



ARBITRATION ARRANGED BY THE CHARTERED INSTITUTE OF ARBITRATORS - IRISH BRANCH ON BEHALF OF THE SIMI

Administered under the Rules of the Chartered Institute of Arbitrators - Irish Branch

GUIDANCE NOTES

DEFINITIONS

Arbitration is a private dispute resolution procedure and is a legally binding means of resolving disputes. An Arbitration Agreement is an agreement to refer a dispute to arbitration, usually in the form of an Arbitration clause as included in the Contract entered into by the Parties. A submission to arbitration is called a Reference and the decision of an arbitrator is an Award.

APPOINTMENT OF AN ARBITRATOR

Where a dispute arises between the Parties attempts shall first be made by the Parties to settle the dispute.

If the dispute cannot be settled either party may then, and only then, should the Claimant apply in writing directly to the Institute at Merchants House, 27-30 Merchant's Quay, Dublin 8, for a "Request for Appointment of Arbitrator" form, SIMI S1.

This form requires the Claimant to insert the full names and addresses of the Parties involved, to express a preference as to he/she wishes the Arbitration is to be conducted i.e. by way of written submission only or by way of written submission plus Oral Hearing. The Claimant must also state whether he/she feels a vehicle inspection is desirable and must state the amount of the claim.

When completed, the form should be returned to the Institute accompanied by a copy of the Contract containing the Arbitration Clause, a brief statement of the nature and circumstances of the dispute and an administration fee of **€130.00 + 21% VAT i.e. €157.30**. The Form refers to the Institute's Arbitration Rules; a copy of these Rules, adopted for use in motor industry related arbitrations, together with an abridged copy of the Institute's Arbitration Guidelines, can be supplied to both Parties and is available on the SIMI website at www.simi.ie.

Once the claimant has returned the completed form accompanied by the relevant documentation the Institute will write to inform the Respondent who has 21 days to lodge the Arbitrator's agreed maximum fee of €1,300.00 plus 21% VAT i.e. €1,573.00. The Arbitrator's fee is paid over by the Institute and consists of €650.00 for a documents only arbitration with a further €250.00 in the event of inspection of the vehicle and €400 if there is an oral hearing. These figures are paid plus VAT if the Arbitrator provides a VAT invoice and any balance remaining is returned to the Respondent at the end of the reference.

If the Arbitrator's fee is not lodged by the Respondent within twenty-one days (or any short extension as may be allowed) the Claimant will be invited to pay the Arbitrators fees so that the arbitration may proceed. If the Claimant is unwilling to pay the Arbitrator's fees in advance the Claimant will be invited to consider the advisability of court proceedings.

PROCEDURE

Once an Arbitrator has been appointed he/she is in complete charge of the Reference and may decide upon the procedure as he/she considers best in the circumstances. The Institute's Rules deliberately give the Arbitrator this flexibility.

HEARING

Where the sum in dispute is small or the claim relates to quantum only a 'written submissions only' Reference should be considered. The additional cost of an oral hearing is saved. In such cases the Arbitrator will make his/her Award based on the documentary evidence sent to him by the Parties.

It is, however, open to both Parties to present their case to the Arbitrator at an oral hearing should they so wish.

AWARD

The Arbitrator's decision is made formally in his/her Award which is sent to both Parties. The Award is a final and binding resolution of the dispute.

Before initiating an arbitration, the Claimant ought to carefully consider the strength of his/her claim. Should the Arbitrator ultimately make no monetary Award to the Claimant, or should the Claimant have rejected an offer of settlement by the Respondent that exceeds the arbitrator's Award, the Claimant would ordinarily have to pay for the costs of the Arbitration and the Respondent's Costs.

THE ARBITRAL PROCESS

Arbitration is an alternative method of determining disputes according to the law and the principles of natural justice.

The main statute law in Ireland applicable to commercial arbitration is:

- Arbitration Act 1954.
- Arbitration Act 1980.
- Arbitration (International Commercial) Act, 1998.

ADVANTAGES OF ARBITRATION:

- Privacy
The proceedings are private.
- Speed and Economy
With the co-operation of the Parties and the adoption of the most suitable procedure for a dispute, the arbitral process can be expeditious and less expensive than Court action.
- Finality of Award
The Arbitrator's Award is final and binding on the Parties.

REPRESENTATION OF PARTIES

It is not essential for the Parties to be legally represented in an Arbitration. A Party may represent itself or it may be desirable to appoint legal representation in certain cases.

PROCEDURES

There is no necessity to follow Court procedures in an Arbitration. The procedures for Arbitration under the SIMI Scheme are set out in the Arbitration Rules for use under this scheme.

TYPE OF ARBITRATION

It is in the interest of the Parties to reduce the length and, therefore, the cost of the Arbitration, partly by proper preparation of documents and partly by agreeing as much as possible in advance. In this respect, the following alternative methods of presenting evidence may be used:

- **Documents Only**

Written Submissions only (including statements of the arguments for each Party) without an Oral Hearing. This may be appropriate where the matters in dispute are entirely or mostly ones of legal interpretation or where there is little or no conflict of evidence as to facts and the disputes are concerned with opinions or amounts.

- **Oral Hearing**

Formal hearings would generally follow the same procedures as in a Court hearing in that the Claimant may give a short summary of its claim and call its witnesses to give evidence. These witnesses will be subject to cross-examination by the Respondent. Following the presentation of the Claimant's case the Respondent will call its witnesses who will give evidence and be cross-examined by the Claimant. Closing statements may be called for by the Arbitrator.

- **Vehicle inspection**

The Parties may ask the Arbitrator to inspect the vehicle. Alternatively, they may retain an expert to examine the vehicle and present a Report to the Arbitrator.

SETTLEMENT

At any time prior to the making of the Award, the parties may settle their dispute by agreement on whatever terms they wish.

It is advisable that the Arbitrator be asked to make an Award incorporating the agreed terms so that the agreement can easily be enforced by the Courts if necessary.

THE AWARD

As soon as possible after all documentation has been exchanged, or at the conclusion of the Hearing, the Arbitrator will issue his/her Award in writing. The Award will normally be a short document, stating in effect which party or parties is/are to pay what damages and costs.

An Award is said to be 'published' when it has been signed and dated by the Arbitrator.

An Arbitrator's Award may be enforced through the Courts if necessary.

SETTLEMENT OFFERS

It is open to the Respondent to make a settlement offer at any stage in an effort to provide protection against having to pay Costs. Such a written offer of settlement should be marked "*without prejudice save as to costs*" and should not be revealed to the Arbitrator until he/she is dealing with Costs at the end of the reference after dealing with the substantive issues.

The Arbitrator, when dealing with Costs, will consider any settlement offer and establish the date and amount of the offer. In the event the offer equals or exceeds the amount of the Award, the Arbitrator will normally award the Costs incurred after the date of the offer against the Party who rejected the offer. Any such letter of offer should state that it will be put before the Arbitrator when he/she is dealing with Costs and contain an explanation of the possible effect of the offer.

EARLY DISCLOSURE

It must be emphasised that for quick and economic arbitration it is essential that the Parties be prepared to disclose all available information and documents from the beginning of the dispute. Such disclosure can sometimes eliminate and reduce the magnitude of the dispute or at least clarify the subject matter at an early stage.

Adopted by the Committee of the Irish Branch CI Arb on 19 September 2007

ARBITRATION RULES

FOR USE IN DISPUTES CONNECTED WITH THE MOTOR INDUSTRY

RULE 1 APPLICABILITY

Where any agreement, submission or reference provides for arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators (Irish Branch) "the Branch", the arbitration shall be conducted in accordance with the following rules.

RULE 2 REQUEST FOR APPOINTMENT OF ARBITRATOR

Where a request for the appointment of an Arbitrator is made to the Branch, the Request for Appointment Form should be completed and sent to the Chartered Institute of Arbitrators (Irish Branch), Merchants House, 27-30 Merchant's Quay, Dublin 8.

RULE 3 SELECTION OF ARBITRATOR

On accepting a Request for Appointment of Arbitrator the Chairman or, in his absence, the Vice-Chairman shall appoint an Arbitrator to determine the dispute and shall advise the parties.

RULE 4 NUMBER OF ARBITRATORS

The appointment shall be of a single arbitrator.

RULE 5 REPLACEMENT OF ARBITRATOR

If, after appointment, any arbitrator dies, refuses, fails or, in the opinion of the Chairman becomes unable or unfit to act, the Chairman shall, upon request, appoint another Arbitrator in his/her place.

RULE 6 COMMUNICATIONS

6.1 Where a party sends out any communication (including any notice or Statement under these Rules to the Arbitrator), it shall send copies to the other party at the same time and shall confirm to the Arbitrator that it has done so.

6.2 The Arbitrator shall likewise copy any communication to a party to the other party at the same time.

6.3 For the purpose of all communications during the proceedings, the address of a party shall be that set out in the Request for Appointment of Arbitrator unless otherwise notified to the Arbitrator.

6.4 Any notice or communication shall be deemed to have been properly delivered if dispatched by post, telex, facsimile transmission or by hand to the address of the party concerned.

6.5 The Arbitrator may, where appropriate, upon the application of either party, order substituted service of any communication in such form as the Arbitrator thinks fit.

RULE 7 JURISDICTION

The Arbitrator shall have the jurisdiction and the powers to direct the procedure in the Arbitration necessary to ensure the just, expeditious, economical and final determination of the dispute.

RULE 8 PROCEDURE

In the absence of any other directions, the Procedure of the Arbitration shall be that set out in the following Rules.

RULE 9 DIRECTIONS

Directions from the Arbitrator to the parties shall be in writing or, if given orally, shall be confirmed in writing by the Arbitrator.

RULE 10 ORDERS

If the parties themselves agree upon any procedural matters, they shall seek the approval of the Arbitrator to them.

RULE 11 OBJECTIONS

Any application to the Arbitrator shall be in writing. On receiving a copy of such application any party may, within seven days thereof, make an objection in writing to the Arbitrator, with a copy to the other party (See Rule 6.1). On receipt of any such application or objection the Arbitrator may give such Directions as appear to him/her appropriate with or without hearing the parties.

RULE 12 ADJOURNMENTS

The Arbitrator may adjourn a meeting or hearing for such a period as he may deem appropriate, if the party appears represented by a legal or professional representative without proper notice having been given to the other party, or for such other reason as he may deem sufficient.

RULE 13 STATEMENT OF CLAIM DEFENCE AND REPLY

13.1 The party who requested the arbitration ("the Claimant") shall send to the Arbitrator a Statement of Claim setting out in sufficient detail the facts, contentions of law on which it relies, and the relief it claims.

13.2 The other party ("the Respondent") shall send to the Arbitrator a Statement of Defence stating in a sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds and on what other facts and contentions of law it relies. If it has a counterclaim, this shall be set out in the Statement of Defence, as a Statement of Claim.

13.3 After receipt of the Statement of Defence, the Claimant may send the Arbitrator a Statement of Reply.

13.4 Where there is a counterclaim the Claimant shall send the Arbitrator a Statement of Defence to the counterclaim, to which the Respondent may make a Statement of Reply.

13.5 All Statements of Claim, Defence and Reply shall be accompanied by copies of the essential documents on which the party concerned relies.

13.6 The Arbitrator shall determine the time limits within which the Statement of Claim, Defence and Reply are to be submitted.

RULE 14 MEETINGS AND HEARINGS

14.1 The Arbitrator shall fix the date, time and place of any Hearing.

14.2 Alternatively, the Arbitrator may determine the dispute on the documents submitted to him by the parties, without any Hearing.

RULE 15 THE AWARD

The Arbitrator shall make his/her Award in writing as soon as practicable after the conclusion of the exchange of documentation or Oral Hearing. An arbitrator may publish two Awards; one related to the substantive issues and one related to Costs.

RULE 16 SETTLEMENTS

If, before the publication of the Arbitrator's Award, the parties arrive at a settlement of their disputes, they shall immediately notify the Arbitrator in writing.

RULE 17 COSTS

- 17.1 The parties shall be jointly and severally liable to the Arbitrator for his/her costs until they are paid.
- 17.2 The Arbitrator shall have full power and discretion to tax and settle costs of the arbitration and, where appropriate, his/her own costs and to determine which party shall pay such costs.
- 17.3 If the Arbitrator has determined that all or any costs shall be paid by any party other than the party which has already paid them, that party shall have the right to recover the appropriate amount from the party liable.

RULE 18 EXCLUSION OF LIABILITY

The Arbitrator and the Branch shall not be liable to any party for any act or omission or negligence in connection with any Arbitration conducted under these Rules.

Adopted by the Committee of the Irish Branch CI Arb on 19 September 2007