Rules for Experts

Waren-Verein der
Hamburger Börse e.V.

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Association of the Foreign and Wholesale Trade
in canned and deep frozen goods, dried fruit, edible nuts,
dehydrated vegetables, spices, seeds for baking,
organic products and similar products

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Part One

General Provisions

Section 1
Scope

These Rules are the Rules for Experts ("Verfahrensordnung für Sachverständige") which are foreseen by section 31 of the Conditions of Business of the Waren-Verein der Hamburger Börse e.V. (WVB). Within this scope the following provisions are to be applied in cases of dispute

— regarding kind and quality or the depreciation of commodities or

— regarding kind and quality of a sample or

— regarding the market price of commodities or

— regarding the weight deficiency, which according to past experience would have taken place during a voyage (section 35 para. 4 WVB).

Section 2
Functions of the Experts

A Committee of Experts shall decide on the questions propounded by the parties or one party by drawing up a written expert opinion.

Section 3
Composition of the Committee

(1) The Committee shall consist of at least two Experts, who are to be appointed by the parties or for the parties according to the provisions of sections 7, 10.

(2) A Third Expert shall participate if the other Experts do not reach a consensus of opinion or if at least one party when nominating the Expert or in the application to be directed to the Experts asks for such participation.

The Experts appointed according to para. 1 shall elect the Third Expert. If they cannot agree, the Third Expert shall be appointed according to section 5.

(3) As far as Experts are mentioned in the following provisions, in case of doubt this means the Experts appointed by the parties or for the parties and the Third Expert.

(4) Only proprietors, directors, managers, personally liable partners, authorized signatories or other executives of firms whose subject matter is the commerce with goods or the mediation or the closing of merchandise-contracts may be appointed as Experts.

(5) The following are excluded from the office of Expert without being challenged:

1. anyone who has been engaged as an Expert in the same case before his appointment,
2. anyone who has mediated in a transaction underlying the dispute or a coherent covering transaction or whoever belongs to an enterprise which mediated in one of these transactions, or at least temporarily belonged to that enterprise since mediation in the respective transaction,
3. anyone who is married to or has been married to a party or to the legal representative of a party,
4. anyone who is, in the sense of section 41 of the German Code of Civil Procedure (Zivilprozeßordnung [ZPO]),

related to, an in-law of, or bound by adoption to a party or to the legal representative of a party.

(6) Companies or legal entities cannot be Experts.

Section 4
Voting

The Committee of Experts shall decide by majority of votes after joint deliberation.

Section 5
Chairman of the Association. Functions

(1) The Chairman of the Association shall appoint

1. the Expert for dilatory parties (sections 7, 10),
2. the Third Expert if the other Experts cannot agree (section 3 para. 2, section 10).

(2) Another member of the Board of the Association is authorized to act instead of the Chairman. The Chairman and the other members of the Board of the Association shall be called by the office according to the rules of procedure to be adopted by the Board of the Association.

Section 6
Board of the Association. Functions

The Board of the Association shall decide upon challenging motions which are brought in because of fear of prejudice (section 9).

Section 7
Constitution of the Committee

(1) Each party shall appoint one Expert. The applicant shall notify the respondent of its Expert with the request that the respondent also nominates an Expert within a specified time. Such period of time must be at least four business days, if one party or both are resident outside Europe, the Mediterranean countries or the Black Sea countries; otherwise the period shall be at least three business days. If the time specified by the applicant is too short, the corresponding minimum time prescribed in the foregoing sentence is deemed to be specified. If the respondent does not nominate its Expert within sufficient time, the Chairman of the Association shall on the written suit of the applicant appoint an Expert for the respondent; this suit shall be filed to the office of the Association.

(2) A person who does not fulfil the requirements of section 3 para. 4 or who is excluded from the office of Expert according to section 3 para. 5 shall be regarded as not having been nominated.

Section 8
Conjoined Valuation ("Durcharbitrage")

(1) If a party asserts that it has a right of recourse against a third party in case of being defeated, the Experts at that party's application shall conjointly give their opinion binding on all parties, provided that section 31 WVB applies also for the relationship between the applicant and the third party.

(2) In this case the Committee of Experts shall be constituted in such a way that the applicant cedes the power of appointment to the third party. section 7 is analogously applicable to the third party.

(3) The third party having been invited to intervene is likewise entitled to the right of application according to para. 1. This provision shall be applied analogously to further third parties.

(4) The applicant may preserve the right to a conjoined valuation by first calling upon the third party to nominate to it an Expert within a specified time. section 7 para. 1 sentence 3 and 4 shall be applied analogously. The period of time will be extended to 14 business days if within three business days after receipt of the request the third party declares to the applicant that it intends to involve a further party in the valuation; if the kind and quality of dried fruits or shell fruits is to be ascertained, the period of time will only be extended to seven business days. - The respondent shall nominate to the applicant the Expert appointed by the third party according to section 7 para. 1.

(5) The respondent may preserve the right to a conjoined valuation by passing on the declaration received from the applicant according to section 7 para. 1 to the third party on the third business day after receipt at the latest, with the request to nominate its Expert to him within a specified time, and - if applicable - by nominating to the applicant according to section 7 para. 1 the Expert nominated to him in time by the third party. The period of time fixed for the respondent according to section 7 para. 1 will be extended to 14 business days if within three business days after receipt of the request the respondent declares to the applicant that he intends to involve a third party in the valuation; if the kind and quality of dried fruits or shell fruits is to be ascertained, the period of time will only be extended to seven business days.

Section 9
Challenge of an Expert

An Expert may be challenged because of fear of prejudice if there is a reason which might justify suspicion against his impartiality. Both parties are in any case entitled to the right of challenge. The challenging petition is to be addressed without delay to the Board of the Association. The Board shall decide according to section 6 after having heard the participating parties and persons.

Section 10
Lapse of an Expert

If an Expert deceases or refuses to assume or to exercise his office or if he is prevented from exercising this office or improperly delays in performing his duties or if he has been challenged successfully or if he ceases by another reason, the following shall be applied:

1. If the Expert had been appointed by a party, this party shall nominate another Expert. To this effect the adverse party may fix to it a time limit pursuant to section 7 para. 1. After fruitless expiry of this period the Expert shall upon application be appointed by the Chairman of the Association.
2. If the Expert had been appointed for a party by the Chairman of the Association according to sections 7 para. 1, 10 no. 1, the Chairman of the Association shall upon an application appoint another Expert.
3. If a Third Expert is concerned, the other Experts shall elect a new Third Expert without waiting for an application of the parties.

Section 11
Application for an Expert Opinion

(1) The application for an Expert Opinion shall be in writing and shall be sent directly to the Experts. It shall contain a precise statement of the questions which are to be answered by the Experts.

(2) The application shall in any case be signed by the applicant. The respondent may join the application by jointly signing the written application and he may supplement the application by adding further questions to the written application.

(3) Every applying party must advise its opponent of the essential content of the written application in due time, so that the opponent is enabled to put own questions to the Experts

before they give their Opinion. This notification is dispensable if the opponent did not nominate an Expert within a time limit which had been fixed to him according to sections 7, 8, 10.

(4) Any persons who have already been engaged as Experts in the same case may be named in the written application.

Section 12
Rule of Prompt Settlement

If possible the application shall be settled by the Experts within three business days after arrival.

Section 13
Formalities and Contents of the Opinion

(1) The Opinion must be signed by all Experts and must contain the date of composition. One original of the Opinion is to be given to each party.

(2) The Opinion shall contain verifiable reasons. Insofar as the Experts estimate a quantity, a value or a price, the factual basis of the estimate and the evaluation of these basic facts shall be specified in the Opinion.

Section 14
Amendment and Rectification of the Opinion

The Opinion can no longer be modified after it has been distributed even to only one party. At the most it may be amended or rectified according to sections 319, 320 and 321 German Code of Civil Procedure (Zivilprozeßordnung [ZPO]).

Section 15
Duties of the Experts. Liability

(1) The Experts shall give the Opinion by acting impartially, to the best of their knowledge and belief and with the exercise of proper care. Furthermore they shall co-operate in amending or rectifying the Opinion if admissible (section 14).

(2) The Experts are liable to the parties and to the third parties involved in the procedure according to section 8 for possible faults of the written Opinion or of the other procedure, however, only in case of gross guilt (intent or gross negligence); they are jointly and severally liable. Insofar as there is no intent, this liability of the Experts is limited to the amount of all their costs, expenses included. If more than one party - including third parties who had been involved in the procedure - suffered damage, then these creditors shall participate in the object of performance of each Expert proportionally to their total claim.

(3) If by any cause in law the Association or its executive organs or its servants should be responsible to a party or a third party for any damage,

this liability shall be limited

— basically to cases of gross guilt and

— to a total amount of 15,339.-- Euro for all liable persons together.

Part Two

Special Provisions Referring to the Ascertainment of Kind and Quality or the Depreciation of Commodities or a Sample

(Quality Arbitration)

Section 16
Application for Quality Arbitration

(1) An application for Quality Arbitration shall comply with the requirements provided in section 11. Furthermore the applicant shall substantiate in the written application which defects are complained of and are to be ascertained by the Experts.

(2) It is advisable that the application should furthermore contain

— details of the goods to be inspected according to kind, type, nature and quantity; where appropriate further distinguishing features (marks, brands etc.) are to be specified,

— details of the place where the goods are stored or if applicable of the vessel from which they are to be discharged,

— a statement as to whether the Experts are to inspect the goods in whole or whether the Experts are to give their Opinion on the basis of samples,

— a statement of how the goods to be delivered were designated in the contract of sale.

Section 17
Further Procedure. Third Expert

(1) If both parties apply for the examination of the goods in whole or for giving the Opinion on the basis of samples, then the Experts shall proceed accordingly. If the parties differ on this matter, the Experts shall decide which procedure is to be followed in giving the Opinion. In case the Experts decide on giving the Opinion on the basis of samples, then they shall determine by whom and otherwise in what way the samples are to be drawn. If both parties apply for the Opinion to be given on the basis of a sample which they had submitted, then the Experts shall proceed accordingly.

(2) If the Opinion is to be given on the basis of an inspection of the goods in whole and the Experts who had been appointed by the parties or for the parties have already inspected the goods, they can determine whether the Third Expert called in subsequently for his part shall inspect the goods in whole alone or jointly with them or whether the Third Expert may desist from inspecting the goods in whole and the three Experts shall give their Opinion on the basis of samples drawn in connection with the previous inspection of the goods in whole by the Experts who had been engaged therein. If the Experts who had been appointed by the parties or for the parties disagree in these questions of procedure, then the three Experts shall jointly inspect the goods in whole and give their Opinion on this basis.

Section 18
Contents of the Opinion

(1) The contents of the Opinion shall comply with the requirements provided in section 13 para. 2.

(2) If the Experts come to the Opinion that the depreciation exceeds 10 % of the market price prevailing on the day of the composition of the Opinion, they shall state in their Opinion the market price prevailing on the said day even without this having been expressly applied for.

Part Three

Costs

Section 19
Fees of the Association

The Association may charge 150.-- Euro as a fee for the appointment of an Expert. A suitable lump sum shall be charged in respect of postage, value added tax and other disbursements. The Association may determine that its cooperation depends upon prepayment of these costs.

Section 20
Fees of the Experts in Quality Arbitration

(1) In the case that the Opinion has been given regarding goods, the fees for each Expert shall be as follows:

— If the Expert has inspected the goods in whole: 3/8 % of the value, but at least 500.-- Euro and at most 1.000.-- Euro, resp. for dried fruits, shell fruits and seeds at least 250.-- Euro and at most 500.-- Euro .

  The calculation of the fee is to be based on the value of the goods in the condition in which they are submitted for inspection. If however, the goods are damaged and it is necessary to ascertain the value in an undamaged state, such value shall be decisive. In the case of goods damaged to an extraordinary extent, the value shall be set at least at 50 % of the basic value.

— If the Expert has given his Opinion on samples of the goods: one half of the aforementioned rates, but at least 300.-- Euro and at most 600.-- Euro, resp. for dried fruits,

shell fruits and seeds at least 150.-- Euro and at most 300.-- Euro.

(2) If an Opinion has been given regarding kind and quality of a sample, each Expert shall receive a fee amounting to at least 150.-- Euro and at most 300.-- Euro, resp. for dried fruits, shell fruits and seeds at most 250.-- Euro.

Section 21
Fees of the Experts for Ascertainments of Prices

In case of ascertainments of prices, the fees for each Expert shall amount to 3/8 % of the value, but at least 250.-- Euro and at most 500-- Euro, resp. for dried fruits, shell fruits and seeds at least 200.-- Euro and at most 500.-- Euro.

Section 22
Raising of the Regular Fees

If the matter demands an above average expenditure of time or labour, the Experts may raise the fees to a maximum of three times the standard fees (sections 20, 21).

Section 23
Expenses of the Experts

If for the purpose of discharging their duties the Experts incur expenses which they may for reasonable grounds consider to be necessary, they shall have a claim to reimbursement. Especially expenses caused by consulting a commercial chemist shall be refunded, insofar as such consultation is reasonable under the circumstances. In case of doubt the commissioning of a commercial chemist is not to be considered as necessary for measurements and other determinations which ordinary commercial undertakings belonging to the trade usually effect by their own instruments

and personnel in the normal course of business. The Committee of Experts may charge a suitable lump sum as clerical fees. Travel expenses shall not be refunded, insofar as the Experts move within the town of their activities.

Section 24
Value Added Tax

The Association and the Experts are entitled to claim from the applicant reimbursement of the value added tax to be paid for their services.

Section 25
Apportionment of Costs

Regarding their fees and expenses the Association and the Experts can only hold the applicant responsible. As between the parties the unsuccessful party shall pay the costs. The Arbitral Tribunal is competent to decide which party according to this shall reimburse costs to another party; the Arbitral Tribunal is likewise competent to determine the amount of the costs to be reimbursed.

Section 26
Arbitration Clause

Any dispute between the Experts and the parties regarding the amount of the payable fees or regarding the expenses to be refunded shall be decided by the Arbitral Tribunal of the Association.