



**ARBITRATION RULES (valid as from 1 July 2008)**

(Article I - Article XIV)

**I. Notice of arbitration**

**Appointment of arbitrators**

1. Notice of arbitration must be given to the other party in writing with a description of the dispute. The notice shall specify the subject(s) which the party requesting arbitration wishes to submit to arbitration. A copy of the arbitration notice must be sent to the Foundation for Transport and Maritime Arbitration Rotterdam-Amsterdam (hereinafter: TAMARA). The foregoing provision shall apply by analogy to a counterclaim. Legal action shall be deemed to have commenced on the date on which a copy of the notice of arbitration is received by TAMARA. A counterclaim shall be deemed to have been lodged on the date on which the copy of the respondent's written notification of the counterclaim is received by TAMARA.

2. If the notice does not include the appointment of the arbitrator, the claimant must appoint an arbitrator within 21 days of the commencement of the arbitration. A copy of the notice of appointment must be sent to TAMARA. If the claimant fails to appoint an arbitrator within 21 days of the commencement of the arbitration, the respondent shall grant an additional period of not less than five working days within which the claimant must appoint an arbitrator. If the claimant fails to appoint an arbitrator within this period, the respondent shall apply to the Interim Injunction Judge of the Rotterdam District Court to appoint an arbitrator.

3. TAMARA shall, if so requested, supply information about available arbitrators to any party and if necessary assist in the appointment of arbitrators. At the request of a party, TAMARA shall appoint an arbitrator on behalf of that party.

4. If the respondent fails to appoint an arbitrator within 21 days of receiving the notice of the appointment of the claimant's arbitrator and the claimant's request to provide the name and address of the respondent's arbitrator, the respondent's arbitrator shall, at the request of the claimant, be appointed by the Interim Injunction Judge of the Rotterdam District Court.

5. The same applies at the request of the concerned party (a) if the two arbitrators appointed by the parties - or by one party and the aforementioned Interim Injunction Judge, as the case may be - do not agree on the choice of the third arbitrator within a period of 21 days of the first day of the appointment of both arbitrators; or (b) if the parties have agreed that their dispute shall be decided by a sole arbitrator but do not reach an agreement on the choice of the arbitrator within 21 days of the date of dispatch of the claimant's written proposal to the respondent as to who should be appointed as sole arbitrator.

#### **Number of arbitrators**

6. Unless the parties have agreed that their disputes shall be decided by a sole arbitrator, each party shall appoint an arbitrator and the two arbitrators so appointed shall jointly appoint a third arbitrator.

7. In the event of a dispute between more than two parties or groups of parties or if it is necessary to appoint a substitute arbitrator, the above rules shall be applied by analogy.

8. The provisions in these Rules regarding "arbitrators" shall apply by analogy to a sole arbitrator.

9. A sole arbitrator must always be a legally trained person. If there are three arbitrators, at least one of them must be legally trained.

#### **Place of arbitration**

10. The place of arbitration shall be Rotterdam, unless the parties have agreed on another place within the Netherlands.

### **II. The arbitration proceedings**

1. The arbitration tribunal shall conduct the arbitration in such a manner as to ensure that the proceedings are fair. The arbitrators shall be absolutely impartial, shall not discuss the dispute with any party in the absence of the other party or parties and shall make sure that all written documents received from any party are placed in the possession of the other party or parties in due time.

2. The arbitrators shall ensure that the proceedings are conducted expeditiously. Unless the parties have explicitly agreed otherwise, or the arbitrators have ruled otherwise taking into consideration the parties' interests and all circumstances of the case, the claimant must file his statement of claim within 6 weeks after the appointment of the arbitrators. The respondent must file his statement of defence within 6 weeks thereafter.

Unless the parties have agreed otherwise, the arbitrators shall have the discretion to decide whether or not a statement of reply and statement of rejoinder may be filed. The same applies to any other written statements by the parties.

3. The provisions of this article shall apply by analogy to a counterclaim.

A counterclaim is permitted if it is subject to the same agreement to arbitrate as that on which the notice of arbitration was based or if the parties have, either explicitly or tacitly, declared such agreement to be applicable.

A counterclaim that is not instituted prior to or in the statement of defence or, if no statement of defence is filed, in the first written or oral defence, cannot be heard in the same arbitration.

The arbitrators shall give the parties an opportunity to plead their case orally, unless the parties waive this right.

4. The arbitrators shall be free, notwithstanding the place of arbitration, to perform their duties at the places within or outside the Netherlands that they consider the most suitable, taking into consideration the parties' interests, the circumstances and the proper conduct of the proceedings. The arbitrators shall inform TAMARA in writing of their appointment, the rules of procedure which they have laid down, and the commencement and end of the proceedings. In addition, they must send TAMARA a copy of each award, whether interim or final.

### **III. Complaints**

Written complaints concerning the conduct of one or more of the arbitrators, if any, shall be addressed by the complainant to TAMARA and a copy thereof shall, at the same time, be communicated by the complainant to the arbitrator(s) concerned and the other party or parties. If TAMARA, after having heard the arbitrator(s), finds that the complaint is well-founded, it shall issue written directives to the arbitrator(s) concerned and summon him or them to comply therewith. If, in the opinion of TAMARA, the relevant arbitrator fails to comply with the directives, it shall notify the parties thereof in writing, after which any party will have the right to demand that a substitute arbitrator be appointed, provided this right is exercised within 14 days of the date on which TAMARA sends the notification. TAMARA can, on request, extend this time limit at its discretion. In that case, the Interim Injunction Judge at the Rotterdam District Court shall replace the arbitrator and appoint another arbitrator in his place.

**IV. Discharge or termination of mandate, substitution and challenge**

1. If an arbitrator is discharged, dies or is challenged, Articles 1029 up to and including 1035 of the Dutch Code of Civil Procedure shall apply, unless provided otherwise in these Rules.

2. The parties shall notify TAMARA immediately of the discharge of or challenge to one or more of the arbitrators.

3. Any party to the arbitration may request that TAMARA, after having heard the other party and the arbitrator(s), terminates the arbitration tribunal's mandate if it, despite repeated warnings, performs its duties unacceptably slowly, taking into consideration all the circumstances of the case. If TAMARA does terminate the arbitration tribunal's mandate, the parties must appoint a new arbitration tribunal in accordance with Article I of these Rules. The jurisdiction of the ordinary court will not be revived.

**V. Costs**

**Administration costs**

1. With respect to arbitration proceedings notified pursuant to these Rules, the claimant shall be liable to TAMARA for administrative costs as fixed and published by TAMARA's management board in Article XIV of these Rules. The administrative costs form part of the arbitration costs.

**Hourly fee of arbitrators**

2. The appointed arbitrators shall work on the basis of an hourly fee as fixed and published by TAMARA's management board in Article XIV of these Rules, unless the parties and arbitrators jointly agree otherwise in writing. The arbitrators shall immediately inform TAMARA if fees different to those fixed and published by TAMARA are agreed.

**Deposit**

3. TAMARA may require that the claimant pay a deposit from which the arbitrators' fees and disbursements will, to the extent possible, be paid. If the respondent has filed a counterclaim, TAMARA may require a deposit from him as well.

The deposit as referred to in the above paragraph shall also be used to pay the cost of filing the award at the registry of the Court. The costs of the secretary of the tribunal, experts appointed by the arbitrators, technical support, and interpreters shall also be paid from the deposit, if and to the extent these costs are incurred by the arbitrators.

As soon as possible after their appointment, the arbitrators shall discuss the amount of work which they anticipate the arbitration will require with TAMARA, in order to determine the amount of the deposit. TAMARA may at any stage request an additional deposit. The arbitrators must inform TAMARA in time if the cost of the arbitration threatens to exceed the deposit. The arbitrators must themselves ensure at all times that there are adequate funds on deposit to pay the arbitration costs.

TAMARA shall inform the arbitrators of the receipt of the deposit.

The arbitrators may suspend the arbitration of the claim or the counterclaim if the relevant party has not paid the requested deposit.

If a party does not pay the requested deposit within 14 days of Tamara's second written demand, he will be deemed to have withdrawn his claim or counterclaim.

TAMARA has no obligation to pay any costs that are not covered by a deposit.

No interest will be paid on the deposit.

In the event of a dispute between one or more parties and/or one or more arbitrators concerning the costs charged by the arbitrators, TAMARA shall settle the dispute, at the request of the party or parties and the arbitrator(s) who are in dispute with each other. TAMARA shall give a binding ruling, to which the parties and arbitrators will accordingly be bound.

In cases in which TAMARA, in its opinion, is unable to quickly and simply give a binding ruling, it shall be entitled to appoint a third party charged with giving a binding ruling, who will settle the dispute in this manner. In that case, the party or parties and the arbitrator(s) among whom a dispute exists, must each advance half of the costs of the third party charged with giving a binding ruling. The aforementioned third party shall also decide who will ultimately bear the costs.

The parties to the arbitration are not jointly and severally liable for the arbitrators' costs, but are only liable in proportion to the deposits that they have made or will make at TAMARA.

#### **Cost award**

4. The unsuccessful party may be ordered to pay the arbitration costs. If more than one party is partly unsuccessful, they may each be ordered to pay such portion of the arbitration costs as the arbitrators deem reasonable.

5. Complaints against the amount of the arbitration costs as fixed by the arbitrators in the cost award may be addressed in writing to TAMARA setting out the reasons for the complaint. TAMARA shall decide on the complaint and its decision shall be final and binding upon the parties and the arbitrators.

6. Unless explicitly agreed to the contrary, the wholly or partly unsuccessful party shall be ordered to pay such portion of the other party's or parties' arbitration costs, including those of representation and other assistance, as the arbitrators deem reasonable in accordance with par. 4 of this article.

**VI. Provisional arbitral awards and other provisional measures**

1. Arbitrators may on grounds of urgency grant provisional arbitral awards at any stage of the arbitration proceedings having regard to the parties' interests. This decision shall not prejudice the arbitrators' final decision on the merits. The ruling shall serve as an arbitral award within the meaning of Article 1051(3) of the Dutch Code of Civil Procedure.

2. In addition, the arbitrators may, at the request of any one of the parties at any stage of the proceedings, render such interim decision or grant such interim relief in respect of the matters in dispute as they deem necessary or useful. This decision shall not prejudice the arbitrators' final decision on the merits.

3. The above shall not prejudice the right of the parties to apply to the competent court for protective measures.

**VII. Binding force**

1. By agreeing to arbitration in accordance with these TAMARA rules, the parties are deemed to have undertaken to comply immediately with an irrevocable award.

2. Unless the parties agree otherwise, an arbitral award may not be appealed. If an appeal is agreed, the arbitrators may declare the award enforceable with immediate effect, whether or not subject to the furnishing of security.

**VIII. Exclusion of liability**

There shall be no liability on the part of TAMARA, any of the members of its management board or any arbitrator for any act or omission in connection with arbitration proceedings subject to these Rules.

**IX. Applicability of the Dutch Code of Civil Procedure**

The provisions of the Dutch Code of Civil Procedure shall apply to any matter insofar as it is not governed by these Rules. This applies, for instance, to the law of evidence, amendment of claims, submission of documents, examination of witnesses, appointment of expert(s), on-site inspections, personal appearance by the parties, etc.

**X. Entry into force of Rules**

These Rules shall apply to all proceedings that are instituted after 30 June 2008.

**XI. Amendment of Arbitration Rules**

TAMARA's management board has the right to amend these Rules. Amendments shall not apply to arbitration proceedings that are already pending. The Rules that are in force at the time of commencement of arbitration proceedings shall apply to those proceedings.

**XII. Publication of award**

TAMARA has the power to have an award published without stating the parties' names or any information that could disclose the parties' identities, unless a party has objected to TAMARA in writing to that publication within one month of receiving the award.

**XIII. Jurisdiction and applicable law**

Any dispute between TAMARA and/or its management board members on the one hand and a party or arbitrator on the other shall be subject to Dutch law and the exclusive jurisdiction of the Dutch courts, specifically the Rotterdam District Court in the first instance.

**XIV Determination of the administration costs and arbitrators' hourly fee**

The administration costs and arbitrators' hourly fees shall be redetermined by TAMARA's management board every two years.

As of 1 July 2014, the following administration costs and arbitrators' fees are applicable:

<b>Amount of claim</b>	<b>Administration costs</b>	<b>Hourly fees</b>
< EURO 50.000	EURO 262,50	EURO 100,00
EURO 50.001 < EURO 100.000	EURO 1.050,00	EURO 200,00
EURO 100.001 < EURO 250.000	EURO 1.312,50	EURO 250,00
EURO 250.001 < EURO 500.000	EURO 1.575,00	EURO 280,00
EURO 500.001 < EURO 1.000.000	EURO 1.837,50	EURO 295,00
> EURO 1.000.000	EURO 2.100,00	EURO 325,00