

ADR, Inc.

Arbitration Rules and Procedures

RULES APPLICABLE TO PROCEEDINGS

Article I . Introductory Rules

- a. Where the parties to a contract have agreed in writing that disputes shall be referred to arbitration under the ADR, Inc. Arbitration Rules and Procedures (~~%Rules+~~), then such disputes shall be settled in accordance with these Rules.
- b. These Rules shall govern the arbitration except where any of these Rules conflict with applicable law.
- c. The term ~~%arbitrator+~~in these Rules should be read to encompass the term ~~%arbitration panel.+~~
- d. If a party becomes aware of a violation or failure to comply with these Rules and fails promptly to object in writing or on the record, the objection will be deemed waived, unless the arbitrator determines that waiver will cause substantial injustice or hardship.
- e. The arbitrator may order appropriate sanctions for failure of a party to comply with its obligations under any of these Rules. These sanctions may include, but are not limited to, assessment of costs, assessment of attorney fees, prohibition of certain evidence, or ruling on an issue submitted to arbitration adversely to the party who has failed to comply.

Article II . Initiation of Arbitration

- a. Any party may initiate an arbitration proceeding under these Rules by submitting to ADR, Inc. an initiating document labeled ~~%Arbitration Submission Agreement+~~, a ~~%Request to Arbitrate+~~, or a ~~%Request for Issuance of an Invitation to Arbitrate+~~. In its discretion, ADR, Inc. may permit the parties to proceed to arbitration upon their signing an ~~%Agreement to Arbitrate+~~and without the necessity of submitting any of the three previously identified initiating documents.
 - (1) An Arbitration Submission Agreement is an initiating document signed by all parties to a dispute indicating their desire to arbitrate a resolution of their differences, whether or not they have previously agreed to arbitrate under an arbitration clause of a commercial contract. ADR, Inc. ~~§~~ form, Arbitration Submission Agreement, is at [Appendix B](#) to these Rules.
 - (2) A Request to Arbitrate is an initiating document triggering the provisions of an arbitration clause of a commercial contract between or among the parties. ADR, Inc. ~~§~~ form Request for Arbitration is at [Appendix C](#) to these Rules.

- (3) A Request for Issuance of an Invitation to Arbitrate is an initiating document requesting ADR, Inc. to invite other parties to a dispute to participate in an arbitration proceeding where the parties have entered into no pre-agreement to arbitrate. ADR, Inc.'s form Request for Issuance of an Invitation to Arbitrate is at [Appendix D](#) to these Rules.
 - (4) An Agreement to Arbitrate is a precondition to the arbitration of any dispute under these Rules. ADR, Inc.'s form Agreement to Arbitrate is at [Appendix E](#) to these Rules.
- b. Upon receipt of a Request to Arbitrate or a Request for Issuance of an Invitation to Arbitrate, ADR, Inc. shall send forthwith a copy of the initiating document and any attached documents to the other party or parties to the dispute.

Article III . Response to Request to Arbitrate or for Issuance of an Invitation to Arbitrate

- a. With respect to a Request to Arbitrate or a Request for Issuance of an Invitation to Arbitrate, within a period of twenty days after the date of receiving a copy of such a Request, the other parties to the dispute shall file a Response (with attachments as appropriate) with ADR, Inc. and serve one copy to each of the other parties to the dispute.
- b. If ADR, Inc. or the requesting party does not receive a written reply to such a Request from an invited party within 20 days of an invited party's receipt of the Request, ADR, Inc., in consultation with the requesting party, may deem the lack of reply as a rejection of the Request or Invitation to Arbitrate the dispute. On ADR, Inc.'s written notice to the requesting party that the arbitration cannot proceed, the requesting party may seek out other dispute resolution or court alternatives to protect its interests.
- c. Any Response submitted by a noticed or invited party shall respond to all the allegations of the claim, or state the reasons why the responding party is not obligated to, or desires not to, participate in an arbitration proceeding.
- d. The arbitration proceeding shall be deemed to commence on the date that ADR, Inc. receives an initiating document.

Article IV . Representation and Assistance

- a. Although parties usually will be represented by counsel at the arbitration, they may appear *pro se*.
- b. The name, address, and telephone number of a party's legal representative must be communicated in writing to the other party or parties and to ADR, Inc. as soon as practicable after such representation is arranged or changed.

Article V . Selection and Appointment of Arbitrator

- a. There shall be one neutral arbitrator, unless the parties agree that the dispute requires the decision of more than one arbitrator.
- b. The parties shall select a neutral arbitrator from the current list of ADR, Inc. § neutrals.
- c. Parties may select two co-arbitrators to round out a three-arbitrator panel from ADR, Inc. § list of neutrals, or, by mutual agreement of the parties, from outside ADR, Inc. § list of neutrals. Alternatively, after selecting a neutral arbitrator from ADR, Inc. § list of neutrals, the parties may agree to separately and independently appoint arbitrators to fill two or more vacancies on an arbitration panel. If an arbitration clause so requires, the parties may separately and independently appoint arbitrators first, and then the party-appointed arbitrators will select a neutral arbitrator from ADR, Inc. § list of neutrals.
- d. If, within 30 days after the initiation of the arbitration proceedings the parties (or the party-appointed arbitrators) cannot agree on a sole neutral arbitrator or on three neutral arbitrators as the case may be, if all parties agree, ADR, Inc. may appoint a neutral arbitrator from ADR, Inc. § list of neutrals or, if appropriate, from outside that list of neutrals to fill any remaining neutral arbitrator vacancy or vacancies on such a panel. If the parties cannot agree to this procedure, either party may apply to the Circuit Court for appointment of a neutral arbitrator pursuant to A.C.A. 16-108-203.

Article VI . Independence; Disclosure

- a. Every arbitrator must be and remain independent of the parties involved in the arbitration proceeding.
- b. No person shall serve as an arbitrator in any dispute in which that person has any financial or personal interest in the result of the arbitration, except by the written consent of all parties.
- c. Prospective arbitrators shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless the parties have already been informed of these circumstances.

Article VII . Grounds for Challenge

- a. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- b. A party may challenge an appointed arbitrator only for reasons of which it becomes aware after the appointment has been made.

Article VIII - Role of the Arbitrator

The role of the arbitrator is much like that of a judge in a court of law. Regardless of the type of arbitration:

- a. The arbitrator may conduct the arbitration proceedings in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the desires expressed by the parties, and the need for a speedy resolution of the dispute.
- b. The arbitrator will be guided by principles of objectivity, fairness, and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- c. The arbitrator shall refrain from having *ex parte* communication with the parties or their counsel regarding substantive matters.

Article IX . Authority of the Arbitrator

- a. The arbitrator has the authority to determine jurisdiction and the power to dismiss one or more claims in arbitration if the arbitrator determines that the arbitrator has no jurisdiction to hear such a claim or claims, that one or more claims are nonarbitrable, or that the party or parties against whom such a claim or claims are brought are improper parties.
- b. In a binding arbitration, after the evidentiary hearing, the arbitrator will render a binding written award. In a nonbinding arbitration, the arbitrator will render a post-hearing award that is advisory only and not binding on the parties. In baseball arbitration, after the evidentiary hearing, the arbitrator will be limited to choosing either the claimant's or the respondent's proposed award amount.

Article X . Discovery

- a. The arbitrator shall have discretion to permit the parties to take necessary discovery, consistent with the needs of the parties and with the needs of the particular case, with the goal of making discovery expeditious and cost-effective.
- b. The arbitrator shall have discretion to permit the parties to be guided by relevant state and federal discovery rules, or other appropriate discovery rules, in obtaining any necessary discovery in the case.
- c. The arbitrator shall have the authority to rule on any discovery motions or objections and to issue orders protecting the confidentiality of proprietary information, trade secrets, or other sensitive information that the parties may have to disclose in discovery.

Article XI . Preliminary Hearings and Prehearing Written Submissions

- a. Preliminary Hearing. Depending on the nature and complexity of the case, the arbitrator may schedule one or more preliminary hearings to discuss with the parties and their counsel some or all of the following topics prior to the evidentiary hearing:
- (1) Pleadings; pleading deadlines
 - (2) Particular rules and law governing the arbitral procedures in the case
 - (3) Arbitrability of all of the issues in the case
 - (4) Discovery
 - (5) Prehearing motions and briefing schedules
 - (6) Witness lists and hearing exhibits
 - (7) Observers and other attendees at evidentiary hearing
 - (8) Fact stipulations
 - (9) Sequestration of witnesses
 - (10) Burden and standard of proof
 - (11) Position statements and prehearing briefs
 - (12) Stenographer or court reporter
 - (13) Interpreter
 - (14) Special needs of sight, hearing, or otherwise physically impaired parties, witnesses, or counsel
 - (15) Hearing date, time, place
 - (16) Estimation of length of hearing
 - (17) Subpoenas
 - (18) Prohibition of *ex parte* communications
 - (19) Site inspections
 - (20) Audio-visual aids
 - (21) Experts
 - (22) Need for final oral arguments; post-hearing proposed findings of fact and conclusions of law
 - (23) Nature and form of award
 - (24) Need for additional preliminary hearings
- b. Prehearing Written Submissions. The arbitrator shall decide whether the parties shall be required to file prior to the evidentiary hearing, prehearing statements of position or prehearing briefs. The arbitrator shall decide what the nature and length of those prehearing written submissions shall be, and the arbitrator shall fix the dates for filing them.

Article XII . Date, Time and Place of Arbitration

- a. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by ADR, Inc., having regard to the circumstances of the arbitration.

- b. The arbitrator, in consultation with the parties and their counsel and representatives, shall set the date(s) and time(s) of the arbitration conference(s).

Article XIII . Arbitration Hearing Procedures

- a. General. The arbitrator shall ordinarily conduct the evidentiary hearing in the manner set forth in these Rules. The arbitrator may vary these procedures if the arbitrator determines that it is reasonable and appropriate to do so.
- b. Waiver of Oral Hearing. The parties may agree to waive oral hearing and submit the dispute to the arbitrator for an award based on written submissions and other evidence upon which the parties agree.
- c. Proceeding in Absence of Party. The arbitrator may proceed in the absence of a party who, after having executed an Arbitration Agreement and after having received reasonable notice of the hearing, fails to attend. The arbitrator may not render an award solely on the basis of the default or absence of the party, but shall require any party or parties who is/are present to submit such evidence as the arbitrator may require for the rendering of an award.
- d. Sequence of Hearing Events. The sequence of events in a two-party case at the arbitration hearing will normally be as follows:
 - (1) Arbitrator makes opening statement.
 - (2) Arbitrator handles any preliminary matters.
 - (3) Parties make respective opening statements.
 - (4) Swearing in of witnesses who are present.
 - (5) Claimant presents evidence of direct case. Respondent cross-examines each witness.
 - (6) Claimant rests direct case.
 - (7) Respondent presents evidence of direct case and counterclaim, if any. Claimant cross-examines each witness.
 - (8) Respondent rests direct case and counterclaim, if any.
 - (9) Claimant presents optional rebuttal evidence.
 - (10) Respondent presents surrebuttal evidence as arbitrator permits.
 - (11) Parties rest their cases.
 - (12) Claimant presents final argument.
 - (13) Respondent presents final argument.
 - (14) Claimant presents rebuttal argument.
 - (15) Respondent presents surrebuttal argument as permitted by the arbitrator.
- e. Witnesses Oath. Unless otherwise agreed by the parties, witnesses will testify under oath or affirmation.
- f. Evidence. The arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as he or she determines is appropriate.
 - (1) Strict conformity to rules of evidence is not required.

- (2) The arbitrator shall, at all times, apply the lawyer-client privilege and work product immunity principles. The arbitrator may apply other privileges and immunities as it deems appropriate to the circumstances.
 - (3) The arbitrator may receive and consider evidence of witnesses by affidavit, by deposition testimony recorded by transcript or videotape, or by other recording device, and the arbitrator will give that evidence only such weight as the arbitrator deems it is entitled to after considering any objection made to its admission.
 - (4) The arbitrator may permit a party or witness to testify by telephone or other mode of communication, as circumstances may require.
 - (5) The arbitrator may require the parties to present evidence in addition to that initially offered.
 - (6) With the agreement of the parties, including the agreement to pay for the services, the arbitrator may, if necessary to a proper determination of the dispute, appoint an expert whose testimony shall be subject to cross examination and rebuttal.
 - (7) The parties may not offer, and the arbitrator shall not consider, as evidence prior settlement offers by the parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated.
- g. Closing of Hearing. When the arbitrator determines that all relevant and material evidence and arguments have been presented, including post-hearing filings, the arbitrator will declare the hearing closed.
- h. Stenographer. Any party may request that a stenographic or other record be made of the hearing, provided that the requesting party makes arrangements for the stenographer and bears the cost of such stenographic record unless the parties agree to share the cost. If a stenographic or other record is made of the hearing, the requesting party or parties will provide a copy to the arbitrator at no cost to the arbitrator or ADR, Inc., and make a copy available to the other parties.

Article XIV . Confidentiality

Unless otherwise agreed by the parties or as required by law, and except in connection with a judicial review of an award, the parties and arbitrator shall treat as confidential the entirety of the arbitration process and proceedings, including any related discovery and decisions of the arbitrator.

Article XV . Post-Hearing Written Submission

The arbitrator shall decide whether the parties shall be required to file after the evidentiary hearing, post-hearing briefs and or findings of fact and conclusions of law. The arbitrator shall decide the nature and length of any such post-hearing written submissions, and the arbitrator shall fix the dates for filing them.

Article XVI . Award

- a. The award shall be in writing and shall be signed by a majority of the arbitrators. In the event of an even number of arbitrators on a panel, a tie vote will constitute a decision in favor of the respondent. A dissenting arbitrator may indicate a dissent in the award.
- b. The award will consist of a written statement regarding the disposition of each claim and the relief, if any, awarded as to each claim.
Unless otherwise agreed by the parties, in determining the award, the arbitrator will be guided by principles of law and equity as applied to the facts of the case. To prevail, a claimant has the burden to prove a claim or claims by a preponderance of the evidence.
- c. Unless otherwise agreed by the parties, the arbitrator is authorized to award any remedy permitted by applicable law, including compensatory and consequential damages, punitive damages, pre or post judgment interest and attorney fees and expenses, and final or interlocutory injunctive relief. The arbitrator has discretion to assess arbitration fees and expenses in favor of either party.
- d. No opinion or statement of reasons supporting the award shall be provided by the arbitrator, unless requested by either party.
- e. The arbitrator shall issue an award within thirty calendar days after the date that the arbitrator declares the hearing closed, unless for good and sufficient reasons additional time is required, in which case, the arbitrator will advise the parties and issue the award as soon as reasonably possible.
- f. At any time before the award is issued and for good cause, the arbitrator, on his or her own initiative or on the motion of a party, may reopen the hearing to allow additional evidence to be introduced in the record.
- g. In addition to the final award, an arbitrator may issue interim, interlocutory, and partial awards as the needs of the dispute require. These awards include, among other types, rulings or orders for the preservation of assets, preservation of evidence, the conservation of goods, or the sale of perishable goods. The arbitrator may require that security be deposited for the costs of such award.
- h. The parties may agree at any stage of the arbitration process to submit the case to ADR, Inc. for mediation. The ADR, Inc. mediator selected or assigned to the case will not be an arbitrator on the case unless the parties agree in writing.
- i. If the parties inform ADR, Inc. in writing that they have reached a settlement, the arbitration proceedings will be deemed terminated. If the parties request, the arbitrator will set forth the terms of the agreed settlement in an award which will be titled "Consent Award" and will be binding on the parties.

Article XVII . Motions to Modify or Correct Award and for Reconsideration

- a. Within fifteen days after the date of the award, either party may request the arbitrator to correct in an award any errors in computation, any clerical or typographical errors, or any errors of a similar nature. The arbitrator may make corrections on the basis of such motion, or on his or her own initiative, within thirty days after the date of the award, unless the time period is extended by the arbitrator.
- b. Motions for reconsideration of an arbitrator's decision in an award may be filed, within fifteen days after the date of the award, only if the arbitrator permits such motion to be filed for good cause. Good cause would include the issuance of a recent court opinion of a pertinent jurisdiction dispositive of the claim or case before the arbitrator, which court opinion was not known or available to the parties or the arbitrator at the time the parties submitted their post-hearing briefs.

Article XVIII . Expense

- a. The parties shall each be responsible for their own expenses and costs.
- b. In addition, unless the parties agree to some other proportion or division of responsibility, the parties shall be responsible to pay their pro-rata share of the following expenses of the arbitration proceedings:
 - (1) The fees of the ADR, Inc. arbitrator(s) to be stated separately as to each arbitrator and to be fixed by ADR, Inc. in accordance with Article XIX;
 - (2) The travel and other expenses incurred by the ADR, Inc. arbitrator(s);
 - (3) The costs of expert advice and of other assistance required by the ADR, Inc. arbitrator(s), as approved in advance by the parties;
 - (4) The travel and other expenses of other individuals to the extent such expenses are approved in advance by ADR, Inc. arbitrator(s) and the parties;
 - (5) Administrative fees and expenses of ADR, Inc.
- c. Parties shall separately make private arrangements with any party-appointed arbitrators for payment of their fees and expenses.

Article XIX . Arbitrator Fees

- a. ADR, Inc. arbitrators shall be paid an administrative fee and hourly fee plus expenses at rates or method of calculation which will be communicated to the parties by ADR, Inc. at the commencement of the arbitration proceedings.

Article XX . Deposit of Expenses and Arbitrator Fees

- a. ADR, Inc. may require each party to deposit an equal amount as an advance for the expenses and fees referred to in Rules at Article XVIII and XIX.
- b. During the course of the arbitration proceedings, ADR, Inc. may require supplementary deposits from the parties.
- c. If the required deposits are not paid in full within thirty days after the parties receipt of the request to make deposits, ADR, Inc. shall so inform the parties in order that one or another of them may make the required deposit. If such deposit is not made, ADR, Inc. may order the suspension or termination of the arbitration proceedings.
- d. After the arbitration proceedings have concluded, ADR, Inc. shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties or bill the parties for any balance due.