



**DISPUTE CONCILIATION RULES
FOR RESOLVING DISPUTES INVOLVING
A MEMBER OF THE ASIA & PACIFIC SEED ASSOCIATION (APSA)**

Introduction and Preface

This document describes and defines the Asia & Pacific Seed Association (APSA) Rules for the Conciliation of a Member's dispute. It has been prepared in recognition of the need to offer a standard format for resolving business disputes, a process which the Parties enter willingly.

Resolution of business disputes through a negotiated settlement is good business - and far preferable to litigation. This conciliation process is not to determine a winner and a loser, but rather to assist the Parties in reaching agreement. When APSA Members in a dispute choose to enter conciliation under these Rules by contract or by mutual agreement, they commit themselves to attempting to resolve the dispute. Each Party should also enter the process of conciliation on the understanding that concessions could be part of the process towards a successful resolution of their disagreement.

The APSA Dispute Conciliation Rules are intended to be simpler and less formal than the conciliation and arbitration rules offered and governed by the International Seed Federation (ISF). They are also Asian in character, the objective to any conciliation procedure being not victory or vindication, but to reach an honourable settlement for the parties. The APSA Conciliation Rules rely upon the value of a good business reputation, which is essential for the long-term prosperity of any participant in the Asian seed industry.

The Rules do not seek to re-invent what has been done already by other organisations. We gratefully acknowledge the ISF and the Australian Seed Federation for ideas, precedents and templates, some of which have been borrowed and incorporated into these APSA Dispute Conciliation Rules.

Definitions

Conciliation. Conciliation is the dispute resolution process described herein. It involves informal negotiation between the Parties, but with the assistance of a neutral Third Party (the Conciliator). The Conciliator cannot impose a decision or an award on the Parties to the dispute, but he/she does serve as a sounding board and wise counsel to both. Further, the Conciliator will offer a non-binding recommendation unless requested by both Parties to refrain. The end result is intended to be a non-binding, confidential recommendation that is accepted by both Parties to the dispute, and which is subsequently executed by the Parties.

Mediation. Mediation is also a negotiation carried out with the assistance of a neutral 3rd party (the Mediator), who does not have the authority to give an award or to impose a decision on disputing parties. The mediator acts as a facilitator, merely helping them to reach an agreement. Unlike Conciliation, the Mediator will NOT issue a recommendation.

Arbitration. Arbitration is a process in which each side presents its case to an arbitration tribunal for a final and often BINDING decision (depending upon the rules in force).

Litigation. Litigation is the judicial procedure through which one party seeks to force a settlement.

Foundations to the APSA Dispute Conciliation Rules

The underlying structure and purposes of these APSA Dispute Conciliation Rules are set forth as follows:

1. The reputation of an APSA Member organisation has considerable value, and this reputation is put at risk in any dispute. Hence, there is a compelling interest for each Party to reach a satisfactory outcome.
2. Each party to a Dispute Conciliation must appreciate that movement and concessions from both sides will be needed. Some of these may be monetary, and some may be qualitative.
3. The Rules involve an independent person – the Conciliator – to assist the Parties in negotiating a settlement of the dispute between themselves.
4. A recommendation for settlement may be made by the APSA Conciliator, but such a recommendation is advisory and not binding.
5. The nature of conciliation, the content, the evidence, and any recommendation made by the APSA Conciliator are confidential.
6. In referring their disputes for resolution under these Rules, the Parties to the dispute agree that APSA, its officers and employees, and any person appointed as Conciliator, are not liable to any Party for or in respect of any act or omission arising out of or in connection with these Dispute Conciliation Rules, unless such act or omission is shown to have been fraudulent.
7. The venue for any meetings of the Parties and the Conciliator will be as agreed among them. However, the APSA Secretariat location of Bangkok, Thailand will be considered neutral and the default choice for meetings.

Scope

1. The APSA Dispute Conciliation Rules are applicable where:
 - a. the contract between the Parties provides that disputes under or arising out of the contract shall be referred to the APSA Dispute Conciliation Rules for resolution under this procedure, or;
 - b. the Parties agree to enter into the APSA Dispute Resolution Rules, and;
 - c. at least one of the Parties is a current Member of APSA.
2. The Rules do not establish APSA or the Conciliator as an “arbitrator”, where a third party arbitrator renders a final decision and award that may be binding on the parties. APSA

recognises that binding arbitration requires a depth of experience and professional capabilities in conflict resolution.

3. The APSA Dispute Conciliation Rules do not apply to claims for physical injury, illness, nervous shock or related consequences.
4. This APSA Dispute Conciliation Rules are primarily aimed at resolution of disputes in different countries. Where a dispute may exist involving a Member with another party in the same country, the dispute resolution procedure set out by that country's seed trade association should be used, if such exist.
5. The Rules address trade in seed as well as disputes regarding intellectual property that may arise from plant breeding.
6. The dispute conciliation process under these Rules is to be conducted in the English language, but if translation is needed, this cost shall be borne by the Party that requires it.

Rules

A. Establishing a Conciliation

1. Where a written complaint has been made by one Party to another, and the complaint has been rejected, and where the Parties have been unable to settle the dispute within four (4) weeks of the date of the written complaint, the matter can be referred for Conciliation in accordance with these APSA Rules.
2. Application for APSA Dispute Conciliation – this form is attached as 'Attachment A'.
3. Registration fees are payable when an application for Conciliation is submitted. The fees are set out in the Application Form.
4. If APSA considers that a dispute is either not eligible under these Rules or is not capable of proper resolution under these Rules, it shall notify the Parties accordingly and refund the registration fee.
5. Appointment of Conciliators under these Rules shall be made by the President of APSA, or his nominee. The APSA Secretariat shall solicit and maintain a list of qualified and available possible Conciliators for this purpose.
6. Within ten (10) calendar days after receipt of an agreement from both Parties to the dispute for conciliation (see Procedure, below), APSA shall appoint a suitably-qualified, independent person as Conciliator and will advise the Parties accordingly.
7. Prior to the acceptance of the Conciliation process where at least one Party may object to the person appointed as Conciliator and so advises both APSA and the opposite Party in writing within ten (10) calendar days, then APSA may change the person appointed, and will advise the Parties and the Conciliators accordingly.
8. If the appointed Conciliator is unwilling or unable to serve in accordance with these Rules, then APSA will appoint a substitute Conciliator as soon as is reasonable, and will advise the Parties and the Conciliators accordingly.

B. Procedure for APSA Conciliation

1. **Application** The application should set out as briefly as possible the purpose of the Conciliation request, and be accompanied by the Application form (attached) and the fee. The Application should contain a brief statement of the dispute and the names and contact

details of the parties involved.

2. **Invitation to Conciliation** APSA shall as soon as possible inform the other Party of the request for conciliation. That Party will be given a period of ten (10) business days to inform APSA whether it agrees or refuses to participate in the attempt to conciliate.
3. **Duties of the Conciliator** The Conciliator shall:
 - (a) adopt procedures suitable for a quick, cost-effective and fair resolution of the dispute, minimising formality as far as possible; and
 - (b) be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing Party.
4. **Duties of the Parties** The Parties shall:
 - (a) agree on an outline of the intended procedure and schedule for this Conciliation procedure;
 - (b) do all things necessary for the quick, cost-effective and fair resolution of the dispute;
 - (c) comply without delay with any direction by the Conciliator;
 - (d) agree – or not – to require that the Conciliator at the end of the procedure make a non-binding recommendation (both parties are required later to change this decision on a recommendation or not).
5. **Operation** The Conciliation operation will be at the discretion of the Conciliator, but may include:
 - (a) convening meetings with the Parties, in person or by tele-conferencing, to develop possible solutions to the dispute;
 - (b) provision by each Party of copies of all relevant documents or other material to the Conciliator and all other Parties to the dispute.
6. **Withdrawal** When the process is prematurely terminated by the withdrawal of any Party, the rights and liabilities of the Parties will not have been altered in any way by the aborted procedure.
7. **Agreement** If the Parties settle the dispute by conciliation, the Conciliator shall prepare a written Agreement, which records the settlement terms for signature by the Parties.
8. **Recommendation** If the Parties do not settle the dispute within eight (8) weeks of the Conciliator's appointment (or such other time agreed in writing by the Parties), and unless otherwise agreed by the Parties, the Conciliator shall within seven (7) days provide a confidential written report to the Parties expressing the Conciliator's views and a recommendation of what would constitute a reasonable resolution of the dispute.
9. **Records and File Period** The records of the proceedings and all documents previously submitted to the Conciliator shall be filed in confidence by the APSA Secretariat, together with a report by the Conciliator on the facts, issues, claims and counterclaims. These records will be destroyed after one (1) calendar year dating from the end of the Conciliation procedure, unless requested otherwise prior to this period.
10. **Abandon the Conciliation** If at any stage the Parties agree or the Conciliator considers that the dispute is inappropriate for continuation of the Conciliation process, then he/she will state this to the Parties in writing, and will discontinue the Conciliation.
11. **Disinterested Conciliator** The Conciliator shall not act as an advocate, adviser or witness for a Party, or be required to disclose any information about any matter arising during the Conciliation procedure, except as may be required by law.
12. **Costs** Unless otherwise agreed by the Parties, each Party shall bear its own costs of the

Conciliation regardless of the outcome, together with half of the costs and disbursements of the conciliation, including the Registration Fee, the Conciliator's fees and expenses, cost of providing a venue for the Conciliation, etc.

13. **End of Procedure** Conciliation comes to an end when one of the following occurs:
 - a. the Parties reach an agreement and provide that in a letter signed by both Parties and addressed to the Conciliator and the APSA President, or;
 - b. the Parties do not reach an agreement, whereby either Party shall declare this by a letter addressed to the Conciliator and the APSA President, or;
 - c. the Conciliator considers – in his/her sole judgement – that an agreement is not attainable. This is to be stated by a letter addressed to the APSA President, with copies to the Parties.
 - d. the Parties do not settle the dispute within eight (8) weeks of the Conciliator's appointment (or such other time agreed in writing by the Parties), and unless otherwise agreed by the Parties, the Conciliator shall within seven (7) days provide a confidential written report to the Parties expressing the Conciliator's views of what would constitute a reasonable resolution of the dispute.
 - e. one of the Parties declares in writing its intention to withdraw from the Conciliation process, such declaration not necessarily requiring a statement as to reasons for this withdrawal.
 - f. either Party fails to make payment for procedural costs as may have been earlier agreed.
14. **Recourse Preserved After Ending** The ending of the Conciliation process for any reason will not constrain any Party from pursuing relief by way of subsequent arbitration or litigation. However, agreements reached under the Conciliation process should contain waivers, providing that the terms of any settlement are met.
15. **Prompt Satisfaction** The financial and other obligations falling upon the parties should be fulfilled promptly - within thirty (30) calendar days that follow an agreement that has been reached. APSA, by way of the Conciliator, will make specific enquiry of the Parties at this time. If not fulfilled, the Conciliator will end the procedure and refer the matter to the APSA President for consideration of any disciplinary or other action for enforcement.
16. **Notice Form** Post or courier of documents with confirmation of receipt, or facsimile or email of documents with a confirmation of receipt, shall be the accepted forms of notice.

C. Conciliators

1. No person can serve as an APSA Conciliator if he/she has any financial or personal interest in the outcome of the process, except by the informed consent of all Parties. Prior to accepting an appointment, the prospective Conciliator, a neutral third party, will disclose any circumstance likely to create a presumption of bias or prevent a prompt commencement of proceedings with the Parties.
2. Any Conciliator will be barred from serving as witness or arbitrator in subsequent arbitration or litigation should the APSA Conciliation fail to settle the case.
3. If any Conciliator shall become unwilling or unable to serve, APSA will appoint another neutral third party, unless the Parties otherwise agree.
4. The Conciliator shall make the best efforts to assist the Parties to reach a settlement. He/She shall conduct the process as seen fit, guided by the principles of impartiality, confidentiality, equity and fairness.
5. The Conciliator will be able to meet or communicate with the Parties whenever

appropriate, and conduct joint or separate meetings with them. He/She may also, at any time during the process, request a Party to submit additional information, as deemed necessary. The Conciliator may also make interim, verbal recommendations for settlement without prejudice to the process or a Party.

6. The Conciliator shall fix the place for the meetings and propose to the Parties a date for the opening meeting. Each Party may if desired be assisted by legal or other counsel of its choice, and bear its own expense in this regard.
7. The Conciliator is responsible for guiding the Parties to an agreement that is full and final, helping the Parties to close the case permanently and move on to better business and relations.
8. APSA has the responsibility to assure that Conciliators who do accept an appointment are compensated for their time and effort and are reimbursed for any expenses, as should be agreed at the time of appointment.

D. APSA Interests

1. The failure of a Member Party to make payment or reimbursement of legitimate and reasonable costs of Conciliation may be cause for the APSA President to recommend to the APSA Executive Committee that the offending Member be censured or expelled or otherwise compelled to comply in accordance with the APSA Constitution and Rules, should this non- payment persist.
2. APSA makes no warranty and makes no representation that it enjoys any force of law such that a Conciliation procedure or Recommendation or an Agreement will be enforceable by it, or that it will attain compliance by the Parties.
3. APSA has a legitimate interest in maintaining the integrity and effectiveness of its Dispute Conciliation procedure. To that end, APSA may amend or alter these Dispute Conciliation Rules as it sees fit, providing that any such changes do not compromise conciliation procedures in progress.

- end -



Attachment A

APPLICATION FORM

**DISPUTE CONCILIATION RULES
FOR RESOLVING DISPUTES INVOLVING A MEMBER
OF THE ASIA & PACIFIC SEED ASSOCIATION (APSA)**

1. _____ Claimant
of _____

Tel: _____ Fax: _____ Email: _____

and / or

_____ Respondent
of _____

Tel: _____ Fax: _____ Email: _____

do hereby apply to the Asia & Pacific Seed Association (APSA) for the following dispute to be subjected to the APSA Dispute Conciliation Rules, and appointment of a Conciliator.

2. The dispute concerns the following issues: (list)

(attachments as necessary, listed here:

- a) _____
- b) _____
- c) _____
- d) _____

3. The amount (if any) claimed is \$ _____
The amount (if any) counterclaimed is \$ _____ (Delete as

appropriate)

4. I / We, the Parties to this application have read the description and procedure of the APSA Dispute Conciliation Rules. We agree to be bound by this procedure.
5. The Conciliation process and all documents will be strictly confidential. The signatories below – and the designates, subordinates, colleagues and counsel of each - shall respect this standard.
6. The Parties commit here NOT to call the Conciliator as a witness in any subsequent judicial or subsequent arbitration proceeding, or in any litigation.
7. The Parties agree also NOT to introduce in any subsequent arbitration proceeding or litigation as evidence any views expressed or suggestions made by any Party during the APSA Conciliation process. This obligation shall include, among others, any proposal put forward by the Conciliator, any opinion given by the conciliator, and/or any fact admitted by a Party.
8. A registration fee of two hundred and fifty dollars - \$US250.00 - plus applicable taxes in Thailand) is payable by the Parties to APSA to commence a Conciliation. If that fee is paid by one Party, the other Party or Parties shall contribute in equal shares.
9. If the Parties agree with the outline for Conciliation procedure as set forth by the Conciliator, including likely costs to be incurred to conform to the outline, then each Party also agrees to pay half (or as otherwise agreed) share of those expenses of Conciliation that are common the process (as opposed to unique to the Party).
10. Payment of Registration Fee:
I / We herein render payment to the Asia & Pacific Seed Association as the registration fee for entering into the APSA Dispute Conciliation Rules of \$US250.00 (plus applicable taxes in Thailand) by:
a) direct bank transfer to APSA account _____;
or
(b) authorise payment of the registration fee by credit card, as follows:

(please complete details)

Bankcard Visacard Mastercard
Card Number..... Expiry Date.....
Cardholder's Name.....

Signature.....

Bankcard Visacard Mastercard
Card Number..... Expiry Date.....

Cardholder's Name.....

Signature.....

11. The reasonable fees and costs of Conciliators appointed by APSA are determined by the APSA and the Conciliator on a case-by-case basis as the case may be.

For the Claimant:

Signed:..... Date:.....

Name:.....

For the Respondent:

Signed:..... Date:.....

Name:.....