



**TAMARA ARBITRATION RULES**  
**(applicable as from 1 January 2015)**

**1. General**

- 1.1 If the parties have agreed that the dispute will be settled in accordance with the rules of TAMARA, the most recently updated version of these rules at the time of receipt of the copy of the notification of arbitration by TAMARA shall apply. The same version of these rules will apply to any counterclaim instituted within the same arbitral proceedings.
- 1.2 Unless otherwise agreed by the parties, the seat of the arbitration will be Rotterdam.
- 1.3 "TAMARA" is the Foundation Transport And Maritime Arbitration Rotterdam-Amsterdam. Any messages which pursuant to these rules are to be sent to TAMARA, are to be directed to TAMARA's management board, care of the Secretary, whose contact details can be found on [www.tamara-arbitration.org](http://www.tamara-arbitration.org).
- 1.4 Wherever these rules refer to "the arbitrators" they refer to the three arbitrators who jointly decide or to the sole arbitrator who decides on his own.
- 1.5 For the purposes of these rules, "in writing" also means fax and e-mail messages.
- 1.6 The parties may appear at the arbitration proceedings in person, or be represented by a practising lawyer, or be represented by any other person expressly authorised in writing for this purpose. The parties may be assisted in the arbitration proceedings by any persons they may choose.

**2. Commencement of arbitration proceedings**

- 2.1 Notification of arbitration must be given to the other party in the form of a written notice with a description of the dispute. The said notice shall contain a specification of what the party commencing the proceedings wishes to submit to arbitration. A copy of the notification of arbitration must be sent to TAMARA by post, fax or email.
- 2.2 The arbitration proceedings shall commence on the date of receipt of the copy of the notification of arbitration by TAMARA.
- 2.3 The provisions in the previous paragraphs of this article shall apply equally to the institution of a counterclaim. In the case of a counterclaim, the notification of arbitration may be included in the statement of defence. If the counterclaim is included in the statement of defence, it shall be deemed to have been instituted at the moment at which the statement of defence is uploaded, unless the parties agree that arbitration shall not be carried out by electronic means, in which

case the counterclaim shall be deemed to have been instituted at the moment at which the statement of defence is received by TAMARA.

### **3. Arbitrators**

- 3.1 Disputes shall be settled by three arbitrators, unless the parties agree that the dispute shall be settled by a sole arbitrator. In cases where the principal claim, excluding interest and costs, does not exceed the amount of EUR 25,000.00, the dispute shall be settled by a sole arbitrator.

#### *Appointment*

- 3.2 TAMARA shall, if so requested, supply information about available arbitrators to any person and, if necessary, assist that person in the appointment of arbitrators.

- 3.3 If, at the time of the notification of arbitration or thereafter, the claimant mentions that for the time being the notification of arbitration is aimed merely at the preservation of rights, the appointment procedure can be deferred for an indeterminate time period until one of the parties makes a request for continuation.

- 3.4 If the notification of arbitration does not include the appointment of an arbitrator, the claimant must appoint an arbitrator within a time period of fourteen days. Subject to objections by the respondent, TAMARA may extend this time period at the request of the claimant.

After the appointment of the arbitrator by the claimant, the respondent has a time period of fourteen days to appoint a second arbitrator. On unanimous request, TAMARA may extend this time period.

If the respondent fails to appoint an arbitrator in time, TAMARA - in the interest of hearing both parties - shall ensure that the respondent has, in all fairness, had sufficient opportunity to do so. If this is not the case, TAMARA shall extend the time period for the benefit of the respondent.

- 3.5 If a party fails to appoint an arbitrator in time, TAMARA shall appoint an arbitrator at the request of the other party.

- 3.6 The two arbitrators appointed by the parties and/or TAMARA shall jointly appoint a third arbitrator.

- 3.7 If the parties have agreed to appoint a sole arbitrator, or if the appointment of a sole arbitrator is prescribed by article 3, paragraph 1, the parties shall jointly appoint the sole arbitrator within a time period of fourteen days after the notification of arbitration. If the joint appointment is not made in time, TAMARA shall - at the request of any party - appoint an arbitrator.

- 3.8 A sole arbitrator must always be a lawyer. If there are three arbitrators, at least one of them must be a lawyer.

- 3.9 If there are several respondents, they must jointly appoint an arbitrator. If the respondents fail to reach such agreement in time, TAMARA shall - at the request of any party - appoint an arbitrator.

- 3.10 If the appointment of a sole arbitrator is prescribed by article 3, paragraph 1, second sentence, and the respondent institutes a counterclaim of which the principal amount exceeds EUR 25,000.00, the dispute shall be settled by three arbitrators, unless the parties agree otherwise. The claimant and the respondent shall each appoint an additional arbitrator, within two weeks after being invited to do so by TAMARA or by the already appointed sole arbitrator.
- 3.11 The appointment of an arbitrator by TAMARA shall, in principle, be carried out within fourteen days after such a request; the arbitrator shall be appointed from among those registered by TAMARA on a publicly available list, unless this is not reasonably possible.
- 3.12 In cases not provided for in these rules, or if the appointment is not made in accordance with these rules, each party shall be free to apply to the Court in interim relief proceedings in accordance with the regulations established by law.
- 3.13 Those arbitrators who have accepted their appointments according to these rules, also accept the validity and effect of these rules.

*Discharge, challenge and substitution*

- 3.14 An arbitrator who has accepted his mandate may, at his own request, be released from his mandate either with the consent of the parties or with the consent of TAMARA.
- 3.15 An arbitrator who has accepted his mandate may be released from his mandate by joint agreement between the parties.
- 3.16 An arbitrator who has accepted his mandate and who has become *de jure* or *de facto* unable to perform his mandate, may, at the request of any party, be released from his mandate by TAMARA.
- 3.17 An arbitrator who has accepted his mandate and, despite repeated demands, performs his duties in an unacceptably slow manner, may, at the request of any party, be released from his mandate by TAMARA.
- 3.18 An arbitrator who has accepted his mandate, may, in a case as referred to in article 9, paragraph 6, at the request of any party, be released from his mandate by TAMARA.
- 3.19 Challenge of one or more arbitrators shall be made in accordance with the regulations established by law. The time period specified in article 1035 of the Dutch Code of Civil Procedure shall be two weeks. TAMARA shall forthwith be notified of the challenge.
- 3.20 An arbitrator whose mandate has been terminated for any reason whatsoever shall be replaced pursuant to the rules applicable to his initial appointment.

#### **4. Proceedings**

4.1 Unless the parties agree otherwise, the language of the arbitration shall be the Dutch language if all parties to the dispute are established in the Netherlands, or the English language in all other cases.

4.2 Unless the parties explicitly agree otherwise, the arbitration will be settled via an online platform ("e-arbitration").

##### *Rules of procedure*

4.3 The arbitrators shall determine the rules of procedure. They shall accommodate the joint wishes of the parties as much as possible. They shall enforce the rules of procedure and ensure that the arbitration proceedings are conducted expeditiously. Unless the arbitrators, whether or not at the unanimous request of the parties, determine otherwise, the course of the proceedings shall be laid down as follows:

4.4 Immediately after their appointment, the arbitrators will allow the claimant a time period of four weeks to file a statement of claim. After the filing of the statement of claim, the arbitrators will allow the respondent a time period of four weeks to file a statement of defence.

4.5 A counterclaim is instituted prior to or in the statement of defence or, if no statement of defence is filed, in the first written or oral defence. A counterclaim is permitted if it is subject to the same agreement to arbitration as that on which the claim is based, or if the parties have either explicitly or tacitly declared such agreement to be applicable. If a counterclaim is instituted, the arbitrators shall allow the original claimant (the respondent in the counterclaim proceedings) a time period of four weeks for his statement of defence in the counterclaim proceedings.

4.6 If a party has not been able to carry out a procedural step in time, the arbitrators will grant a new time period of the same duration. If, however, the other party has notified the party concerned in writing, prior to the granting of the new time period - with a copy to the arbitrators - that no additional extensions will be permitted after the new time period to be granted, the procedural step will have to be carried out within this new time period. If this is not achieved the arbitrators will, at the request of the other party, decide that the right to carry out the procedural step has lapsed. Only in the case of compelling circumstances may the arbitrators grant the party concerned a final time period to carry out the procedural step in question.

4.7 After the statement of defence, or, in the case of a counterclaim, the statement of defence in the counterclaim proceedings has been submitted, the arbitrators shall decide whether a second round of written statements will follow or whether an oral hearing of the dispute will take place.

##### *Other procedural rules*

4.8 During each arbitration, the arbitrators shall give the parties an opportunity to plead their case orally, unless the parties explicitly waive this right. However, in those cases where the principal claim, excluding interest and costs, does not exceed the amount of EUR 25,000.00, no oral

hearing of the dispute shall take place and the arbitration will be conducted on the basis of documents alone. In that case, the statement of defence will be followed by a second round of written statements.

- 4.9 If the respondent fails to appear at the arbitration proceedings despite the fact that, according to the arbitrators, he has been sufficiently and appropriately summoned, an award will be rendered after submission of the statement of claim. As long as no award has been rendered, the respondent may still appear at the arbitration proceedings. In this case, the arbitrators shall grant a time period for the submission of the statement of defence.
- 4.10 During the arbitration proceedings, a party may change or increase its claim or counterclaim, or the grounds for these respective claims, if by doing so the other party's defence will not be unreasonably hampered or the arbitration proceedings unreasonably delayed.
- 4.11 The respondent's cooperation in the appointment of arbitrators does not forfeit his right to challenge the jurisdiction of the arbitrators. A motion to dismiss for lack of jurisdiction of the arbitrators must be filed before all principal defences. In principle, a motion to dismiss for lack of jurisdiction must be lodged by statement of defence; the arbitrators, however, may decide that a motion to dismiss for lack of jurisdiction may be filed in a separate statement.

## **5. Award**

- 5.1 Unless different rules of procedure have been established, the arbitrators shall render an award as soon as possible after the oral hearing or after completion of the last procedural step, if possible within ten weeks.
- 5.2 The arbitrators may render a final award, a partial final award, or an interim award.
- 5.3 The arbitrators will make sure that as soon as possible the original of the award, or a copy thereof certified by an arbitrator or by TAMARA, is sent to the parties.
- 5.4 The time period within which a party may request rectification of a manifest error which lends itself for a simple rectification as referred to in article 1060, paragraph 1, of the Dutch Code of Civil Procedure, as well as the time period within which a party may request an additional award as referred to in article 1061, paragraph 1, of the Dutch Code of Civil Procedure shall be thirty days after the date of dispatch of the award.
- 5.5 Only at the explicit request of a party shall the arbitrators ensure that the original of the final or partial final award is deposited with the Registry of the Rotterdam District Court or the District Court of the district within which the place of arbitration is located. The requesting party shall bear the costs of the deposit unless decided otherwise by the arbitrators.

- 5.6 By agreeing to arbitration in accordance with these rules, the parties are deemed to have undertaken to comply immediately with an irrevocable award. An arbitral award may not be appealed, unless the parties agree otherwise. In the latter case the arbitrators may, in the instances where this is allowed by the law, declare the award provisionally enforceable, whether or not subject to the provision of security.
- 5.7 The arbitrators shall make their award in accordance with the rules of law, unless the parties have explicitly agreed that the arbitrators shall decide as *amiabile compositeur*.
- 5.8 At the joint request of the parties, the arbitrators shall record the content of the amicable settlement agreed between the parties in the form of an arbitral award in accordance with article 1069 of the Dutch Code of Civil Procedure.

## **6. Interim relief proceedings and other provisional measures**

- 6.1 The arbitrators may, on grounds of urgency and having regard to the parties' interests, render an arbitral award in interim relief proceedings at any stage of the arbitration proceedings. The award in interim relief proceedings shall not prejudice the arbitrators' final decision on the substance of the case. The award in interim relief proceedings is an arbitral award within the meaning of article 1043b, paragraph 4, of the Dutch Code of Civil Procedure.
- 6.2 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 (within the framework of the regular arbitration proceedings) in respect of the matters in dispute as they deem necessary or useful. This decision shall not prejudice the arbitrators' final decision on the substance of the case. The decision is an arbitral award within the meaning of article 1043b, paragraph 4, of the Dutch Code of Civil Procedure.
- 6.3 If interim relief proceedings have to take place within the framework of a dispute which has not yet been submitted to arbitration proceedings in accordance with these rules, or if the dispute has been submitted to arbitration proceedings but not all the arbitrators have been appointed, TAMARA shall, at the request of the claimant in the interim relief proceedings, appoint one or more arbitrators depending on the number of arbitrators parties have agreed upon, unless the parties themselves jointly appoint one or more arbitrators. The arbitrators appointed by TAMARA are only appointed for the purpose of the interim relief proceedings, unless the parties agree otherwise.
- 6.4 TAMARA must be notified of interim relief proceedings. The claimant shall be liable to TAMARA for administrative costs.
- 6.5 The above shall not prejudice the right of a party to apply to the competent court for protective measures.

## **7. Costs**

- 7.1 The arbitration costs consist of administrative costs, the arbitrators' fees and disbursements, and other costs.
- 7.2 With respect to arbitration proceedings which have been notified pursuant to these rules, the claimant shall be liable to TAMARA for administrative costs as fixed and published by TAMARA's management board.
- 7.3 The appointed arbitrators shall work on the basis of an hourly fee as fixed and published by TAMARA's management board, unless the parties and the arbitrators jointly agree otherwise in writing. The arbitrators shall immediately inform TAMARA if fees different to those fixed and published by TAMARA are agreed.
- 7.4 Other costs are costs incurred by the arbitrators and/or TAMARA with regard to the arbitration, such as the costs of experts appointed by the arbitrators, and costs for technical support and interpreters.

### *Deposit*

- 7.5 The arbitrators may require that the claimant pay a deposit from which the arbitration costs, to the extent possible, be paid. If the respondent has filed a counterclaim, the arbitrators may require a deposit from him as well.
- 7.6 As soon as possible after their appointment, the arbitrators, in consultation with TAMARA, shall determine the amount of the deposit. On behalf of the arbitrators, TAMARA shall request the party or the parties designated by the arbitrators to pay the deposit into TAMARA's third-party account. At the request of the arbitrators, TAMARA may at any stage request an additional deposit.
- 7.7 The arbitrators must inform TAMARA in time if the costs of the arbitration threaten 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 has no obligation to pay any costs that are not covered by a deposit. No interest will be paid on the deposit.
- 7.8 The arbitrators may suspend the arbitration of the claim or the counterclaim if the relevant party has not paid the requested deposit or the administrative costs charged to him. If a party does not pay the requested deposit or the administrative costs charged to him within fourteen days after a second written demand issued by TAMARA, he will be deemed to have withdrawn his claim or counterclaim.
- 7.9 The parties shall be liable to TAMARA and the arbitrators for the arbitration costs in proportion to the deposits that the said parties have made or are to make. The obligation to pay the arbitration costs remains in full force, even if the arbitration proceedings have been terminated for any reason whatsoever.

### *Cost award*

- 7.10 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.
- 7.11 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, after having consulted the party concerned and the arbitrators, shall decide on the complaint. TAMARA's decision shall be final and binding upon the party and the arbitrators. In cases in which TAMARA, in its opinion, is unable to quickly and simply give a binding ruling, TAMARA shall be entitled to appoint a third party charged with giving a binding ruling. In that case, the party and the arbitrators 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.
- 7.12 The unsuccessful or partly unsuccessful party may be ordered to pay such portion of the other party's or parties' costs related to the arbitration as the arbitrators deem reasonable, namely the costs for legal and other assistance, and other reasonable costs made in relation to the arbitration. The party concerned may be ordered to pay these costs only in part, in the same way as he may be ordered to pay the arbitration costs only in part.

## **8. 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 experts, on-site inspections and the participation of the parties in a hearing.

## **9. Final provisions**

- 9.1 These rules shall apply to all proceedings that are commenced after 31 December 2014.
- 9.2 TAMARA's management board has the right to amend these rules. Amendments shall not apply to arbitration proceedings that are already pending.
- 9.3 In cases not provided for in these rules and where parties cannot reach an agreement among themselves, TAMARA shall decide or, if all the arbitrators have been appointed, the arbitrators shall decide.
- 9.4 There shall be no liability on the part of TAMARA, or on the part of any of the members of its management board in person, or on the part of any arbitrator for any act or omission in connection with an arbitration subject to these rules, except in case of intent or wilful recklessness on the part of the person or the legal person concerned, with regard to the damage in the particular case.

- 9.5 Any dispute between TAMARA and/or its management board members on the one hand and a party or arbitrator on the other hand shall be subject to Dutch law and to the exclusive jurisdiction of the Dutch Courts, specifically the Rotterdam District Court in the first instance.
- 9.6 Complaints about arbitrators with regard to the conduct of a case shall be in writing and addressed to TAMARA; a copy of the complaint shall, at the same time, be sent to the arbitrator(s) concerned as well as to 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 strictly comply therewith. If, in the opinion of TAMARA, the arbitrator concerned fails to comply with the directives, TAMARA shall notify the parties thereof in writing, after which any party, in accordance with article 3, paragraph 18, has the right to demand that TAMARA release the arbitrator concerned from his mandate. This right must be exercised within 14 days of the date on which TAMARA sends the notification mentioned above. TAMARA can, on request, extend this time period at its discretion.
- 9.7 In the event of a decision as referred to in article 1065a of the Dutch Code of Civil Procedure, the appointment of the arbitrators will revive.
- 9.8 TAMARA's management board 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.
- 9.9 The Dutch text of these rules is the only authentic text. In case of conflict between the Dutch text and the text in another language, the Dutch text will prevail.