

CAI
Cotton Association of India

**Rules
of
Conciliation**

COTTON ASSOCIATION OF INDIA

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C o n t e n t s

RULES OF CONCILIATION

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Rules of Conciliation

CAI CONCILIATION CLAUSE

All parties desirous of making reference to conciliation by Cotton Association of India, should include following conciliation clause in writing in their contracts:

“Any dispute or difference whatsoever arising between the parties out of this contract shall be settled by conciliation in accordance with the By-laws and Rules of Conciliation of Cotton Association of India and the settlement reached made in pursuance thereof shall be binding on the parties.”

PRELIMINARY

Short title and scope

1. (1) These rules may be called Rules of Conciliation.
- (2) These rules shall apply where the parties have agreed in writing, that –
 - (a) a dispute which has arisen, or
 - (b) a dispute which may arise,
between them in respect of a defined legal relationship, whether contractual or not, should be resolved by amicable settlement under CAI Rules of Conciliation.
- (3) These rules shall not apply to disputes which by virtue of any law for the time being in force may not be submitted to conciliation.

Definitions

2. In these rules, unless the context otherwise requires,-
 - (a) “Chairman” means the Chairman of CAI & Vice-Chairman means Vice-Chairman of CAI ;
 - (b) “Rules of Conciliation” or “rules” means CAI Rules of Conciliation;
 - (c) “Board” means the Board of CAI
 - (d) “CAI” means Cotton Association of India, Mumbai;
 - (e) “Panel” or “Panel of conciliators” means the panel of persons approved by the Board to act as conciliators;
 - (f) “Party” means a party to the agreement referred to in rule 1(2);
 - (g) “Schedule” means the Schedule to these rules.

PART I

PROCEDURES FOR CONCILIATION PROCEEDINGS IN CAI

Commencement of conciliation proceedings

3. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under these rules, briefly identifying the subject of the dispute with regard to quality under CAI By-law 36(2) or other than quality.
- (2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
- (3) If the other party rejects the invitation, there will be no conciliation proceedings.

- (4) If the party initiating conciliation does not receive a reply within fifteen days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

Number and appointment of Conciliators

4. (1) There shall be one conciliator unless the parties have agreed that there shall be two or three conciliators.
 - (2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.
 - (3) In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator from the panel.
 - (4) In conciliation proceedings with two conciliators, each party may appoint one conciliator from the panel.
 - (5) In conciliation proceedings with three conciliators, each party may appoint one conciliator from the panel and the parties may agree on the name of the third conciliator also from the panel who shall act as the presiding conciliator.
 - (6) The parties may agree to enlist the assistance of CAI in connection with the appointment of conciliator from the panel, and in particular :-
 - (a) a party may request CAI to recommend the names of suitable individuals from the panel to act as conciliator;
or
 - (b) where the agreement between the parties provides for the appointment of conciliator by CAI, a party may request CAI in writing to appoint a conciliator from the panel.
 - (7) Where a request in pursuance of clause (a) or clause (b) of sub-rule (6) is made to CAI, the party making the request shall send to CAI-
 - (a) a copy of the invitation to conciliate;
 - (b) a copy of the acceptance by the other party;
 - (c) a copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by conciliation;
 - (d) any additional information, if required, by CAI.
 - (8) In recommending or appointing an individual to act as conciliator, CAI will follow the procedure specified in rule 25 and will have regard to -
 - (a) any qualifications required of the conciliator by the agreement of the parties;
 - (b) such considerations as are likely to secure the appointment of an independent and impartial conciliator.
 - (9) A successor conciliator will be appointed in the manner in which his predecessor had been appointed.

Explanation : In this, Rule and all the following Rules of this part, the term 'conciliator' applies to a sole conciliator, two or three conciliators as the case may be.

Submission of statements to conciliator

5. (1) The conciliator upon his appointment, may request each party to submit to him through CAI within seven days, a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim. Each party shall send a copy of such statement to the other party simultaneously.
- (2) The conciliator may request each party to submit to him through CAI a further statement in writing of his position and the facts and grounds in support thereof supplemented by any documents, samples and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents, samples and other evidence to the other party.
- (3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him through CAI such additional information as he deems appropriate.

Representation and assistance

6. Each party shall advise, in writing, the other party and the conciliator of -
 - (a) the name and address of any person duly authorised who will represent or assist him, and
 - (b) the capacity in which that person will represent.

Role of conciliator

7. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The conciliator shall 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 disputes, including any previous business practices between the parties.
- (3) The conciliator may conduct the conciliation proceedings in such manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.
- (5) The conciliator shall not be bound by the 'Code of Civil Procedure, 1908' as amended or the Indian Evidence Act, 1872 as amended.

Administrative services

8. CAI will arrange the administrative services specified in Part II.

Communication between conciliator and parties

9. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- (2) The place or venue of conciliation shall be at Association's Cotton Green premises, Mumbai 400 033 or such place in Mumbai as may be determined by the conciliator in consultation with CAI, taking into consideration the convenience of all concerned. The decision of the conciliator in this regard will be final and binding on both the parties.

Disclosure of information

10. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate.

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

Cooperation of parties with conciliator

11. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Suggestions by parties for settlement of dispute

12. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator within 15 days or such other time as may be decided by the conciliator but not exceeding further 7 days, suggestions for the settlement of the dispute.

Settlement agreement

- 13 (1) When it appears to the conciliator that there exist elements of a settlement, which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties within 15 days for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement within 7 days. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.
- (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.
- (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties and to CAI.

Status and effect of settlement agreement

14. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under Section 30 of the Arbitration and Conciliation Act, 1996.

Confidentiality

15. The conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement.

Termination of conciliation proceedings

16. (1) The conciliation proceedings shall be terminated-
- (a) by the signing of the settlement agreement by the parties on the date of agreement; or

- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
 - (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated on the date of the declaration; or
 - (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
- (2) The conciliator shall, upon termination of the conciliation proceedings, send intimation thereof in writing to CAI.

Resort to arbitral or judicial proceedings

17. The parties shall not initiate during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs

18. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The fee of the conciliator and any assistance provided pursuant to rule 4(6)(b) and fee and charges for any administrative assistance pursuant to rule 8 shall be fixed by the conciliator in accordance with the Schedule.

Provided that the CAI may, on request from the conciliator, fix the fee of the conciliator at a figure higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.

- (2) For the purpose of sub-rule(1). "costs" means costs relating to -
- (a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;
 - (b) any expert advice requested by the conciliator with the consent of the parties;
 - (c) any assistance provided pursuant to rule 4(6) and rule 8;
 - (d) any other expense incurred in connection with the conciliation proceedings and the settlement agreement.
- (3) Where more than one conciliator is appointed, each conciliator shall be paid separately the fee set out in the Schedule.
- (4) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits

19. (1) Secretary CAI will advise each party to deposit with CAI an equal amount as an advance for the costs referred to in rule 18(2), which he expects will be incurred.
- (2) During the course of the conciliation proceedings, the conciliator may, in consultation with CAI direct supplementary deposits with CAI in an equal amount from each party for the costs referred to in sub-rule (1).

- (3) If the required deposits under sub-rules (1) and (2) are not made in full within seven days, the conciliator will inform the parties in order that one or the other party may make the required deposit and if the required deposit is not made, the conciliator may suspend the proceedings, or may make a written declaration of termination of the proceedings to the parties, effective on the date of the declaration.
- (4) Subject to any settlement agreement, upon termination of the conciliation proceedings, CAI shall apply the deposits to the costs of the proceedings, render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties.

Role of conciliator in other proceedings

20. Unless otherwise agreed by the parties -
 - (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is subject-matter of the conciliation proceedings.
 - (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Admissibility of evidence in other proceedings

21. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute, that is, the subject-matter of the conciliation proceedings -
 - (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
 - (b) admissions made by the other party in the course of conciliation proceedings;
 - (c) proposals made by the conciliator;
 - (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

Interpretation and application

22. If any question arises as to the interpretation or application of these rules or any procedural matters thereunder, the decision of the Board shall be final and binding on the parties.

PART II

SERVICES FOR PROCEDURES UNDER THE RULES OF CONCILIATION

Services for conciliation

23. To facilitate the conduct of conciliation proceedings that the parties have agreed to conduct under the Rules of Conciliation, CAI will -
 - (a) perform the functions of the appointing authority whenever
 - (i) CAI has been so designated by the parties in conciliation clause of their contract or in a separate agreement, or
 - (ii) the parties have agreed to submit a dispute to CAI under the rules of Conciliation without specifically designating it as the appointing authority; and
 - (b) provide the administrative services herein specified when required by the agreement, or when requested by all the parties, or by the conciliator with the consent of the parties.

Services as the Secretariat

24. (1) On receiving a request in pursuance of rule 4(6)(a) or 4(6)(b), CAI will register the request and intimate in writing to the parties the registration number of the case which shall be quoted by the party while making any subsequent communication to CAI.
- (2) CAI will scrutinise every request and the documents, make necessary entries in the register and prepare a file of the case.

Services as recommending or appointing authority

25. (1) On receipt of a request in pursuance of rule 4(6)(a), CAI will communicate to the party making the request a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators.
- (2) On receipt of a request to appoint a conciliator in pursuance of rule 4(6)(b), CAI will follow the following procedure-
 - (i) CAI will communicate to each party a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of conciliators.
 - (ii) within five working days following the receipt of the list, a party may select any name and after renumbering the name in the order of his preference, return the list to CAI.
 - (iii) on receipt of the list returned by the parties, CAI will appoint the conciliator from the list taking into account the order of preference indicated by the parties.
 - (iv) if for any reason the appointment cannot be made according to the procedure specified in clauses (i) to (iii), CAI may, unless the parties recommend the name of the conciliator to be appointed by CAI, appoint the conciliator from the panel of conciliators.
- (3) In recommending or appointing a conciliator, CAI will have regard to the matters referred to in rule 4(8) and will carefully consider the nature of the dispute in order to include in the list, persons having appropriate profession or business experience, language ability and nationality.
- (4) All appointments on behalf of CAI will be made by the Chairman/Vice-Chairman or any Committee appointed by the Board for this purpose.

Administrative services

26. (1) CAI may provide the administrative services specified in this Part -
 - (a) upon the request of the parties
 - (b) upon the request of the conciliator with the consent of the parties; or
 - (c) if the parties designate CAI for providing such services.
- (2) All oral or written communications from a party to the conciliator, except at meetings, may be directed to CAI which will transmit them to the conciliator and where appropriate, to the other party.
- (3) Agreement by the parties that CAI will provide the administrative services, constitutes consent by the parties that, for the purpose of compliance with any time requirements of the rules, any written

communications shall be deemed to have been received by the addressee when received by CAI. When transmitting communications to a party, CAI will do so to the addresses provided by each of them to CAI for this purpose.

- (4) CAI will also assist in the exchange of information and of settlement proposals.
- (5) CAI will assist the conciliator to establish the date, time and place of meetings and will give the parties advance notice of such meetings.
- (6) CAI will provide a meeting room for the conciliator and the parties or their counsel in the offices of CAI on the charges set out in the Schedule. However, where these facilities are provided in any place other than the offices of CAI, the charges will be determined by CAI and billed separately in each case.
- (7) Upon request, CAI will make arrangements for reporter transcript of meetings or hearings.
- (8) Upon request, CAI will make arrangements for the services of interpreters or translators. The cost of interpretation or translation will be determined by CAI and billed separately and is not included in the fee for administrative services.
- (9)
 - (a) CAI will hold advance deposits to be made towards the costs of conciliation proceedings.
 - (b) On termination of the conciliation proceedings, CAI will apply the proceeds of the advance deposits towards any of its unpaid administrative fee and charges and the costs of the conciliation proceedings and will render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties.
- (10)
 - (a) Upon request, CAI will provide other appropriate administrative services the cost of which will be determined by CAI and billed separately and are not included in the fee for administrative services.
 - (b) The kinds of services which can be provided are as follows:
 - (i) long distance and local telephone access and fax, e-mail and telecopier facilities;
 - (ii) Photocopying and other usual office services
- (11)
 - (a) CAI may require the party requesting one or more of the services referred to in sub-rule (6), (7), (8) or (10) to deposit an amount specified by it as advance towards the cost of such services.
 - (b) CAI may also require the parties to make supplementary deposits towards the costs of the services referred to in clause (a).
 - (c) If the required deposit under clause (a) or clause (b) is not made in full within the time specified by CAI, CAI may not provide the services requested for.

27. **Fees and Expenses**

A. Registration Fee

A registration fee of Rs.5,000/- for Members and Rs.10,000/- for Non-Members shall be paid along with the application for reference to conciliation. The registration fee will not be refunded and become the property of the Association.

B Conciliation Fee

- (1) The fee of CAI for making appointment of conciliator and for providing administrative services, other than those specified in sub-rules (6), (7), (8) and (10) of rule 26, is based upon the number of cotton bales transacted for quality disputes and amount of claim for disputes other than quality as disclosed when the statement of dispute is submitted to CAI in pursuance of sub-rule (1) of rule 5.
- (2) The Rules of Conciliation provide that the costs of conciliation include the costs of the administrative and conciliator's fees. The Schedule of fee is given at Annexure I.
The costs are, borne equally by the parties unless the settlement agreement provides for a different apportionment [rule 18(4)].

28. **Amendment of Rules**

The Board of CAI may revise, amend or alter these Rules or the Schedule of Fees and other monies to be charged and paid as and when they think necessary.

29. **Applicability of Rules**

In case of any inconsistency in these Rules qua the provisions of the Arbitration and Conciliation Act of 1996 and the Rules, if any, made thereunder, the Rules of Conciliation of the Association shall prevail.

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SCHEDULE OF FEES FOR CONCILIATION**Item
No.****(I)** FEES RE. CONCILIATION, ETC.◆ **INDIAN COTTON**

(a)	<u>Fees for Survey for Country Damaged Cotton (under By-law 36(2)) :</u> (By-law 41)		Rs.
	Members	For first 55 bales or less	2000/-
		For every additional 55 bales or less	1000/-
	Non-Members	For first 55 bales or less	2500/-
		For every additional 55 bales or less	2000/-

◆ **IMPORTED COTTON (Fees for both Members and Non-Members)**

(a)	<u>Fees for Conciliation as to quality :</u> (By-law 212)		
	<u>For all imported cottons :</u>		Rs.
		For first 50 bales or less	2000/-
		For next 50 bales or less	1500/-
II.	<u>Fees for supply of Classification of Grades & Staples of American Cotton :</u>		Rs 5000/-

III. Fees for Conciliation under By-law 38 :

(a)	Registration Fee: (To be paid in advance by the claimant and by respondent in case respondent files a counter claim) :		
	i)	For Members	Rs.5,000/-
	ii)	For Non-members	Rs.10,000/-

Registration fee is non-refundable and becomes the property of the Association

(b)	<u>Administrative Fees & Conciliation Fees</u>		
	For Members	@0.25% of the amount of claim passed subject to Minimum Rs.10000/- Maximum Rs.100000/-	
	For Non-members	@0.25% of the amount of claim passed subject to Minimum Rs.15000/- Maximum Rs.150000/-	

- i) All fees to be paid in advance by the claimant when reference for conciliation is made to the Association and also by respondent when he files counter claim.
- ii) If application for conciliation and counter claim by respondent is rejected before commencement of conciliation proceeding, administrative and conciliation fees deposited by claimants and by respondent if any will be refunded. However Registration fees are not refundable.

(c) Incidental Charges

For Members Rs.5000/- including stamp paper and postage cost.

For Non-members Rs.5000/- including stamp paper and postage cost.

- i) To be paid in advance by claimant and in case of counter claim by respondent also and retained by CAI.
- ii) On receipt of application for conciliation and counter claim by respondent if such application is rejected before commencement of conciliation proceedings, incidental charges deposited by claimant and respondent will be refunded.

(d) Adjournment

Adjournment fee: Rs.1000/- per adjournment to be paid to CAI by party(ies) requesting for adjournment- Non-refundable.

As far as possible Plaintiffs & Defendants may be allowed minimum adjournments subject to payment of adjournment fees.
