

Binding Arbitration

Rules of Arbitration (Binding)

BBB ARBITRATION

The Better Business Bureau® of the San Joaquin Valley (BBB) is a nonprofit organization supported by local businesses. It is dedicated to promoting and fostering the highest ethical relationship between businesses and the public through consumer and business education and voluntary self-regulation.

The BBB assists in the resolution of disputes between a business and its customers. BBBs have a national reputation for fairness because they remain neutral in a dispute. They do not take sides but work to get the problem settled as quickly as possible.

If you have a marketplace dispute, the BBB can offer you several ways to resolve it. Arbitration is one alternative dispute resolution (ADR) option: The BBB provides a professionally trained arbitrator who will listen to both sides, weigh the evidence and make a decision about the dispute.

What is arbitration?

Arbitration is an informal process in which two parties present their views of a dispute to a neutral third party, an arbitrator, who will decide how to resolve the dispute.

Many businesses participating in BBB ADR programs have agreed to arbitrate disputes with their customers within defined limits. Other businesses ask the BBB to provide arbitration on a case-by-case basis.

The issues and the types of awards that the arbitrator may consider in your case will be outlined in a document called the Agreement to Arbitrate. The Bureau will work with you to write the Agreement to Arbitrate so it is based on the facts of your case. The arbitrator will be asked to make a decision that he or she believes is fair based on the facts of your case.

Who is the arbitrator?

BBB arbitrators are volunteers from your community who have been approved as arbitrators by the Better Business Bureau. They are normally not paid for their services.

The arbitration hearing

The BBB will consult with the parties and the arbitrator(s) in scheduling an arbitration hearing. While most cases require only a single hearing, additional hearings may be scheduled if the arbitrator deems it necessary.

How to prepare for arbitration

Before coming to your arbitration hearing, you should prepare an outline of your argument to help you in your presentation. You may want to use the checklist at the end of this section to assist you in your preparation.

Also before coming to the hearing, you should prepare a list of questions you want to ask the other party.

What will happen at the hearing?

You will have an opportunity to state the facts as you see them. Each party also will have the opportunity to ask questions of the other party.

The arbitrator may also ask questions to clear up uncertain areas and to gain a fuller understanding of the dispute.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Deal with any questions that have not been answered and tell the arbitrator exactly what you think the decision should be and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts in order to make a fair decision. You should be prepared to convince the arbitrator that your position is right.

A cooperative approach works best. You are there because a disagreement exists, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Arbitrators may not have technical expertise, so your presentation may be more productive if you can use layman's terms to describe what happened.

An arbitration checklist

This checklist will help you prepare for your arbitration hearing. Use whichever items are appropriate to your case; some may not apply.

Organize your materials in the order you wish to present them. This will help you present your case clearly and logically.

Clearly state what the problem is and why you think the other party is responsible.

List in chronological order the actions you took to resolve the dispute, including:

individuals with whom you spoke;

when you spoke with them;

what they told you and/or what actions they took;

other business/service persons involved:

Who were they?

When did they get involved?

How did they become involved?

What did they tell you and/or what actions did they take? Written statements or the presence of witnesses can help substantiate the facts of your case.

Collect and bring to the hearing all available written information relating to your dispute. Bring original documents, if possible, and bring copies for the arbitrator and the other party. If you do not have certain documents, you may be able to get copies from your repair shop, bank or credit card company. Documents that might be useful include:

Purchase order and finance/lease agreement.

Any relevant warranty.

Any repair, service and maintenance records and proof of payment for these services.

Correspondence between you and the other party.

Other documents which may support your case, e.g., newspaper/magazine articles, photographs, court decisions and legal documents, consumer group information, brochures and technical information.

List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them and ask them to testify in person or to submit written statements. You are responsible for your witnesses' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

The arbitrator will accept all relevant evidence presented at the hearing. The arbitrator will decide the importance of each piece of evidence after the hearing is closed. **It is better to be over prepared than under prepared.**

Evidence will not be accepted after the hearing if it was possible to present that evidence at the hearing, or if the arbitrator has already rendered a decision.

In summary

- Organize your case.
- Back up your position with evidence.
- A clear, concise and well-organized presentation supported by relevant facts and good documentation will help the arbitrator fulfill his or her responsibility.

Rules of Arbitration (Binding)

1. DEFINITIONS

The following list defines key words as they are used in these Rules.

Arbitration is a process in which two or more persons agree to let an impartial person or panel decide their dispute.

Arbitrator refers to the individual or panel selected to conduct your arbitration and make a decision in your dispute. Any action taken or decision made by a panel shall be by majority vote.

BBB refers to the Better Business Bureau that is administering the arbitration.

Days refers to calendar days.

Decision refers to the written document signed by the arbitrator and mailed to the parties.

Parties includes the consumer, the business and any other person or company that has precommitted to arbitrate or has signed an Agreement to Arbitrate under these Rules.

These Rules often refer to the individual parties in an arbitration as the "consumer" and the "company."

Shall is mandatory; **may** is discretionary.

You refers to one of the parties involved in the dispute being arbitrated.

2. SCOPE OF BBB ARBITRATION

Disputes involving consumer products and/or services may be arbitrated under these Rules as long as the consumer agrees to arbitrate the dispute after it arises. If an agreement between a business and a consumer is signed before the dispute arises and requires that both parties arbitrate dispute under any BBB binding arbitration rules, then any arbitration under that agreement will be conducted using the BBB Rules of Binding Arbitration for Disputes Subject to Pre-Dispute Binding Arbitration Clauses.

The following claims will not be considered unless specifically agreed in writing by all parties that the arbitrator may consider them:

- Claims seeking criminal penalties;
- Claims based on product liability;
- Claims for personal injuries;
- Claims where no deficiency or problem is alleged in the product or services involved in the transaction;
- Claims that have been resolved by a previous court action, arbitration or written agreement between the parties.

The decision as to whether your dispute (or any part of it) can be arbitrated rests solely with the BBB. (See Rule 33.)

3. REMEDIES

The following remedies may be awarded in an arbitration proceeding: a) full or partial refund of the cost of the product and/or service involved in the transaction, including sales tax and other direct incidental costs associated with the sale of the product or service; b) completion of promised work or fulfillment of contractual obligations; c) repairs, or reimbursement for the cost of repairs, to fix a defective product; and/or, d) the amount of any actual out of pocket loss or property damage, not to exceed \$2,500, caused by the provision of the service.

Additional remedies may be awarded in an arbitration proceeding only if the remedy is included in the company's precommitment with the BBB or if it is agreed in writing by all parties that the arbitrator may award the specific remedy.

The following may not be awarded in BBB arbitration unless it is specifically agreed by all parties that the arbitrator may award them: compensation for loss of wages, compensation for mental anguish, punitive damages or legal fees.

4. TIME FOR FILING A CLAIM

Unless otherwise specified in a company's precommitment with the BBB, claims must be filed within one year of the transaction that is the basis of the dispute or within the warranty period as provided by the company's written warranty, whichever is the longer period. This time limitation may be waived by consent of all parties.

5. AGREEMENT TO ARBITRATE

The BBB shall prepare an Agreement to Arbitrate that briefly describes the nature of the dispute and the decision sought as they are viewed by you and any other party.

The Agreement to Arbitrate shall include only those claims that fall within the scope of these Rules, unless both parties agree to arbitrate additional claims in your case.

The Agreement to Arbitrate is intended to be a general outline of the dispute, not an argument of your case.

The BBB shall give the Agreement to Arbitrate to each party prior to the hearing. Each party shall sign the Agreement to Arbitrate and return it to the BBB within five days of receiving it. Failure to mail the signed Agreement within this time period may result in a delay of the resolution of your case.

You should contact the BBB at once if you disagree with the general description of your case and/or the decision you are seeking.

Parties should **not** contact the BBB if they think the description of the other party's case is in error; that is an issue for the arbitrator to decide.

If the consumer's claim falls within a company's precommitment, then the company's failure to sign the Agreement to Arbitrate and return it to the BBB within five days of receiving it will be considered an acceptance of that Agreement, and the company will be bound to all of its terms.

A. ESCROW

The Agreement to Arbitrate will also detail the amount to be held in escrow by the BBB. The person or persons who is in possession of the items or funds in dispute will be responsible for placing them into an escrow account. If the items or funds in dispute have not been received by the BBB at least 72 hours prior to the scheduled hearing time, the hearing will be re-scheduled. The BBB will distribute any funds or items in dispute based on the decision of the neutral.

6. SELECTING YOUR ARBITRATOR

A. General selection procedure

The BBB maintains a pool of individuals who have volunteered to serve as arbitrators. The neutral will be appointed from this pool by the BBB. They do not necessarily have specific expertise in the matter to be arbitrated, but can call upon the assistance of an expert when necessary.

7. COMMUNICATING WITH THE ARBITRATOR

You or anyone representing you shall not communicate in any way with the arbitrator about your dispute except: a) at an inspection or hearing for which the other party has received notice but does not appear, or b) when all other parties are present or have given their written permission.

All other communication with the arbitrator must be sent through the BBB.

Violation of this rule may result in your case being discontinued.

8. QUALIFYING THE ARBITRATOR

The arbitrator shall sign an oath pledging to make an impartial decision in your dispute. If the arbitrator believes that he or she cannot make an impartial decision, he or she shall refuse to serve.

If a financial, competitive, professional, family or social relationship exists between the arbitrator and one of the parties (even if the arbitrator believes the relationship is so minor as to have no effect on the decision), it shall be revealed to all parties and you may decide that this arbitrator should not serve in your case.

The BBB reserves the right to reject any arbitrator for any reason that it believes will affect the program's credibility.

9. YOUR REPRESENTATIVE

You may present your own case or have someone represent you.

If your representative is a lawyer, you must give the lawyer's name and address to the BBB at least eight days before the hearing. The BBB will notify the other parties to give them an opportunity to obtain lawyers if they want. Your failure to give the BBB advance notice of legal representation may result in a rescheduling of your hearing.

You are responsible for any fees charged by your representative.

10. INSPECTION BY THE ARBITRATOR

You or the arbitrator may request an inspection of the product or service involved in your dispute.

If possible, the inspection will be performed as part of the hearing; otherwise, the inspection will be scheduled for a later date and all parties will receive at least eight days notice unless such notice is waived by all parties.

11. TECHNICAL EXPERTS

At the request of the arbitrator, the BBB will make every effort to obtain an impartial technical expert to inspect the product involved or the service performed.

The expert's findings will be presented in writing or in person, at the BBB's option, either before, during or after the hearing. In any case, you will have an opportunity to evaluate and comment on the qualifications and findings of the expert.

You also have the right to have your own technical expert serve as a witness at your own expense.

12. HEARING NOTICE

The BBB will set a date, time (during normal business hours) and place for your arbitration hearing. The hearing will be set with due regard for the schedule of the parties and the arbitrator. Notice of the date, time and place of the hearing will be sent to you at least 7 ~~40~~ days in advance of the hearing.

If you object to the date, time or place stated in your notice, contact the BBB immediately. However, the BBB reserves the right to make the final decision as to the date, time and place for the arbitration hearing.

13. MANNER IN WHICH HEARING IS CONDUCTED

Although most arbitrations involve in-person hearings, the BBB, at your request or at its option, may arrange to have your statement and evidence presented by telephone or in writing.

To the extent practical, the BBB will arrange for the hearing to be held at a neutral location.

14. ATTENDANCE AT HEARINGS

The BBB has the option to arrange for its staff, volunteers from its pool of arbitrators, or government representatives to attend arbitration hearings.

For any other observer to attend a hearing, the BBB will first determine that reasonable accommodations exist and then make sure that the parties and the arbitrator have no objection to the presence of an observer. If there is room and no objection, the observer shall be subject to the BBB's directions regarding proper conduct.

15. MEDIA PRESENCE AT THE HEARING

Media shall be permitted access to arbitration hearings on the same basis as other observers.

Unless there is approval of all parties and the arbitrator, neither media representatives nor any other observer may be permitted to bring cameras, lights, recording devices or any other equipment into the hearing.

Without such approval, all observers (including media representatives) shall be limited to note taking and shall be subject to the BBB's direction regarding observers' proper conduct.

16. YOUR ABSENCE FROM THE HEARING

If you do not attend a hearing after receiving proper notice from the BBB, the arbitrator may decide to go ahead with the hearing without you.

In deciding whether or not to go ahead with the hearing, the arbitrator will take into account, along with other relevant considerations, any unforeseen circumstances or emergencies that prevented you from attending the hearing as scheduled and from giving the BBB advance notice that you will not attend.

Your absence will not result in an automatic decision against you and you shall be given an opportunity to present your case in a time and manner set by the arbitrator. If you then fail to present your case, the arbitrator may make a decision without your presentation.

17. RECORD OF HEARING

The BBB will maintain basic file information on your arbitration hearing for three years, or longer if required by law. This information will include the witnesses' names and documents presented as evidence at the hearing. Copies of these materials and official arbitration forms relating to your case will be given to you on request. A reasonable copying fee may be charged.

18. INTERPRETERS

If you need an interpreter for your arbitration and cannot provide your own, contact the BBB and it will make every effort to find a volunteer interpreter.

19. OATH OF PARTICIPANTS

You and your witnesses shall be placed under oath at the hearing.

20. HEARING PROCEDURES

The arbitrator will decide on the order and the procedures to follow for you to present your side of the dispute.

You will be given an opportunity to make a personal presentation of your case and you may present witnesses and evidence in support of your case. You may also question the other parties, their witnesses and their evidence. After everyone has presented his or her case, each party will be given the opportunity to make a closing statement.

If the arbitrator determines that additional information is necessary in order to make a fair decision, the arbitrator may direct that this additional evidence be submitted at a subsequent hearing or in any manner deemed appropriate by the arbitrator. If the arbitrator directs that written evidence be submitted after the initial hearing, the evidence shall be sent to the BBB within the time frame specified by the arbitrator. The BBB will send a copy to the other party and solicit a response. Both the written evidence and any response shall be submitted by the BBB to the arbitrator.

When the arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed.

21. ADMISSION OF EVIDENCE AT THE HEARING

You may present your case without being restricted by courtroom rules of evidence.

However, you should be sure your evidence is relevant to your case.

The arbitrator can limit your presentation if it is repetitious or irrelevant.

22. ABSENTEE STATEMENTS

If you have a witness who cannot attend the hearing, you may present that person's written statement to the arbitrator. You must make a copy for the other party to read and use for response.

If you present your case by telephone, you should submit to the BBB at least seven days before your hearing any written documents on which you will rely. The BBB will provide these documents to the other party before the hearing.

Before the arbitrator makes a decision, you may ask the arbitrator to give you a reasonable number of days to respond to a written statement or document presented by the other party at the hearing. The arbitrator may grant your request at his or her discretion.

23. SUBPOENAS

You may send the BBB a request that the arbitrator subpoena witnesses or evidence that are relevant to your case. Any request should include a statement as to why the witnesses or evidence are relevant and why you believe a subpoena is necessary. If the arbitrator agrees with your request, a subpoena will be sent according to state law.

The party requesting a subpoena shall be responsible for any expenses involved in the issuance of the subpoena and shall be responsible for enforcement of the subpoena if necessary.

24. ADMISSION OF EVIDENCE AFTER INITIAL HEARING

Before a decision is made, an arbitrator may schedule new or additional hearings or otherwise request new or additional evidence to get all possible facts relating to your dispute.

Before a decision is made, you may send the BBB new information that was impossible to present at your original hearing and request that it be considered. The BBB will send it to the other parties for their response and then forward the information and any response to the arbitrator.

After the arbitrator has made a decision in your case, no more arguments or evidence may be presented, even if newly discovered or not available at the time of the hearing.

25. CLOSING THE HEARING

If you have been asked or allowed by the arbitrator to furnish additional evidence in support of your case, the arbitrator will set a deadline by which you must send the evidence to the BBB. The BBB will give the other party an opportunity to respond to your evidence and then will send all materials to the arbitrator.

The arbitrator will close the hearing when he or she determines that the parties have had sufficient opportunity to present all relevant evidence. The arbitrator will normally render a decision within five days after the hearing is closed.

26. SETTLEMENT

If all parties voluntarily decide to settle the dispute before the hearing, the settlement will end the dispute and no hearing will be held.

If a voluntary settlement is reached during the hearing, the arbitrator shall include the settlement in a final or interim consent decision. If a settlement is reached after the hearing but before the arbitrator's final decision, be sure to notify the BBB at once.

27. TIME LIMITS

The BBB shall make every effort to obtain a final resolution of your complaint within 60 days, unless state or federal law provides otherwise. This time period may be extended at the request of the consumer.

28. THE DECISION

When the arbitrator has reached a decision in your case, all parties will be mailed a written decision accompanied by the arbitrator's reasons for the decision. The BBB will NOT read a decision to you over the phone.

A. Scope of decision

A decision shall be one that:

- the arbitrator considers fair; and,
- falls within the scope of these Rules and your Agreement to Arbitrate.

Arbitrators are not bound to apply legal principles in reaching what the arbitrator considers to be a fair resolution of the dispute.

The decision may order an action to be performed, money to be paid or a combination of these remedies. The arbitrator may award all or part of what you seek or may decide to award no payment or performance at all.

B. Types of decisions

The arbitrator may render either a final or an interim decision.

1. If the arbitrator renders a **final decision**, the arbitrator has no further authority over the decision unless a valid request is made pursuant to Rule 28(C), Clarifying the decision; Rule 28(D), Correcting the decision or reasons for decision; or Rule 28(E), Decision is impossible to perform or to perform timely.
2. An **interim decision** may be written when the decision requires some action to be taken. If the arbitrator renders an interim decision, the arbitrator maintains continuing authority over the execution of the decision in accordance with the specific terms set out in the decision.

Interim decisions will state a time within which the consumer must notify the BBB if the action ordered in the interim decision was not performed or was performed unsatisfactorily. If an interim decision has been rendered and a reconvening is requested in accordance with the terms of the decision, the BBB will schedule a further hearing. In addition to the evidence presented at that hearing, the arbitrator may request additional evidence from the parties or from an impartial technical expert. The arbitrator will send a decision to the BBB within five days after the hearing is closed.

C. Clarifying the decision

You may request that the arbitrator clarify a decision if you do not understand the decision, or if you and the other parties disagree about the specific action required by the decision. Requests for clarification must be sent in writing to the BBB within 5 days of your receipt of the decision.

The BBB will not accept a clarification request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

If your written statement to the BBB is an appropriate request for clarification of the decision, the BBB will send the request to the other parties, solicit their views, and send the request and any response to the arbitrator. The arbitrator may either clarify the decision or reject the request for clarification and let the decision stand as written.

You may not ask the arbitrator to clarify the reasons for decision.

D. Correcting the decision or reasons for decision

You may request correction of the decision or the reasons for decision if you believe the decision or reasons contain a mistake of fact, a miscalculation of figures or exceed the arbitrator's authority. Requests for correction of a decision or reasons must be sent in writing to the BBB within 10 days of your receipt of the decision.

A mistake of fact is not a conclusion of the arbitrator with which you disagree; it is a true error in such things as a date, time, place or name, and may justify a correction only if it concerns the essence of the decision.

A miscalculation of figures is not a dollar figure you consider to be unfair; it is a mathematical error.

The arbitrator's authority is limited to the scope of the Agreement to Arbitrate.

The BBB will not accept a correction request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

If your written statement to the BBB is an appropriate request for correction, the BBB will send the request to the other parties, solicit their views and send the request and any response to the arbitrator. The arbitrator may either correct the decision or reasons or reject the request for correction and let the decision or reasons stand as written.

E. Decision is impossible to perform or to perform timely

If you believe you cannot perform the arbitrator's decision within the established time limit, or at all, you should immediately inform the BBB in writing. The BBB will process your submission in the same manner as a request for correction.

The arbitrator may request additional evidence, request another hearing or do anything necessary to confirm or deny your claim of impossibility of performance. If the arbitrator confirms such impossibility, the original decision may then be changed to include any remedy falling within the scope of the Agreement to Arbitrate.

If the company has exceeded the time for performance specified in the decision, the consumer should notify the BBB in writing. The BBB will immediately contact the company and attempt to determine the reasons for its noncompliance.

F. Suspending the time to perform

If you submit to the BBB a written statement relating to correction, clarification or impossibility of performing the decision, the time for acceptance and performance of a decision shall be suspended until the issue is resolved by the arbitrator or by the BBB.

G. After decision is issued

Once a decision in your case has been issued:

- The parties will be legally bound to abide by the decision and must comply with the decision's terms (subject to modification/correction under these Rules or to any limited right of review that may be provided by state or federal law).
- Each party gives up any right to sue the other party in court on any claim that has been resolved at the arbitration hearing, unless the company fails to perform according to the arbitrator's decision.

(If the company fails to perform the decision, notify the BBB and they will try to resolve the matter. In addition, you may have the right to enforce the decision in court or pursue other legal remedies under state or federal law.)

H. Verification of performance

All parties must do what the decision requires within the time limits set by the arbitrator.

Unless otherwise stated in the decision, the time for performance shall begin when you receive the decision. Approximately two weeks after the performance date, the BBB shall contact the parties to see if the decision has been performed.

29. TIMELY OBJECTIONS

Any failure to follow these Rules that may significantly affect the independence, impartiality or fairness of the arbitration process should be raised with the BBB at the earliest opportunity. The BBB will make a final decision on the appropriate action to be taken if the BBB determines that a failure to follow these Rules has significantly affected the independence, impartiality or fairness of the arbitration process.

30. CHANGE OF TIME

You and the other parties to the arbitration may jointly agree--in writing--to change any period of time stated in these Rules.

31. CONFIDENTIALITY OF RECORDS

It is BBB policy that records of the dispute resolution process are private and confidential.

The BBB will not release the results of your individual case to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by law or pertinent to judicial or governmental administrative proceedings.

32. JUDICIAL PROCEEDINGS/EXCLUSION OF LIABILITY

In submitting to arbitration under these Rules, you agree that the arbitrator shall not be subpoenaed by either party in any subsequent legal proceeding. You further agree that the BBB, Council of Better Business Bureaus or the arbitrator shall not be liable for any act or omission in connection with your arbitration.

33. INTERPRETATION OF RULES/RIGHT TO DISCONTINUE ARBITRATION

The BBB reserves the right to make the final decision on procedural questions, on the scope of the agreements, on a consumer's eligibility for arbitration and on any other question concerning the application and interpretation of these Rules.

The BBB at all times reserves the right to discontinue administration of arbitration for any case(s) due to a conflict with any state/federal law or regulation, or due to the conduct of a party