failure concerns information requested by the arbitrator, the arbitration shall proceed as the arbitrator considers appropriate;

4.8.4 Where the failure is the non-delivery of the defence, the arbitrator may make the award on the basis of documents already received.

## **5 Arbitration costs**

5.1 The cost of the registration fee for "documents only" arbitration is £100 plus VAT for the customer and £395 plus VAT for the trader. CEDR will not accept applications made without payment.

5.2 If the arbitrator decides that a site visit is required, the customer will pay 20% of the overall cost and the trader will pay 80% of the overall cost. The cost must be reasonable. If the customer is successful in their application, the arbitrator may, at their discretion, award all or part of the site visit cost back to the customer. The trader is not entitled to payment for any fees or site visit costs paid by the customer, except as specified in rule 5.5.

5.3 Subject to Rules 5.4 and 5.5 below, each party shall bear its own costs of legal representation, preparing and submitting its case and of attending any hearing. No

legal action may be brought to recover these costs.

- 5.4 The arbitrator may award that the trader shall reimburse the customer their registration fee if the customer is successful in their application.
- 5.5 The arbitrator may also order one party to pay all or part of the other's costs where the former has acted unreasonably and caused the latter unnecessary expense.
- 5.6 These provisions for costs will not apply to any appeal to the courts of England & Wales.

## **6 Confidentiality**

- 6.1 No party involved in any dispute under the rules, or CEDR or the arbitrator, shall disclose details of the proceedings to any stranger to the proceedings unless it is necessary to do so in order to enforce a binding settlement or as may be required by law. Notwithstanding the foregoing, CEDR may collate and process data pertaining to the use of the service, compile, analyse and publish statistics therefrom and monitor and review the operation of the service provided always that (save with the express consent of the parties) no personal data, privileged or confidential information shall be published.

## **7 Miscellaneous**

- 7.1 CEDR reserves the right to appoint a substitute arbitrator if the originally appointed arbitrator dies, is incapacitated or is, for any reason, unable to deal expeditiously with the dispute. The parties shall be notified of any substitution.
- 7.2 Subject to the right of either party to request CEDR to draw the arbitrator's attention to any accidental slip or omission which he / she has power to correct by law, neither CEDR nor the arbitrator can enter into correspondence regarding an award made under the service.
- 7.3 Neither CEDR nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules, save that the arbitrator (but not CEDR) shall be liable for any wrongdoing on his / her own part arising from bad faith.

- 7.4 Where CEDR receives notification that a member or registered firm has failed to comply with the arbitrator's award, CEDR will advise the GGF or FENSA as appropriate although this will in no way prevent or delay a Claimant's right to seek an enforcement order in the courts of England and Wales.
- 7.5 Where the arbitrator determines that the member or registered firm has failed to comply with the GGF Consumer Code of Practice or FENSA Rules, CEDR will advise the GGF or FENSA as appropriate who will take appropriate action in line with the relevant Code or Rules.
- 7.6 CEDR will send a copy of the arbitrator's award to GGF or FENSA as appropriate for information purposes.

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## ARBITRATION TIMELINE

