

SMA ARBITRATION RULES

DOCUMENT NO. 1

**MARITIME ARBITRATION RULES
SOCIETY OF MARITIME
ARBITRATORS, INC.**

**P R E A M B L E
INTERPRETATION AND APPLICATION OF RULES**

The powers and duties of the Arbitrator(s) shall be interpreted and applied in accordance with these Rules and Title 9 of the United States Code. Whenever there is more than one Arbitrator, and a difference arises among them concerning the meaning or application of these Rules, the difference shall be resolved by majority vote or by an Umpire, where appropriate.

In all matters not expressly addressed in these Rules, the Arbitrator(s) shall act in the spirit of these Rules and make every effort to ensure that an award is legally enforceable.

All references to Arbitrator(s) are deemed gender neutral. All references to Arbitrator(s) in the singular shall apply to the plural if the Panel consists of more than one Arbitrator.

All references to the "Act" are to the United States Arbitration Act (Title 9 of the United States Code).

All references to a third Arbitrator or Panel Chairman shall also apply to an Umpire, where applicable.

All references to "SMA" are to the Society of Maritime Arbitrators, Inc.

I. RULES A PART OF THE ARBITRATION AGREEMENT

Section 1. Agreement of Parties

Wherever parties have agreed to arbitration under the Rules of the Society of Maritime Arbitrators, Inc., these Rules, including any amendment(s) in force on the date of the agreement to arbitrate shall be binding on the parties and constitute an integral part of that agreement.

Nevertheless, except for those Rules which empower the Arbitrators to administer the arbitration proceedings, the parties may mutually alter or modify these Rules.

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Unless stipulated in advance to the contrary, the parties, by consenting to these Rules, agree that the Award issued may be published by the Society of Maritime Arbitrators, Inc. and/or its correspondents.

Section 2. Consolidation

The parties agree to consolidate proceedings relating to contract disputes with other parties which involve common questions of fact or law and/or arise in substantial part from the same maritime transactions or series of related transactions, provided all contracts incorporate SMA Rules.

Unless all parties agree to a sole Arbitrator, consolidated disputes are to be heard by a maximum of three Arbitrators to be appointed as agreed by all parties or, failing such agreement, as ordered by the Court.

II. TRIBUNALS

Section 3. Name of Tribunal

The "Panel" is any Tribunal created under the parties' agreement, to resolve disputes by arbitration under these Rules.

Section 4. Roster of Arbitrators

The SMA shall establish and maintain a roster of persons with qualifications to act as Maritime Arbitrators from which Arbitrators may be chosen.

Section 5. Office of Tribunal

Office of the Panel - Depending upon the number of Arbitrators, the office of the Panel shall be as follows:

- (a) *Sole Arbitrator* - The home address or place of business of the sole arbitrator.
- (b) *Two Arbitrators* - The home or business address of either of the Arbitrators, as decided by them.
- (c) *Three Arbitrators* - The home or business address of the Arbitrator chosen by the other Panel members to act as Chairman of the Panel.

III. INITIATION OF THE ARBITRATION

Section 6. Initiation Under an Arbitration Agreement

Any party to an agreement for arbitration under SMA Rules may initiate an arbitration by giving written notice to the other party of its demand for arbitration and naming its chosen arbitrator.

In its demand for arbitration, the party initiating the process shall set forth the nature of the dispute, the amount of damages involved, if any, and the remedy sought.

The parties shall be free to amend or add to their claims until the proceedings are closed pursuant to Section 25.

Section 7. Fixing of Locality

The arbitration is to be held in the City of New York at a location chosen by the Panel, unless otherwise agreed by the parties.

The parties shall be given sufficient notice to enable them to appear or be represented at the proceedings.

IV. APPOINTMENT OF ARBITRATORS

Section 8. Disqualification

No person shall serve as an Arbitrator who has or who has had a financial or personal interest in the outcome of the arbitration or who has acquired from an interested source detailed prior knowledge of the matter in dispute.

Section 9. Disclosure by Arbitrators of Disqualifying Circumstances

Prior to the first hearing or initial submissions, all Arbitrators are required to disclose any circumstance which could impair their ability to render an unbiased award based solely upon an objective and impartial consideration of the evidence presented to the Panel.

Such disclosure shall include close personal ties and business relations with any one of:

- (a) the parties to the arbitration;
- (b) other affiliates or associated companies of the parties;
- (c) counsel for the parties;
- (d) the other Arbitrators on the Panel.

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No Arbitrator shall accept an appointment or sit on a Panel, where the Arbitrator or the Arbitrator's current employer has a direct or indirect interest in the outcome of the arbitration.

Upon receipt of the disclosure statement(s) from the Arbitrator(s), the parties may accept the Panel or challenge any (or all) of the Arbitrators.

If challenged, the grounds for it shall be made known to the Arbitrator(s), who may withdraw from the Panel and be replaced pursuant to Sections 13a and 13b as appropriate. However, if the challenged Arbitrator(s) consider(s) the challenge to be without merit and declines to withdraw, the arbitration shall proceed with due reservation of the challenger's right to seek recourse from the appropriate United States District Court after the Award has been issued.

Section 10. Direct Appointment by Parties

If the arbitration agreement specifies a method by which Arbitrators are to be appointed, that method shall be followed and in the event of a conflict, its terms shall prevail over this section of the Rules.

When requested by a party, the SMA shall submit its then current roster of members from which arbitrators may be appointed.

If a party fails to appoint its Arbitrator within the time frame specified in the arbitration agreement, the party demanding arbitration may resort to Section 5 of the Act.

If no such time frame is specified, the party demanding the arbitration shall give the other written notice that the appointment of its Arbitrator is made pursuant to Section 10 of these Rules which requires the other to appoint an arbitrator within twenty days of receipt of that notice, failing which the party demanding arbitration may appoint a second Arbitrator with the same force and effect as if that second Arbitrator were appointed by the other party. Any thus chosen second Arbitrator shall be a disinterested person with the same qualifications, if any, required by the arbitration agreement. If the arbitration agreement provides for three Arbitrators, the two so chosen shall appoint the third. Notwithstanding anything contained in this section to the contrary, if the party demanding arbitration seeks to compel the appointment of a second Arbitrator sooner than the stipulated twenty days, it is free to proceed under the Act.

Section 11. Appointment of Additional Arbitrator by Named Arbitrators

If the two party-appointed Arbitrators fail to appoint a third Arbitrator within a reasonable time, any party may petition the Court under the Act to make such an appointment after advising the Arbitrators.

Section 12. Notice of Appointment to Arbitrator(s)

Arbitrators may be appointed by the parties or their counsel, orally or in writing. If an oral appointment is made, it should be confirmed in writing as soon as practicable. The Chairman shall promptly notify the parties or their counsel, that the Panel is complete and ready to proceed with the arbitration.

Section 13. Vacancies

If an Arbitrator is unable to serve, the vacancy shall be filled as follows:

- (a) If the vacancy is created by a party-appointed Arbitrator, that party shall promptly name a replacement. The previously-selected Chairman will continue to serve in that capacity unless the two party-appointed Arbitrators choose a replacement Chairman before the hearings have commenced or, if the arbitration is conducted on documents alone, before the first submissions or documents are received by the Panel.
- (b) If the office of Chairman becomes vacant, the two party-appointed Arbitrators shall appoint a replacement Chairman.
- (c) Following the replacement of Arbitrator(s), the arbitration shall resume on the existing record, unless the Panel directs or the parties agree otherwise.

V. PROCEDURE FOR ORAL HEARING

Section 14. Representation

Any party has the option to be represented in the arbitration proceedings by counsel or any other duly-appointed representative.

Section 15. Stenographic Record

Unless otherwise agreed by the parties, a stenographic record of all hearings shall be arranged. The parties shall initially share the cost of the record, subject to final apportionment by the Arbitrator(s).

Section 16. Interpreters

If required, the party presenting shall furnish and initially pay for an interpreter. The interpreter shall be independent of both parties.

Section 17. Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The Panel has the power to compel witnesses to leave the hearing room during the testimony of other witnesses.

Section 18. Adjournments

The panel may grant adjournments upon a showing of good cause. If all parties jointly request an adjournment, it shall be granted.

Section 19. Oaths

After the Panel has been accepted by the parties, each Arbitrator shall take the oath set forth in Appendix A hereto. If the arbitration is to be conducted without hearings, the Arbitrator(s) may make the oath in writing.

The Arbitrators shall require witnesses to testify under oath administered by any duly qualified person (see Appendix A). The form of oath may be amended to include an affirmation under penalty of perjury.

Section 20. Majority Decision

Whenever the Panel consists of more than one Arbitrator, the decision and award of the Arbitrators shall be by majority vote, where appropriate, unless a unanimous decision is required by the arbitration agreement. In cases where the arbitration clause calls for two party-appointed Arbitrators and an Umpire, should the two be unable to agree, they shall appoint an Umpire who shall take into account the reasons for their disagreement and adjudicate the matters in controversy as if he/she were sole Arbitrator.

Section 21. Order of Proceedings

If hearings are scheduled, the first hearing of the arbitration shall be at the time and place designated by the Chairman. The Chairman shall instruct each party or their counsel to deliver to each member of the Panel a statement identifying the other interested parties so that the Arbitrator(s) may determine whether grounds for voluntary withdrawal exist.

Each claimant should submit a pre-hearing statement of its position and claim.

At the first hearing, each party, or their counsel, may make an opening statement setting forth its position.

The arbitration proceeding shall be conducted in an orderly manner appropriate to judicial proceedings. Rules of evidence used in judicial proceedings need not be applied.

If it is not clear which party is the claimant, the Panel shall make the determination. Arbitrators shall apply burdens of proof and if by majority vote, the Panel concludes that the claimant has not made its case, no further evidence need be taken from the respondent, unless that respondent is asserting a counterclaim.

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Copies of any documents, exhibits and accounts intended to be introduced at a particular hearing should be supplied to the other party or opposing counsel and to Panel members at least one week prior to the date of that hearing. Any fact or expert witness intended to testify before the Panel should likewise be identified at least one week in advance of the scheduled hearing date.

Following the presentation of all evidence, the parties may agree to present their arguments in a final oral hearing rather than in written briefs.

Section 22. Arbitration in the Absence of a Party

After a default has been established under the provisions of Section 4 of the Act or after the Panel has been completed pursuant to these Rules, the arbitration may proceed in the absence of the defaulting party, who, after due notice, failed to be present or failed to obtain an adjournment.

Section 23. Evidence

The parties may offer such evidence as they desire and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. The Arbitrator(s) may subpoena witnesses or documents at their own initiative or at the request of any party (see Appendix B).

The Panel shall be the judge of the relevancy and materiality of the evidence offered.

All evidence shall be taken in the presence of the Arbitrator(s) and of all the parties, except in the case of depositions or where any of the parties is absent without reasonable cause, in default, or has waived its right to be present or where submission of evidence by mail or in other form has been agreed by both parties.

The Panel has the power to direct that depositions be taken from witnesses who cannot testify in person.

All evidence submitted to the Panel, as well as all written communications between any party and the Panel, after it has been constituted, shall be submitted to all parties.

Section 24. Evidence by Affidavit

The Panel may receive evidence by affidavit and shall give such affidavits appropriate weight in light of any objections made by opponents.

Section 25. Closing of Proceedings

Upon completion of submission of evidence, the parties may submit briefs on an agreed schedule. If the parties cannot agree, the schedule shall be established by

the Panel. Once all submissions are completed, the Chairman shall declare the proceedings closed.

Section 26. Reopening of Proceedings

Following the submission of briefs, the Panel may require the parties to provide clarifications concerning their claims or defenses and may order additional hearings for that purpose.

At any time prior to the issuance of an Award, hearings may be reopened on the application of any party provided the Panel agrees that good cause has been shown.

VI. PROCEDURE FOR OTHER THAN ORAL HEARINGS

Section 27. Arbitration on Documents Alone

The parties, by written agreement, may submit their disputes to arbitration on documents alone. In such case, the Panel members shall make their disclosures in writing to all parties, pursuant to Section 9 and communicate the written oath (see Appendix A attached) to the parties. Thereafter, the parties shall make their submissions of documents and briefs, on such schedule as they agree. If the parties cannot agree, the Panel will establish the schedule (see Rules for Shortened Arbitration Procedure - Document No. 2).

VII. THE AWARD

Section 28. Time

The Panel has the collective duty to issue awards not later than 120 days after the final evidence or brief has been received and the parties have been notified that the proceedings have been closed. Failure of the Panel to abide by this provision shall not be grounds for challenge of the Award.

Section 29. Form

The Award and the Arbitrator(s)' reasons for same shall be made in writing and signed either by the sole Arbitrator or Umpire or by a majority, if more than one, or by all, if unanimous. A partial or total dissent shall be signed by the dissenter and included with the majority Award.

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Section 30. **Scope**

The Panel, in its Award, shall grant any remedy or relief which it deems just and equitable, including, but not limited to, specific performance. The Panel, in its Award, shall assess arbitration expenses and fees as provided in Sections 15, 36 and 37 and shall address the issue of attorneys' fees and costs incurred by the parties. The Panel is empowered to award reasonable attorneys' fees and expenses or costs incurred by a party or parties in the prosecution or defense of the case.

Any attorneys' fees or party costs awarded shall be quantified in the Award.

The Panel shall retain jurisdiction to modify the Award for the sole purpose of correcting obvious clerical and/or arithmetical errors.

Section 31. **Award upon Settlement**

Should the parties settle their dispute during the course of arbitration, the Panel may, upon the request of the parties, set forth the terms of the settlement in an Award.

Section 32. **Delivery of Award to Parties**

The parties accept that legal delivery of the Award may be accomplished:

- (a) By mailing of the Award or a true copy thereof to the parties at their last known addresses or that of their counsel; or
- (b) By personal service of the Award.

VIII. SPECIAL PROVISIONS

Section 33. **Waiver**

Any party with knowledge that a provision of these Rules has been breached, but who continues with the arbitration without registering an official objection with the Panel shall be deemed to have waived any right to object.

Section 34. **Time Periods**

The parties may modify any period of time by mutual agreement and consent of the Panel. The Panel may extend or shorten any period of time established by the Rules upon a showing of good cause and shall notify the parties accordingly.

Section 35. **Service of Documents**

Wherever parties have agreed to arbitration under these Rules, they shall be deemed to have consented to service of any papers, notices or process necessary to

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initiate or continue an arbitration under these Rules or a court action to confirm judgment on the Award issued. Such documents may be served:

- (a) By mail addressed to such party or counsel at their last known address; or
- (b) By personal service.

Counsel for either party may be utilized by the Panel to implement subpoenas or other legal procedures instituted by the Panel. The expenses and fees for such services are to be allocated as the Panel members direct.

IX. EXPENSES AND FEES

Section 36. Expenses

The expenses of witnesses shall be paid by the party producing or requiring the production of such witnesses subject to allocation by the Panel in its final Award.

Subject to the final allocation in the Award, expenses incurred at the request of the Panel shall initially be borne equally by the parties. These include required travel and out-of-pocket expenses of the Panel members, the expense of producing witnesses requested by the Panel, or the cost of providing any proofs produced at the direct request of the Panel. The Panel may require an advance deposit for any sums it may reasonably have to expend.

The travel and living expenses of a party-appointed Arbitrator from outside the area named for the arbitration shall be borne by the party who appointed such Arbitrator.

Section 37. Arbitrator(s)' Fees

Each Panel member shall determine the amount of his/her compensation. When determining the fee, the Arbitrator(s) shall take into account the complexity, urgency and time spent on the matter.

At any time prior to issuance of the Award, the Panel may require that the parties post security for its estimated fees and expenses. Upon such request, each party shall promptly deposit the required amount into a segregated interest-bearing escrow account with the Chase Manhattan Bank, administered by the SMA (See Appendix C). Alternatively, such deposits may be held in any other escrow account or in any other manner, if agreed to by the Arbitrator(s).

If the dispute is settled during the course of the arbitration, a fee commensurate with work already performed in the arbitration is due to the Arbitrator(s).