

## **VBN / VGB ARBITRATION BOARD**

## Preface

In 1992, the Dutch Flower Auctions Association (*Vereniging van Bloemenveilingen in Nederland*, or VBN) and the Association of Wholesale Trade in Horticultural Products (*Vereniging van Groothandelaren in Bloemkwekerijprodukten*, or VGB) set up an Arbitration Board. The reason for this was the increasing number of forward transactions that were being brought about through agencies of the flower auctions, and this was increasing the risk of disputes. Every day, many forward transactions are agreed through the flower auctions and usually involve substantial financial interests. It is therefore desirable to have a good dispute settlement procedure in place.

The VBN/VGB Arbitration Board will in principle only act in disputes between growers or commercial agents selling the growers' products and buyers on the way in which forward transactions will be or have been put into effect. The grower and buyer must however have agreed in advance that they will submit any dispute to the Arbitration Board. The clause for this agreement is usually included as standard in the agencies' long-term forward agreements. If this agreement has not been made, and if the parties, after the dispute has arisen, agree in writing after all that the VBN/VGB Arbitration Board must resolve the dispute, the dispute may still be submitted to the Board. If no arbitration has been agreed or cannot be agreed later, the dispute must be referred to the ordinary court.

For anyone who has to deal with the VBN/VGB Arbitration Board, this brochure describes in detail how the arbitration hearing proceeds and what the consequences of the arbitration award will be for the grower and the buyer.

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## **Arbitration justice**

Arbitration is a form of private justice. Arbitrators administer justice by virtue of a special instruction and not by virtue of an official position or profession. Arbitrators therefore act as judges. In principle they therefore have the same powers as an ordinary court. Having a case heard by arbitrators rather than the ordinary court has a number of advantages. Proceedings are less formal, can be implemented faster than ordinary justice, and may be handled by persons with specific expertise in the matter. The parties involved remain anonymous.

In arbitration proceedings, the same general principles of procedural law are applicable as for the regular courts. Book 4 of the Code of Civil Procedure contains the rules for arbitration in the Netherlands. These rules are therefore also applicable to the VBN/VGB Arbitration Board. The most important rules in this Code are contained in the Procedural Rules of the VBN/VGB Arbitration Board, which are set out in the second part of this brochure. Only if the parties have agreed otherwise due to international arbitration may the scope of these procedural rules as set out below be deviated from.

## **The Arbitration Board**

The Arbitration Board comprises a permanent, independent chairman, who chooses two co-arbitrators for each case. When making his choice, factors such as knowledge of the product concerned and the independence of the arbitrators will play a role. The VBN and the VGB have drawn up two lists for this: a list of arbitrators for growers and a list of arbitrators for buyers. A lawyer assists the Arbitration Board.

## **Submitting a dispute**

### **Who may submit a request and when?**

Any buyer and seller may refer a dispute about a forward transaction or its financial settlement to the Arbitration Board. One condition, however, is that the transaction was brought about through an agency of a VBN Flower Auction. The buyer or seller concerned must first have complied with the provisions relating to complaints as laid down in the auction regulations concerned. Only if this complaints procedure has not led to a solution that is satisfactory to one or both of the parties concerned may arbitration be considered.

### **Jurisdiction of Arbitration Board**

The VBN/VGB Arbitration Board has jurisdiction only if the parties have explicitly agreed with each other beforehand that they will refer any disputes to it. The dispute must be in connection with a forward contract concluded by the parties through one of the auctions. The standard forward contracts used by the flower auctions for these transactions usually contain a provision laying down the agreement for arbitration. In addition to these requirements, under the complaints procedures in the auction regulations, the Arbitration Board only has jurisdiction if one of the parties does not accept the advice given by the manager or head of the agency following the complaint. The arbitrators have jurisdiction, if the chairman deems necessary, to give a decision in interlocutory proceedings.

### **How to initiate arbitration proceedings**

Arbitration proceedings begin at the moment the defending party (buyer/seller) receives a letter from the claiming party, stating:

- the claimant wishes for arbitration
- what the dispute is about
- a clearly formulated claim, requesting an award ordering the defendant to pay the claim and arbitration costs
- the reason for the claim

If the case is urgent, the claimant may ask in its letter to the Arbitration Board for accelerated proceedings (interlocutory proceedings).

The letter must be accompanied by a copy of the contract of sale and other documents relevant to the dispute. The claimant will send the letter (i.e. the application) as follows:

- the original to the defending buyer/seller.
- five copies to the administrative office of the Arbitration Board.

### **Costs of arbitration**

Once the application has been received, the claimant will be asked to pay an advance amount of € 3,000 for the costs of the proceedings into the bank account of the Arbitration Board. Once this amount has been received the case will be dealt with. The final amount of the costs of the proceedings will be determined according to the number of hours that the arbitrators and any experts engaged have spent on the case, together with administrative costs. In a complex case the costs will therefore generally be higher than in a straightforward case. The arbitrators will decide how the final costs of the proceedings will be apportioned to both parties. The starting point will be that the party ruled against will pay the costs of the proceedings. This decision will be stated in the arbitration award. If the costs of the proceedings are less than € 3,000, the excess amount will be refunded to the claimant.

### **Claim and defence: orally and in writing**

The claimant and defendant themselves play an important role in arbitration proceedings. It is important that the parties present their points of view properly and clearly. They must consider whether they themselves have sufficient knowledge to put forward their case properly at the hearing. If not, it is worth considering engaging legal assistance.

It is also important that the claim and the defence are recorded in writing. If the parties submit their claim or defence in writing as well as providing an oral explanation at the hearing, it is easier for the arbitrators to take account of the arguments put forward by the parties in reaching their decision. The claimant must at any rate submit its application in writing in order to commence arbitration proceedings. The defendant will be given the opportunity in good time by the Arbitration Board to submit a written defence, but is not obliged to do so. It follows from the above, however, that conducting only an oral defence at the hearing may be to the defendant's disadvantage.

## The hearing

### **Procedure**

During the hearing, the parties will be given sufficient opportunity to explain their claim and defence orally, and the principle of hearing both sides will be upheld. The chairman will preside at the hearing and any discussion must be conducted through him. The Board will ensure that the presentation of the parties' arguments and the discussion will remain limited to the main points. The Board members will then ask questions about the dispute that has arisen, in order to obtain relevant information about it.

### **Place and time**

The place and time of the hearing will be determined by the Arbitration Board. The parties will receive a summons to the hearing in good time, stating the place, date, time and the names of the arbitrators.

### **Legal representation and assistance**

Neither party is required to engage a lawyer. They may appear at the hearing in person or by proxy and present and explain their claim or defence. It is the responsibility of the parties themselves to decide whether they are able to put forward their case themselves or would prefer to call on a specialist, such as a lawyer or counsel for a legal expenses insurer.

### **Witnesses and experts**

The Arbitration Board may, at the request of one or both parties, permit witnesses or experts to be brought to the hearing. The Board is authorised to nominate one of its members to interview the witnesses or experts. Furthermore, the Arbitration Board may, on its own initiative, call up witnesses or experts to be interviewed.

## **The award**

### **The award**

At the end of the hearing, the Arbitration Board will set the date on which it will announce its decision. This decision by the Arbitration Board will be contained in an award, which will also state whether and how the loss incurred must be compensated and which party must compensate the loss incurred. In addition, the award will contain reasons for the decision and determine how the ultimate costs of the proceedings will be apportioned to both parties.

The arbitrators will make their decision based on the law and the auction regulations, observing principles of fairness and reasonableness at all times.

### **Announcing the award**

The award will be sent to both parties and to the registry of the court, because the law requires arbitration awards to be filed with the court. The award may then serve as an enforceable document, i.e. it may be enforced through a bailiff, for example. The Arbitration Board does not make its award public, however it is possible to obtain a subscription for the awards from the administrative office. A summary of the award will be made available to the professional journals for publication. The awards and summaries will be supplied without names and personal details.

### **No appeal possible**

Once the parties and the registry of the court have received the award, the task of the Arbitration Board has ended. The parties must accept the award, which is binding, i.e. no full appeal is possible.

## **Duration of arbitration proceedings**

The entire proceedings can be completed fairly quickly. The duration will depend on such things as the speed with which suitable arbitrators can be found and the complexity of the case itself. With a complex case, the Board will need more time to prepare the case and make its award. Normally, the arbitrators will need at least an average of four weeks from the end of the hearing to deliberate and draw up its award with due care.

If the Arbitration Board exercises its authority to give a decision in interlocutory proceedings, proceedings can progress considerably faster.

## **International arbitration**

If the parties wish to deviate from the rules of Book 4 of the Code of Civil Procedure because one or both of them does/do not have a registered office in the Netherlands, this must be agreed and laid down in writing at the time of concluding the forward agreement. The Arbitration Board reserves the right not to hear the dispute if the parties make agreements in respect of the choice of law, location of the hearing, choice of language, authority of the arbitrators, etc. which makes it impossible for the VBN/VGB Arbitration Board to hear the case. Reference is made in this respect to Articles 7 and 24c of the procedural rules hereinbelow.

## **Information**

For more information, please apply to the administrative office:

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**PROCEDURAL RULES  
OF THE  
VBN/VGB ARBITRATION BOARD**

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## Arbitration

1. Arbitration will be governed by the rules of Book 4 of the Code of Civil Procedure (Articles 1020 to 1077), unless agreed otherwise due to international arbitration. The articles below are an elaboration of the most important rules contained therein.

### The Arbitration Board

2. The Arbitration Board will be chaired by a chairman. The chairman will choose an arbitrator on behalf of the wholesale sector from the list drawn up by the VGB and an arbitrator on behalf of the growers from the list drawn up by the VBN. All arbitrators are required to be neutral. The Arbitration Board will be assisted by an independent secretary who holds the title of 'Master of Laws' (*meester in de rechten*).
3. The administrative office of the Arbitration Board will be at the address of the *Stichting Administratie Arbitragecommissie*.
4. The arbitrators, including the chairman, will be appointed by the executive committees of the VBN and VGB for a period of 3 years. The executive committees may at any time appoint deputy arbitrators if required for the duration of this period, with the proviso that every three years all the arbitrators will be appointed (or re-appointed) at the same time.

### Commencement of arbitration

5.
  - a. In the case of an arbitration clause, a case will be pending on the day of receipt of a written notification, in which one party notifies the other that it is to proceed with arbitration.
  - b. The notification must contain a clear explanation of the dispute and what is being claimed.
  - c. The party initiating the arbitration will send the chairman or the secretary a copy of this notification.
  - d. In the event of a submission agreement, the case will be pending at the moment of concluding the submission agreement. Either party will send a copy of the submission agreement to the chairman or the secretary.
  - e. When sending the copy of the notification as referred to in paragraph a or the submission agreement, all the documents relating to the dispute must be enclosed.

### International arbitration

6. If the parties wish to deviate from the rules of Book 4 of the Code of Civil Procedure because one or both of them does/do not have a registered office in the Netherlands,

this must be agreed and laid down in writing at the time of concluding the agreement. The Arbitration Board reserves the right not to hear the case if the parties make agreements in respect of the choice of law, location of the hearing, choice of language, authority of the arbitrators, etc. which makes it impossible for the VBN/VGB Arbitration Board to hear the case.

## **Place of arbitration**

7.
  - a. The place of arbitration will be in the Netherlands and will be decided by the Arbitration Board.
  - b. The Arbitration Board may hold the hearing and deliberations and interview the witnesses and experts at any place it deems suitable for such purpose.

## **Language of arbitration**

8. The arbitration proceedings will be conducted in the Dutch language. If one or both parties does/do not have a registered office in the Netherlands and all parties agree to use English as the working language, the Arbitration Board may decide to do so. If arbitration is conducted in Dutch, the parties are entitled to be assisted at the hearing by a translator or interpreter.

## **Procedure**

9. The chairman will ensure the progress of arbitration. He will convene the first hearing of the Arbitration Board within a reasonable period of time, with due regard for the availability of the arbitrators and the parties. In the event of unnecessary delay, the chairman will decide when the hearing is to take place.
10.
  - a. The parties will be treated on equal terms. Each of the parties will be given the opportunity in the hearing to put forward and explain their point of view to the Arbitration Board;
    - The defendant will be given the opportunity to respond to the claimant's claim and explanation;
    - the Arbitration Board will not hear any party in the absence of the other party, unless the latter party has been given adequate opportunity to be present;
    - the arbitrators will not discuss the case with the parties to the proceedings or their legal advisers outside the regular proceedings.

- b. The parties may appear in person or by proxy at the hearing and explain their claim or defence orally or – with the consent of the Arbitration Board – in writing.
- 11. A party who has appeared at the arbitration proceedings must lodge an appeal before all defences to claim the lack of jurisdiction of the Arbitration Board on the grounds that there is no valid agreement for arbitration. This party must do so at the risk of forfeiting its right to claim such lack of jurisdiction at a later date, in arbitration proceedings or before the ordinary court.
- 12. At the request of one of the parties, the Arbitration Board may permit a party to present witnesses or experts. The Arbitration Board is entitled to nominate one of its members to interview witnesses and experts.
- 13.
  - a. The Arbitration Board may also appoint experts and interview or consult them and call up and interview witnesses on its own initiative.
  - b. If the Arbitration Board appoints one or more experts to provide advice, it will send a copy of the appointment and the instruction given to the expert to the parties as soon as possible.
  - c. After the expert's opinion has been received, The Arbitration Board will send it as soon as possible to the parties.
  - d. At the request of one of the parties, the experts will be interviewed at the hearing of the Arbitration Board. If a party makes such a request, it will inform the Arbitration Board and the other party as soon as possible.
  - e. The Arbitration Board will give the parties the opportunity to ask the experts questions and to present their own experts.
- 14. The chairman is authorised to order a provisional hearing of witnesses, an expert's opinion or investigation and to order one or more members to carry out the necessary action in this respect.
- 15. The Arbitration Board is free to apportion the burden of proof and to evaluate the evidence.
- 16. The Arbitration Board may order the personal appearance of the parties to provide information or to try to reach a settlement at any stage of the hearing.
- 17. The defendant is entitled at the first hearing at which it appears to lodge a claim against the claimant, provided this claim relies on the agreement on which the claimant's claim is based.

## **Non-appearance at the hearing**

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18. If the claimant, even after having been given adequate opportunity to do so, fails to submit its claim or provide a satisfactory explanation of it without giving well-founded reasons, the Arbitration Board may decide to end the arbitration proceedings in an award.
19. If the defendant, even after having been given adequate opportunity to do so, fails to put forward a defence without giving well-founded reasons, the Arbitration Board will allow the claim, unless it judges it to be unlawful or unfounded. Before making its award, the Arbitration Board may require the claimant to furnish evidence of one or more of its arguments.

### **Interlocutory proceedings**

20.
  - a. The Arbitration Board has the authority to give a decision in interlocutory proceedings.
  - b. The Arbitration Board may, if it is of the opinion that circumstances so require, in any proceedings whether or not at the request of one or both parties, to make a preliminary award or take preliminary measures in respect of matters under dispute that may be necessary or desirable.
  - c. The awards made under paragraph a or b do not affect the rights and defences of the parties.

### **Challenge**

21.
  - a. An arbitrator may be challenged if there is a justified doubt about his impartiality or independence. For the same reasons, the secretary to the Arbitration Board may also be challenged.
  - b. The challenging party will notify the arbitrator concerned, the Arbitration Board and the other party of the challenge, stating reasons. The proceedings may be suspended by the Arbitration Board from the day of receipt of the notification.
  - c. A person requested to act as arbitrator or secretary who suspects that he may be challenged, will notify the chairman in writing, stating the possible reasons for a challenge. He will notify the parties accordingly as soon as his appointment has been made.
  - d. A party may not challenge an arbitrator appointed by the chairman if it has acquiesced in his appointment, unless the reasons for challenging him have only become known to it at a later date.
  - e. If the challenged arbitrator does not withdraw within two weeks from the day of receipt of the notification as referred to in paragraph c, the president of the district

court will make a decision on the merits of the challenge at the request of either party.

### **Withdrawal of arbitration application**

22.

- a. The claimant may withdraw its application for arbitration, provided this is done immediately after the case has been called for a hearing.
- b. As soon as the Arbitration Board has begun hearing the case after it has been called, it is only possible to withdraw with the explicit cooperation of the other party.

### **End of the arbitration**

23. Without prejudice to the provisions of 17 and 20, the arbitration case will end:
- at the request of both parties;
  - by filing the final award at the registry of the district court within whose jurisdiction the place of arbitration is located.

### **Award**

24. In the cases in which an ordinary court may impose a judicial penalty, the Arbitration Board is also authorised to do so.

25.

- a. The Arbitration Board will decide by a majority of votes.
- b. The Arbitration Board will reach its decision, with due regard for reasonableness and fairness, according to the rules of law unless international arbitration has been agreed.
- c. In the event of international arbitration, the Arbitration Board will make an award based on reasonableness and fairness.
- d. The award will state the grounds on which the decision is based, and will be signed by the arbitrators.
- e. If an arbitrator refuses to sign, the other arbitrators will state this at the bottom of the award they have signed.
- f. The secretary will send a copy of the award to the parties.
- g. The original of the final award will be filed at the registry of the district court in whose jurisdiction the place of arbitration is located.
- h. The award will state which party will be ordered to pay the costs of the arbitration.

26. No appeal against the award of the Arbitration Board will be possible.

## Costs

27. The Arbitration Board will determine how much the claimant must pay in advance before the Arbitration Board will begin hearing the case. The Arbitration Board may defer hearing the case until the claimant has paid the amount due. After the case has ended, part of the amount paid may be refunded. The claimant will be required to pay costs even in the case that the arbitration application is withdrawn.

28.

- a. A party who has brought or summoned a witness or expert to the hearing will be required to pay these costs itself, as far as possible at the hearing.
- b. If the Arbitration Board calls witnesses or experts, the costs thereof will be regarded as arbitration costs.

29.

- a. Arbitration costs are understood to mean those costs referred to under 26 and 27 b, as well as all further costs that the arbitration may necessarily entail in the opinion of the Arbitration Board.
- b. The costs of legal assistance to the parties will be paid for by the party who has availed itself of such assistance.
- c. In its award, the Arbitration Board will give an estimate of the amount of arbitration costs up to and including filing the award with the registry of the district court.
- d. The arbitration costs will generally be charged to the party ruled against, unless the Arbitration Board decides otherwise.

## Implementation

30. The arbitration award may only be enforced after the President of the District Court, at whose registry the original of the final award has been filed in accordance with 24 g, has given leave for such enforcement at the request of one of the parties.

31. If international arbitration has been agreed, contrary to the provisions of 29 the arbitration award will be acknowledged and enforced under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) through a court in the country in which the party ruled against is domiciled or has its registered office or holds its assets.