

**CONSUMER ARBITRATION PROGRAM
FOR PORSCHE CARS NORTH AMERICA
(CAP-MOTORS)
GUIDE AND RULES FOR
MEDIATION / ARBITRATION**

I. GENERAL INFORMATION

A. Introduction

This guide provides important information about the mediation and arbitration program for Porsche Cars North America ("Program") under the Magnuson-Moss Warranty Act ("Mag-Moss Act") and state lemon law ("Lemon Law"). This guide is designed to help you, the consumer, prepare for mediation /arbitration under the Program. You should read this guide in its entirety. Otherwise, you may not fully understand your rights and responsibilities under the Program.

B. Administration of the Program

DeMars & Associates, Ltd. ("Administrator") administers the Program. The Administrator is responsible for the overall administration of the Program, including collecting necessary documents, facilitating mediation efforts, and when needed, scheduling the arbitration hearing, and providing you with an impartial, qualified Mediator and/or Arbitrator. The Administrator does not decide cases. The Administrator provides a forum for hearing and resolving disputes using impartial Mediators and Arbitrators.

The Administrator's Program fees, including the Mediator and Arbitrator fees, are paid by Porsche Cars North America ("PCNA") in accordance with federal regulations. No Program fees will be charged to you.

The Administrator, Mediators and Arbitrators are exempt from civil liability as a result of any act or omission in connection with the mediation or arbitration held under the Program. The parties are prohibited from calling the mediator, arbitrator or any employee or agent of the Administrator as a witness or expert in any proceeding involving the parties related to a Lemon Law dispute subject to this Program. Further, no party can subpoena any notes or other materials generated by the mediator and/or arbitrator.

C. Program Timeline

The mediation conference and/or arbitration hearing of an eligible consumer claim will take place within forty (40) days from when the Administrator receives a claim. The 40-day timeline can be extended in any of the following circumstances:

- 1) For a seven day period if the consumer has not attempted to seek resolution directly from the manufacturer;
- 2) If the delay is due to the consumer's failure to promptly provide:
 - his or her name,
 - address,
 - make and model information,
 - vehicle identification number for the vehicle, and
 - a statement summarizing the defect or concern being reported;
- 3) For a period not to exceed thirty (30) days to permit the Program the opportunity to respond to an Arbitrator's request for additional information, including a vehicle inspection.

II. MEDIATION PROCESS

A. What is Mediation?

Mediation is a process in which parties to a dispute and a Mediator (a neutral facilitator) discuss settlement. This

discussion takes place during a series of phone calls between the mediator and each of the parties separately. This process is known as shuttle mediation. At the choice of the parties, shuttle mediation may alternatively take place via email or in an online forum. The Mediator assists the parties' efforts to reach a mutually acceptable settlement of the dispute; however, the Mediator cannot impose any settlement upon the parties. Mediation is voluntary for both the consumer and PCNA. The dispute may be settled prior to the commencement of mediation efforts because the parties may continue direct negotiations during the Program. If the Mediator determines that shuttle mediation is not productive, the Administrator will schedule the mediation as a telephone conference call.

In mediation, the parties can discuss any vehicle issue of concern and attempt to resolve all differences, even if some of the alleged problems with the vehicle are not covered by the warranty or the Lemon Law.

At the outset of the shuttle mediation call, the Mediator describes the procedures and ground rules. Each party then describes their respective views of the dispute in a separate phone conversation with the Mediator. During each separate session, the Mediator attempts to clarify each party's version of the facts, priorities and positions, and explores alternative solutions.

If discussions reach a stage where no further progress is being made, the Mediator may suggest a three way call so parties may speak to each other directly.

During the separate and joint sessions, the Mediator attempts to assist the parties in narrowing their differences and in obtaining agreement on major and minor issues. The Mediator attempts to reduce a disagreement into a workable solution. At appropriate times, the Mediator may make suggestions about a final settlement, advise the parties on the consequences of failure to reach a mutually acceptable agreement, outline the progress that has been made, and formalize offers to achieve agreement.

The Mediator acts as a facilitator to keep discussions focused and to avoid new outbreaks of disagreement. Once it appears an agreement has been reached, the Mediator verifies the specifics of an agreement and helps the parties ensure that the terms are comprehensive, specific, and clear in the final session.

B. Mediation Procedures

1. **Initiation of Mediation.** Upon receipt of an eligible claim, the Administrator will promptly notify the consumer and PCNA, in writing, that an eligible application has been received, and shall advise the parties of:
 - (i) the identity of the assigned Mediator,
 - (ii) the date by which shuttle mediation will begin and
 - (iii) the Administrator's address to which all requests or other correspondence concerning the claim should be directed.

The Administrator will send notification to the parties at least ten (10) days prior to the date shuttle mediation will begin. A copy of the consumer's claim will be provided to PCNA and the Mediator.

2. **Appointment of the Mediator.** A single Mediator will be assigned by the Administrator to conduct the shuttle mediation.
3. **Representation by Attorney.** A party may be represented by an attorney. The attorney's name, address and telephone number must be communicated in writing to all parties and to the Administrator at least five (5) days prior to the mediation. All representatives must have settlement authority.
4. **Inspection of Vehicle.** After the commencement of a claim in this Program, PCNA has the right to inspect the vehicle. PCNA and the consumer should attempt to arrange a mutually agreeable time and location for such inspection, however, in the event they are unable to agree upon a date, the inspection must take place at least ten (10) days prior to the arbitration hearing. The consumer must be present during the inspection, unless the consumer expressly waives in writing the right to be present. The inspection does not constitute another attempt to repair the vehicle, and no repair procedures may be conducted without the consumer's written consent.

PCNA may perform limited non-repair diagnostic examinations and inspection procedures, such as test driving the vehicle or attaching a testing device to the vehicle. The results of any diagnostic procedures or information gathered as a result of the inspection must be provided to the consumer within ten (10) days of the inspection.

Please Note: Failure to make the vehicle available for inspection may delay the arbitration proceedings.

5. **Authority of the Mediator.** The Mediator shall interpret and apply these rules insofar as they relate to the Mediator's duties and responsibilities. All other rules shall be interpreted and applied by the [Arbitrator or Administrator](#).

The Mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The Mediator is authorized to conduct joint and separate discussions with the parties and to make oral and written recommendations for the settlement.

6. **Privacy.** Mediation conferences are private and confidential. The parties, their attorneys, if any, and Administrator and regulatory personnel may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the Mediator.
7. **Confidentiality.** The Mediator shall not divulge confidential information disclosed to the Mediator by the parties in the course of the mediation. Furthermore, the Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and, except as otherwise required by law, shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding (i) views expressed or suggestions made by another party with respect to a possible settlement of the dispute, (ii) admissions made by another party in the course of the mediation proceedings, (iii) proposals made or views expressed by the Mediator, or (iv) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

8. **Teleconference Mediation.** In the event that the Mediator believes that direct communication between PCNA and the customer would be beneficial, the Mediator may schedule a Teleconference Mediation no later than 12 days prior to the scheduled Arbitration.
9. **Termination of Mediation.** The mediation shall be terminated by (i) the execution of a written settlement agreement by the parties; (ii) a written declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile; or (iii) a settlement agreement has not been met by 10 days prior to the scheduled Arbitration.

III. ARBITRATION PROCESS

A. What is Arbitration?

In Arbitration a dispute is given to an impartial person to make a final decision. Pursuant to the Mag-Moss Act and certain Lemon Laws, you may be required to use this arbitration process before resorting to the rights and remedies available under Mag-Moss Act and Lemon Law, where applicable. You may also use this program if the vehicle is still covered by the factory new vehicle limited warranty. Arbitration is a less formal process than litigation; however, the decision of the Arbitrator is binding on PCNA once the consumer accepts that decision as evidence by the consumer signing the Acceptance form and returning it to Administrator. The parties must act in good faith in carrying out the terms of the decision.

The arbitration hearing is managed in a way to encourage a full and complete review of the facts and to give each party a full and equal opportunity to present their case. The Arbitrator conducts the hearing and takes whatever action is necessary to insure that the hearing is fair, orderly and efficient. All parties must abide by the Arbitrator's rulings regarding the conduct of the hearing.

B. Arbitration Procedures

1. **Beginning Arbitration.** To be eligible for the Program, you must have a PCNA vehicle covered by the terms of the factory new vehicle limited warranty at the time of application. The Administrator will determine whether or not your case is eligible for the Program.

When a case is ineligible, you will be notified by the Administrator in writing. If you believe the ineligible determination was made in error, an arbitrator will consider a written appeal if the application and supporting documents are received within 30 days from the date of the ineligible notice letter.

When a case is eligible, the Administrator assigns a case number and sets a date for the hearing. The arbitration hearing will take place unless the Administrator is notified that a settlement agreement has been reached.

The Administrator provides the parties with the following information:

- (a) the identity of the assigned Arbitrator;
 - (b) the scheduled arbitration hearing date, time and location;
 - (c) a notice that if one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;
 - (d) a request to the consumer that the vehicle be brought to the arbitration hearing for inspection by the Arbitrator along with proof of current liability and collision insurance.
 - (e) the applicable Program forms.
2. **Pre-Arbitration Hearing Information Form.** Each party is required to complete a Pre-Arbitration Hearing Information Form ("Form") and send it to the Administrator. The Form requests information necessary to resolve the dispute such as:
 - (a) whether a party will be represented by an attorney;
 - (b) whether a party will be using an interpreter;
 - (c) any change or additional information to the consumer's written statement regarding the alleged defect or other complaint being reported;
 - (d) any change or additional information to PCNA's written summary of its position;
 - (e) any witnesses to be called by a party;
 - (f) any documents the parties want the Arbitrator to review that have not already been included;
 - (g) whether a party wants the Arbitrator to inspect or test-drive the vehicle; and
 - (h) if a test drive is requested, proof of insurance coverage on the vehicle.

The Administrator must receive the signed Form from each party at least seven (7) days prior to the arbitration hearing. If the Form is not received by the deadline, the hearing will still take place and the arbitrator will take into consideration the fact that the Form was not received.

The parties must provide a written list of witnesses, other than rebuttal witnesses, at least five (5) days prior to the arbitration hearing. Except for rebuttal evidence, any document not attached to the Form, or otherwise supplied to the Administrator at least seven (7) days prior to the arbitration hearing, may be excluded from evidence. The Arbitrator makes this decision.

3. **Appointment of Arbitrator.** A single Arbitrator will be assigned by the Administrator to hear and decide the arbitration dispute. The Administrator will provide the Arbitrator with all relevant documents submitted to the Administrator by the parties before the arbitration hearing.
4. **Arbitrator Disclosure and Challenge Procedure.** A person appointed as an Arbitrator shall disclose to the Administrator any circumstance likely to affect impartiality. This may include any bias or any financial or personal interest in the result of the arbitration. This may also include any past or present relationship with the parties or their representatives. If this information is received from the Arbitrator or another source, the Administrator shall communicate the information to the parties and the Arbitrator. If a party objects to the assigned Arbitrator, it must send a letter stating the objection within seven (7) days from the date of the letter assigning the Arbitrator. If the Administrator receives a written objection about the assigned Arbitrator, the

Administrator shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision. This decision shall be final and binding.

5. **Arbitrator Vacancies.** If for any reason the Arbitrator becomes unwilling or unable to perform his or her duties, the Administrator may declare the position vacant and appoint a new Arbitrator.
6. **Date, Time and Place of Arbitration Hearing.** The Administrator shall set the date, time, and place for each hearing upon consulting with the Arbitrator. The arbitration hearing is held at a site reasonably convenient to the consumer. The vehicle should be brought to the arbitration hearing and you will need to bring proof of current liability and collision insurance.
7. **Withdrawal of Consumer's Claim.** You may withdraw your claim up to five (5) days prior to the arbitration hearing date. If the claim is withdrawn, the case file will be closed and submitted to the Administrator. If you decide to file another claim, you should contact the Administrator, who will determine if you are eligible to file another claim.
8. **Representation by Attorney.** Any party may be represented by an attorney. The attorney's name, address and telephone number must be included on the Pre-Arbitration Hearing Information Form. All representatives must have settlement authority.
9. **Evidence.** The parties may give testimony and documents related to the dispute. The parties shall give any evidence the Arbitrator may reasonably decide is necessary to understanding and deciding the dispute. The Arbitrator may receive and consider the statements of witnesses by affidavit, a signed, written statement. The Arbitrator shall give the information the weight the Arbitrator decides is appropriate after consideration of any objection about relevancy made by the other side.

The Arbitrator shall judge the relevance of the evidence presented. Legal rules of evidence do not apply. Evidence shall be taken in the presence of all the parties. An exception will be made where a party does not attend after being notified of the date, time, and place of the hearing, or has waived the right to attend. The hearing may proceed under these circumstances. All documents submitted by the parties to the Administrator and each other prior to the hearing shall be made a part of the case file, unless excluded by the Arbitrator as irrelevant or redundant.

Whenever possible, evidence is labeled and placed in the case file. The Arbitrator will include a written summary of any other evidence in the case file. All evidence included in the case file will be sent to the Administrator following the hearing.

The vehicle should be brought to the arbitration hearing and you will need to bring proof of current liability and collision insurance. If you feel it is not capable of being safely operated you will need to advise the Administrator prior to the hearing, along with your reasons. You may be requested to trailer the vehicle to the hearing. The Arbitrator may inspect your vehicle if requested by a party or if the Arbitrator decides it is necessary. Additionally, the Arbitrator may test-drive the vehicle. The parties must be present on such inspection or ride unless a party waives its right to be present. The Arbitrator will include information from the test drive in the case file. In the event the vehicle is not made available for inspection at the hearing and the Arbitrator determines an inspection is necessary, the Arbitrator may choose to delay rendering a decision in the matter until such time as the vehicle is made available for inspection.

10. **Communication with Arbitrator.** There shall be no direct communication between the parties and Arbitrator other than at the oral hearing, except as specifically permitted within this guide. Any other oral or written communication from the parties to the Arbitrator shall be sent to the Administrator. The Administrator will forward the communication to the Arbitrator.
11. **Attendance at the Arbitration Hearing.** Arbitration hearings shall be open to the public as required by the Mag-Moss Act and applicable Lemon Law. Although these hearings are open and informal, Arbitrators can exclude anyone who is disrupting the hearing.

- 12. Oral Presentations and Arbitration in the Absence of a Party.** The Program allows for oral presentations by both parties to the dispute. Each party has the right to be present for the other party's oral presentation. If one party fails to appear at the time set for the hearing, the Arbitrator may still allow the presentation by the other party.

Should a party fail to appear at the scheduled time, the Arbitrator may either decide the dispute or give the absent party an opportunity to rebut any contradictory evidence or submit additional information before a decision is made. The Arbitrator has the authority to make a decision whether or not an oral presentation is made.

PCNA and the Administrator shall take all steps necessary to ensure that the Program, the Program Staff, and Arbitrators, are sufficiently insulated from PCNA, so that the decision of the Arbitrator and the performance of the Program Staff are not influenced by PCNA.

- 13. Preparation for Arbitration Hearing.** All parties should come to the hearing prepared to present testimony, documents and other evidence about the dispute. This will include information about what you are asking the arbitrator to award. You should bring with you to the hearing your copies of all documents you have submitted to the Program and to the other side, and all documents you have received from the Program and the other side.

14. Order of Proceedings at the Arbitration Hearing.

- a. The arbitration hearing will be opened by:
- the filing of the oath of the Arbitrator,
 - the recording of the date, time and place of the hearing,
 - the name of the case, and
 - the names and addresses of parties, attorneys and witnesses present.

The Arbitrator will record a description of the exhibits. The Administrator will send a copy of the case file to you approximately one week before the hearing. You should bring your copy of this case file to the hearing.

- b. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved and condition of the vehicle.
- c. The Arbitrator shall administer an oath or affirmation to all persons who will give testimony.
- d. The Arbitrator will limit the oral presentation to two hours for each side of the dispute for a total of up to four hours. The Arbitrator may extend the oral presentation time at his/her discretion.
- e. You or your attorney will present testimony and documents to support your claim.
- f. The manufacturer's representative(s) or attorney(s) will have the opportunity to question the consumer and the consumer's witnesses about their testimony after each one testifies.
- g. The manufacturer(s) will then present testimony and documents supporting its defense.
- h. You or your attorney will have the opportunity to question PCNA's witnesses about their testimony after each one testifies.
- i. The Arbitrator may question any witness at any time during the hearing.
- j. After all testimony, the Arbitrator will decide whether he/she will inspect and/or test-drive the vehicle, if the vehicle is capable of being safely operated. After the inspection and/or test-drive is conducted, and all persons have returned to the hearing room, the parties will have the opportunity to offer additional testimony about it on the record.

k. Each party shall then have an opportunity to make a brief closing statement.

The Arbitrator has the discretion to vary this procedure but shall give a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

15. **Post-hearing Filing of Documents or Other Evidence.** If the Arbitrator directs that documents or other evidence be submitted to the Arbitrator after the arbitration hearing, they shall be filed with the Administrator. The Administrator will send the documents to the Arbitrator. The Arbitrator shall set a deadline for the documents to be submitted.
 16. **Closing of Arbitration Hearing.** The Arbitrator shall specifically ask all parties whether they have any additional evidence to offer or witnesses to be heard. Upon receiving negative replies or, if satisfied that the record is complete, the Arbitrator shall declare the arbitration hearing closed.
 17. **Scope of Decision.** The Arbitrator will render a fair decision based upon the information gathered by the Program and upon any information provided by the parties. In addition, the Arbitrator will take into account all legal and equitable factors, including but not limited to the written warranty, the provisions of the Lemon Law, this guide, and any other appropriate equitable factors. The decision is based solely upon the case file, documents and testimony presented during the hearing, and test-drive, if any.
 18. **Available Remedies.** The arbitrator may award the following:
 - Refund of vehicle purchase price
 - A new, substantially identical replacement vehicle
 - A further repair
 - Reimbursement for incidental expenses
 - No further action
 - Any other remedy which the Arbitrator determines is reasonably appropriate under the circumstances.
- The Arbitrator is not authorized to award attorney's fees or consequential damages such as lost wages.
- The decision of the Arbitrator is final and conditionally binding upon the parties, unless judicial proceedings are initiated (See "Post Decision Proceedings" below). Requests for rehearing are not considered by the Arbitrator, or the Administrator.
19. **Time and Form of Decision.** The decision will be made promptly by the Arbitrator, but no less than ten (10) days from the date of closing the arbitration hearing. The decision will be in writing, will include a brief statement of the reasons for the decision and will be signed by the Arbitrator. Decisions are to be made within forty (40) days of your application to the program, unless the arbitrator defers the decision for more information, which may not exceed thirty (30) additional days.
 20. **Reasonable Offset for Use of the Vehicle.** A decision ordering repurchase of a vehicle may be subject to a reasonable offset for your use of the vehicle.
 21. **Delivery of Decision to Parties.** The parties will be mailed a copy of the decision via first class mail to the party or its attorney's last known address. If you are dissatisfied with the decision or if you are dissatisfied with PCNA's intended actions or performance you may pursue legal remedies including court. The Arbitrator's decision is admissible in any subsequent legal proceedings. Parties are entitled to receive copies of all the Program's records related to the dispute, at a reasonable cost.
 22. **Compliance with Arbitrator's Decision.** If the decision is in your favor, PCNA must comply with the decision within thirty (30) days of the date PCNA receives notice you accepted the decision. Compliance occurs on the date you receive the relief specified in the decision.

- 23. Technical Corrections.** Either party may request that the Arbitrator make a technical correction to the decision by filing a written request with the Administrator and sending a copy of the request to all opposing parties within ten (10) days after receipt of the written decision. Technical corrections shall be limited to mathematical errors, corrections of a party's name or information regarding the vehicle, and typographical or spelling errors. Technical correction of a decision shall not extend the time for manufacturer compliance.
- 24. Post Decision Proceedings.** The decision of the Arbitrator is binding on PCNA once you accept it. If you reject the decision, or PCNA fails to complete the terms of an accepted decision within the required timeframe, you may pursue other rights and remedies available under state or federal law. The Arbitrator's decision is admissible in any subsequent legal proceedings.

If PCNA fails to carry out a further repair award within the specified time frame, or if you assert that the further repair attempt has not resolved the concern(s), you may contact the Administrator to request that the Arbitrator reconsider the decision. The Administrator will investigate the dispute and treat it as a new dispute. However all phases of the process will be expedited to the extent possible, and if reasonably possible, the same Arbitrator will decide the dispute.

Administrator's Office

If you have any questions or are uncertain about any part of this Program, please contact the Administrator:

CAP-Motors
DeMars & Associates, Ltd.
P.O. Box 1015
Hurst, TX 76053
(800) 279-5343
info@demarsassociates.com

The parties should provide their case number on all communications.

Special Accommodations

Persons needing special accommodations to participate in the arbitration hearing should contact the Administrator no later than ten (10) days prior to the conference or hearing date. If hearing impaired, contact the Administrator via TTY Relay Service at 800-947-3529. An interpreter will be provided by the Administrator upon request.