

# ARBITRATION PROGRAM REGULATIONS

Pursuant to General Business Law, Article 33-B, section 697-a

Title 13 NYCRR Chap. VIII Part 303

Consumer Warranty on Farm Equipment – Arbitration Program Regulations

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### Section 303.1 Purpose

(a) These regulations are promulgated pursuant to General Business Law (“GBL”), Article 33-B, section 697-a, added by chapter 662 of the Laws of 2005 as amended by Chapter 706 of the Laws of 2006. They set forth the procedures for the operation of an alternative arbitration mechanism (the “Program”) as required by GBL section 697-a(c).

(b) These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning defective farm equipment.

### Section 303.2 Definitions

(a) Unless otherwise stated, terms used in these regulations are as defined in GBL section 697.

(b) The term “Administrator” shall mean a professional arbitration firm or individual appointed by the Attorney General to administer the Program.

### Section 303.3 Appointment of Administrator

(a) The Attorney General shall appoint an Administrator or Administrators to a definite term not to exceed two years. The term shall be renewable.

(b) The following criteria shall be considered in the selection of an Administrator: capability, objectivity, non-affiliation with a supplier’s arbitration program, reliability, experience, financial stability, extent of geographic coverage, and fee structure.

(c) The Attorney General shall give appropriate public notice at least 60 days prior to the expiration of an Administrator’s term inviting any interested qualified party to apply

in writing for the position of Administrator within 30 days from the date of the public notice.

(d) Upon a vacancy occurring prior to the expiration of an Administrator's term, the time periods in subdivision (c) shall not apply and the Attorney General shall take appropriate steps to assure the continued administration of the Program.

#### Section 303.4 Consumer's Request for Arbitration

(a) The Attorney General shall prescribe and make available "Request for Arbitration" forms for GBL Article 33-B claims. To apply for arbitration under the Program, a consumer shall obtain, complete and submit the appropriate form to the Attorney General.

(b) Those consumers wishing a hearing on documents only shall so indicate on the form.

(c) The consumer shall indicate on the form his/her choice of remedy (i.e., either refund or comparable replacement equipment), in the event the arbitrator rules in favor of the consumer. Such choice shall be followed by the arbitrator unless the consumer advises the Administrator in writing of a change in his/her choice of remedy prior to the arbitrator's rendering of a decision.

(d) Upon receipt, the Attorney General shall date-stamp and assign a case number to the form.

(e) The Attorney General shall review the submitted form for completeness and eligibility and shall either accept it or reject it.

(f) If the form is rejected by the Attorney General, the Attorney General shall promptly return the form, notifying the consumer in writing of the reason(s) for the rejection and, where possible, inviting the consumer to correct the deficiencies.

(g) If the form is accepted by the Attorney General, he shall refer it to the Administrator for processing. The Attorney General shall promptly notify the consumer in writing of the acceptance of the form and of its referral to the Administrator. The Attorney General shall prescribe a filing fee and an arbitration fee to be paid by the consumer and the supplier, respectively. Such notice shall also advise the consumer to pay the prescribed filing fee directly to the Administrator.

(h) If, after 30 days from the date of the notice of acceptance, the Administrator fails to receive the prescribed filing fee, the Administrator shall promptly advise the consumer in writing that unless such fee is received within 60 days from the date of the first notice, the form will be returned and the case marked closed. After such time, if the consumer wishes to pursue a claim under the Program, (s)he must submit a new form to the Attorney General.

(i) Participation in any informal dispute resolution mechanism that is not binding on the consumer shall not affect the eligibility of a consumer to participate in the Program.

#### Section 303.5 Filing Date

On the day the Administrator receives the prescribed filing fee, the Administrator shall date stamp the "Request for Arbitration" form. Such date shall be considered the "filing date".

#### Section 303.6 Notice to the Supplier

(a) Each supplier of farm equipment sold to a New York consumer shall

notify the Attorney General in writing, within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices under the GBL Article 33-B Program. Such information shall be presumed correct unless updated by the supplier.

(b) Within 5 days of the filing date, the Administrator shall send the supplier's designee a notice that a Request for Arbitration has been filed by the consumer and that the supplier must remit the prescribed arbitration fee to the Administrator within 10 days from the date of mailing by the Administrator. The date the prescribed arbitration fee is received by the Administrator is considered the "commencement date."

(c) Within 5 days of the "commencement date," the Administrator shall send the supplier's designee a copy of the consumer's completed Request for Arbitration form along with a notice that it may respond in writing. Such response shall be sent in triplicate, within 15 days of the commencement date, to the Administrator, who shall promptly forward one copy to the consumer.

(d) If, after 10 days from the date of mailing of the first notice to the supplier requesting payment of the prescribed arbitration fee, the Administrator fails to receive such prescribed fee, the Administrator shall promptly advise the supplier in writing that unless such fee is received within 20 days from the date of the first notice, the Attorney General's Office will be notified of the supplier's non-compliance. In the event that the Administrator fails to receive the prescribed arbitration fee from the supplier within 20 days of the first notice, it shall promptly notify the Attorney General's Office in writing of such non-compliance.

### Section 303.7 Assignment of Arbitrator

(a) After the commencement date, the Administrator shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and GBL Article 33-B.

(b) The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale, distribution or manufacture of farm equipment.

(c) Upon a finding by the Administrator, at any stage of the process, of grounds to disqualify the arbitrator, the Administrator shall dismiss the arbitrator and assign another arbitrator to the case.

(d) If any arbitrator should resign, die, withdraw or be unable to perform the duties of his/her position, the Administrator shall assign another arbitrator to the case and the period to render a decision shall be extended accordingly.

(e) Arbitrators shall undergo training established by the Administrator and the Attorney General. This training shall include procedural techniques, the duties and responsibilities of arbitrators under the Programs, and the substantive provisions of GBL Article 33-B.

### Section 303.8 Scheduling of Arbitration Hearings

(a) The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the "Request for Arbitration" form, a hearing on documents only and both parties agree to a documents only hearing; provided, however, that the parties may mutually agree in writing to change the mode of hearing. Upon such change, the parties shall notify the

Administrator who shall comply with the request and, where necessary, such request shall waive the 40 day limit in which a decision must be rendered.

(b) The consumer may respond in writing to the supplier's submission within 25 days of the commencement date. Such response shall be sent in triplicate to the Administrator, who shall promptly forward a copy to the supplier.

(c) An oral hearing, where appropriate, shall be scheduled no later than 35 days from the commencement date, unless a later date is agreed to by both parties. The Administrator shall notify both parties of the date, time and place of the hearing at least 8 days prior to its scheduled date.

(d) Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the supplier, including evening and weekend hours.

(e) Hearings shall also be scheduled to accommodate geographic needs of the consumer. Regular hearing sites shall be established at locations designated by the Administrator. No hearing site established by the Administrator shall be discontinued without the approval of the Attorney General. In addition, where a regular site is more than 100 miles from the consumer's residence, a hearing must be scheduled at the request of the consumer at a location designated by the Administrator within 100 miles of the consumer's residence.

(f) In unusual circumstances, a party may present its case by telephone, provided that adequate advance notice is given to the Administrator and to the other party. In such cases, the arbitrator and both parties shall be included and the party requesting the telephonic hearing shall pay all costs associated therewith.

### Section 303.9 Adjournments

Either party may make a request to reschedule the hearing. Except in unusual circumstances, such request shall be made to the Administrator orally or in writing at least two business days prior to the hearing date. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

### Section 303.10 Request for Additional Information or Documents

(a) A party, by application in writing to the Administrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his or her own initiative, direct the production of documents or information which she or he believes will reasonably assist a party in presenting his or her case or assist the arbitrator in deciding the case. The arbitrator's direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information.

(b) All documents and information forwarded in compliance with the arbitrator's direction shall be legible and received no later than three business days prior to the date of the hearing. Each party shall bear its own photocopying costs.

(c) Upon failure of a party to comply with the arbitrator's direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.

(d) The term "documents" in this section shall include, but not be limited to, relevant supplier's service bulletins, dealer work orders, diagnoses, bills, and all communications



relating to the consumer's claim.

(e) At the request of either party or on his or her own initiative, the arbitrator, when she or he believes it appropriate, may subpoena any witnesses to appear or documents to be presented at the hearing.

#### Section 303.11 Representation by Counsel or Third Party

Any party may be represented by counsel or assisted by any third party.

#### Section 303.12 Interpreters

Any party wishing an interpreter shall make the necessary arrangements and assume the costs for such service.

#### Section 303.13 Hearing Procedure

(a) The conduct of the hearing shall afford each party a full and equal opportunity to present his/her case.

(b) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(c) Formal rules of evidence shall not apply; the parties may introduce any relevant evidence.

(d) The arbitrator shall receive in evidence a decision rendered in a previous arbitration which was not binding on the consumer and give it such weight as the arbitrator deems appropriate.

(e) The arbitrator shall receive relevant evidence of witnesses by affidavit,

and such affidavits shall be given such weight as the arbitrator deems appropriate.

(f) The arbitrator shall have discretion to examine or ride in the consumer's equipment. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination or ride.

(g) The consumer shall first present evidence in support of his/her claim, and the supplier shall then present its evidence. Each party may question the witnesses called by the other. The arbitrator may question any party or witness at any time during the hearing.

(h) The arbitrator shall maintain decorum at the hearing.

(i) The arbitrator may request additional evidence after the closing the hearing. All such evidence shall be submitted to the Administrator for transmission to the arbitrator and the parties.

#### Section 303.14 Hearing on Documents Only

If the hearing is on documents only, all documents shall be submitted to the Administrator no later than 30 days from the commencement date. The arbitrator shall render a timely decision based on all documents submitted.

#### Section 303.15 Defaults

(a) Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a timely decision based on the evidence presented and documents contained in the file.

(b) If neither party appears at the hearing, the arbitrator shall return the case to the Administrator who shall close it and so notify the parties.

(c) In a documents-only hearing, where the supplier fails to respond to the claim, the arbitrator shall render a decision based upon the documents contained in the file.

Section 303.16 Withdrawal or Settlement Prior to Decision

(a) A consumer may withdraw his/her request for arbitration at any time prior to decision. If the Administrator is notified by the consumer of his/her request to withdraw the claim within seven business days of the commencement date, the Administrator shall refund the filing fee to the consumer and the arbitration fee to the supplier.

(b) If the parties agree to a settlement more than seven business days after the commencement date but prior to the issuance of a decision, they shall notify the Administrator in writing of the terms of the settlement. Upon the request of the parties, the arbitrator shall issue a decision reflecting the settlement.

Section 303.17 The Decision

(a) The arbitrator shall render a decision within 40 days from the commencement date which shall be in writing on a form prescribed by the Administrator and approved by the Attorney General. The decision shall be dated and signed by the arbitrator. An electronic signature authorized by the arbitrator shall be deemed a valid signature.

(b) In his/her decision, the arbitrator shall determine whether the consumer qualifies for relief pursuant to GBL section 697-a. If the arbitrator finds that the consumer qualifies, (s)he shall award the specific remedies prescribed by the statute.

(c) The decision shall specify the monetary award where applicable. A calculation of the amount, in accordance with GBL section 697-a shall be included in the

decision. The decision shall also award the prescribed filing fee to a successful consumer.

(d) The decision shall, where applicable, require that any action required by the supplier be completed within 30 days from the date the Administrator notifies the supplier of the decision.

(e) The Administrator shall review the decision for technical completeness and accuracy and advise the arbitrator of any suggested technical corrections, such as computational, typographical or other minor corrections. Such changes shall be made only with the consent of the arbitrator.

(f) After review, the Administrator shall, within 45 days of the commencement date, mail a copy of the final decision to both parties, the arbitrator, and the Attorney General. The date of mailing to the parties shall be date-stamped by the Administrator on the decision as the date of issuance.

(g) Failure to mail the decision to the parties within the specified time period or failure to hold the hearing within the prescribed time shall not invalidate the decision.

(h) The arbitrator's decision is binding on both parties and is final, subject only to judicial review pursuant to CPLR, Article 75. The decision shall include a statement to this effect.

Section 303.18 Record keeping

(a) The Administrator shall keep all records pertaining to each arbitration for a period of at least two years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the Attorney General upon written request.

- (b) The Administrator shall maintain records and statistics for the Program.

Section 303.19      Miscellaneous Provisions

- (a) All communications between the parties and the arbitrator, other than at oral hearings, shall be directed to the Administrator.

- (b) If any provision of these regulations or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of these regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.