

**ARBITRATION RULES FOR MARITIME DISPUTES  
(NO INSTITUTIONAL ADMINISTRATION)**

June 12, 2010

Rule 1 - Introductory Rules. . . . .	2
Rule 2 - Notice, Calculation of Periods of Time. . . . .	2
Rule 3 - Notice of Arbitration. . . . .	2
Rule 4 - Response by Respondent. . . . .	3
Rule 5 - Representation and Assistance. . . . .	3
Rule 6 - Number of Arbitrators. . . . .	3
Rule 7 - Appointment of Sole Arbitrator. . . . .	3
Rule 8 - Appointment of Three Arbitrators. . . . .	4
Rule 9 - Independence and Impartiality of Arbitrators. . . . .	4
Rule 10 - Challenge of Arbitrators. . . . .	4
Rule 11 - Replacement of an Arbitrator. . . . .	5
Rule 12 - Conduct of the Proceedings. . . . .	5
Rule 13 - Submission of Written Statements and Documents. . . . .	6
Rule 14 - Pleas as to Jurisdiction of the Tribunal. . . . .	7
Rule 15 - Discovery. . . . .	7
Rule 16 - Hearings. . . . .	8
Rule 17 - Evidence and Witnesses. . . . .	8
Rule 18 - Compelling Attendance of Witnesses. . . . .	9
Rule 19- Experts Appointed by the Tribunal. . . . .	10
Rule 20 - Applicable Law. . . . .	10
Rule 21 - Settlement or Other Grounds for Termination. . . . .	10
Rule 22 - the Award. . . . .	10
Rule 23 - Interpretation of the Award. . . . .	11
Rule 24 - Correction of Awards and Additional Awards. . . . .	12
Rule 25 - Additional Powers of the Tribunal. . . . .	12
Rule 26 - Original Exhibits and Documents. . . . .	13
Rule 27 - Costs. . . . .	13
Rule 28 - Waiver of Rules. . . . .	13
Rule 29 - Exclusion of Liability. . . . .	14
Rule 30 - Model Arbitration Clause. . . . .	14

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(NO INSTITUTIONAL ADMINISTRATION)**

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**RULE 1 - INTRODUCTORY RULES**

- 1.1 **Scope of Application.** These rules shall apply to the resolution of any dispute where any agreement or reference provides for arbitration of such dispute under the Arbitration Rules for Maritime Disputes, Non-Administered. The parties may agree in writing to modification of any provision of these Rules.
- 1.2 **Definitions.** In these Rules:
- (1) "Tribunal" means a sole arbitrator or all of the arbitrators where more than one is appointed;
  - (2) "He" means he or she, "his" means his or hers;
  - (3) "He", "his", "it", or "its", in referring to a party, means any individual or entity.
  - (4) "Rules" means the Arbitration Rules for Maritime Disputes (No Institutional Administration) that shall at the time be posted at <http://davismarine.com/>
  - (5) "Party" means party, if more than two parties have adverse interests that are subject to arbitration under the agreement to arbitrate under these Rules.
- 1.3 **Written and Electronic Copies.** Unless otherwise requested by a party or arbitrator, any submission, including copies of exhibits and other documents, may be exchanged or submitted electronically, including by attachment to e-mail.

**RULE 2 - NOTICE, CALCULATION OF PERIODS OF TIME**

- 2.1 For the purposes of these Rules, any notice or other communication is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business, e-mail address or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered. Notice can be made by e-mail or telephone facsimile transmitted and received at the place of business or residence of the party.
- 2.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

**RULE 3 - NOTICE OF ARBITRATION**

- 3.1 The party wishing to refer a dispute or matter to arbitration (hereafter called the "Claimant") shall send to each opposing party (hereinafter called the "Respondent") a notice of arbitration which shall include or be accompanied by the following:
- (1) A demand that the dispute be referred to arbitration;
  - (2) The names and addresses of the parties;
  - (3) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
  - (4) A reference to the contract or incident out of or in relation to which the dispute arises;
  - (5) The general nature of the claim and an indication of the amount involved, if any;
  - (6) The relief or remedy sought;

- (7) A proposal as to the number of arbitrators (*i.e.*, one or three), if the parties have not previously agreed thereon.
- 3.2 The Notice of Arbitration may also include:
  - (1) The proposal for the appointment of a sole arbitrator referred to in Paragraph 7.1.
  - (2) The Statement of Claim referred to in Paragraph 14.2.
- 3.3 Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Respondent.

#### **RULE 4 - RESPONSE BY RESPONDENT**

- 4.1 For the purpose of facilitation of the appointment of arbitrators, within fourteen days of receipt of the Notice of Arbitration the Respondent may send to the Claimant a Response containing
  - (1) a confirmation or denial of all or part of the claims;
  - (2) a brief statement of the nature and circumstances of any envisaged counterclaims; and
  - (3) any comment in response to any statements contained in the Notice of Arbitration, as allowed in Rules 3.1(7) and 3.2. on matters relating to the conduct of the arbitration.
  - (4) response proposal for appointment of arbitrator(s).
- 4.2 Failure to send a Response shall not preclude the Respondent from denying the claim nor from setting out a counterclaim in its Statement of Defense.

#### **RULE 5 - REPRESENTATION AND ASSISTANCE**

- 5.1 To the extent it may be permitted by applicable local law, parties may be represented or assisted by persons of their choice, whether legal practitioners or any other representatives. A party represented shall notify all other parties, the arbitrator or arbitrators at the time appointed of the name and address of such person. Unless the notice specifically states otherwise, notice of appointment of a representative (but not of an assistant) shall constitute appointment of the representative for receipt of notices and other communications relative to the proceeding.

#### **RULE 6 - NUMBER OF ARBITRATORS**

- 6 If the parties have not previously agreed on the number of arbitrators (*i.e.*, one or three), and if within fourteen days after the receipt by the Respondent of the Notice of Arbitration the parties have not agreed that there shall be three arbitrators, one arbitrator shall be appointed.

#### **RULE 7 - APPOINTMENT OF SOLE ARBITRATOR**

- 7.1 If a sole arbitrator is to be appointed, any party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.
- 7.2 If within fourteen days after receipt by a party of a proposal made in accordance with Paragraph 3.2.1 the parties have not reached agreement on the choice of a sole arbitrator, each of the parties shall exchange lists of proposed arbitrators as follows:
  - (1) Each party shall communicate to all other parties a list of proposed arbitrators containing at least three more names than the number of parties participating in the arbitration, ranked in the order of the proposing party's preference. For purposes of determining the number of parties, entities and individuals whose interests are not substantially adverse with respect to the issues that are in dispute and/or are represented by the same attorney, shall be considered one party.

- (2) Within seven days after the receipt of this list, each party may return the list to each other party after having deleted not more than two names of which that party elects to strike and numbered the remaining names on the list in the order of that party's preference. If a party fails to respond to the list of another party within seven days, that party shall be deemed to have accepted the proposals of the other party.
- (3) After the expiration of the above period of time the parties shall mutually contact the sole arbitrator from among the names approved on the lists in the order of the highest composite ranking. If the arbitrator thus selected does not accept assignment, the next proposed arbitrator in order shall be mutually contacted by the parties, until an individual so selected is willing to accept assignment.
- (4) If for any reason the appointment cannot be made according to this procedure, any of the parties may petition a court of competent jurisdiction to appoint the sole arbitrator, pursuant to the provisions of 9 U.S.C. § 5.

7.3 Where the name of a person is proposed for appointment as an arbitrator, or at the request of any party or prospective party, his or her full name, address and a description of his or her qualifications shall be provided.

#### **RULE 8 - APPOINTMENT OF THREE ARBITRATORS**

8 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal. If more than two parties are involved, two arbitrators shall be selected as provided in Rule 7, and those two shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

#### **RULE 9 - INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS**

- 9.1 An arbitrator (whether or not appointed by the parties) conducting an arbitration under these Rules shall be and remain at all times wholly independent and impartial, and shall not act as advocate for any party.
- 9.2 A prospective arbitrator shall disclose to those who contact him or her in connection with possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
- 9.3 An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him or her of these circumstances.
- 9.4 Any arbitrator appointed hereunder is entitled to a qualified good faith immunity from suit.
- 9.5 No party shall have *ex parte* communications with an arbitrator, except to the extent the parties may agree. Any written communication with an arbitrator shall be simultaneously forwarded to all other parties.

#### **RULE 10 - CHALLENGE OF ARBITRATOR**

- 10.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 10.2 A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.
- 10.3 Any party who intends to challenge an arbitrator shall give notice of the challenge within fourteen days after the appointment of the challenged arbitrator has been notified to the challenging party, or in the event of circumstances stated in Sections 9.3 and 10.1.

- 10.4 The challenge shall be notified to all other parties, to the arbitrator who is challenged, and to other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.
- 10.5 When an arbitrator has been challenged by one party, the other party may agree to the challenge, in which case the challenged arbitrator shall be removed and replaced. The arbitrator may also, after the challenge, withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Rules 7 and 8 shall be used in full for the appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or participate in the appointment.
- 10.6 If the other parties to the arbitration do not agree to the challenge and the challenged arbitrator does not withdraw, any party may petition any court of competent jurisdiction to determine if there is good cause for the disqualification of an arbitrator. If such court sustains the challenge, the appointment of the challenged arbitrator shall be withdrawn and a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Rules 7 and 8 that was applicable to the appointment or choice of the arbitrator being replaced.

#### **RULE 11 - REPLACEMENT OF AN ARBITRATOR**

- 11.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Rules 7 and 8 that was applicable to the appointment or choice of the arbitrator being replaced.
- 11.2 In the event that an arbitrator fails to act or in the event an arbitrator cannot perform his or her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding sections shall apply.
- 11.3 If under Sections 11.1 or 11.2 an arbitrator is replaced, any hearings held previously shall be repeated

#### **RULE 12 - CONDUCT OF THE PROCEEDINGS**

- 12.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity to present its case.
- 12.2 The parties may agree on the arbitral procedure, and are encouraged to do so.
- 12.3 In the absence of procedural rules agreed by the parties or contained herein, the Tribunal shall have the widest discretion allowed under such law as may be applicable to ensure the just, expeditious, economical, and final determination of the dispute.
- 12.4 All documents or information supplied to the Tribunal by one party shall at the same time be communicated by that party to the other party.
- 12.5 In the case of a three-member Tribunal, the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.
- 12.6 If either party so requests at any stage of the proceedings, the Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 12.7 The parties may choose the place of arbitration. Failing such a choice, the place of arbitration shall be Seattle, Washington, unless the Tribunal determines in view of all the

circumstances of the case that another place is more appropriate. The Tribunal may hold hearings and meetings anywhere it deems convenient. The Tribunal may meet anywhere it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

### **RULE 13 - SUBMISSION OF WRITTEN STATEMENTS AND DOCUMENTS**

- 13.1 The Tribunal may determine the periods of time within which the parties shall submit their written statements. If no specific periods of time are determined by the Tribunal the parties shall proceed as set out in this Rule.
- 13.2 Within thirty days of receipt of notification for the sole arbitrator or the presiding arbitrator that the Tribunal has been constituted, the Claimant shall, if it has not done so, send the Respondent a Statement of the Claim setting out in full detail the facts supporting the claim, any contentions of law on which it relies, and the relief or remedy sought. The Claimant may annex to its Statement of Claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit.
- 13.3 Within thirty days of receipt of Statement of Claim, or the notification referred to in Rule 14.2 where the Statement of Claim was served with the Notice of Arbitration, the Respondent shall send to the Claimant a Statement of Defense setting out in full detail the facts supporting the claim, any contentions of law on which it relies, and the relief or remedy sought. The Respondent may annex to its statement of claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit. Any counterclaims shall be submitted with the Statement of Defense in the same manner as claims are set out in the Statement of Claim.
- 13.4 During the course of the arbitral proceedings, either party may amend or supplement its claim or defense unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. A claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.
- 13.5 The Tribunal shall decide which further written statements, in addition to the statement of Claim and Statement of Defense, shall be required from the parties or may be presented to the Tribunal and shall fix the periods of time for communicating such statements.
- 13.6 The periods of time fixed by the Tribunal for the submission of written statements (including the Statement of Claim and the Statement of Defense) shall not exceed forty-five days. The Tribunal may extend the time limits on such terms as it may deem appropriate if it concludes that an extension is justified.
- 13.7 All Statements referred to in these Rules shall be accompanied by copies (or if the are especially voluminous, lists identifying documents, photographs, samples, etc.) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples.
- 13.8 Copies of all statements referred to in this Rule shall be served on each arbitrator of the Tribunal and on each opposing party.
- 13.9 As soon as practicable following completion of the submission of the Statements specified in this Rule, the Tribunal shall proceed in such manner as has been agreed by the parties, or pursuant to its authority under these Rules.
- 13.10 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal to submit its Statement of Claim, the Tribunal shall issue an order for the termination of the arbitral proceedings, subject to reinstatement upon good cause upon application made within 30 days of the order of termination. If the Respondent fails to

submit a Statement of Defense, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may nevertheless proceed with the arbitration and make the award.

#### **RULE 14 - PLEAS AS TO JURISDICTION OF THE TRIBUNAL**

- 14.1 The Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- 14.2 The Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Rule, an arbitration clause which forms a part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- 14.3 A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim, in the reply to the counter-claim.
- 14.4 In general, the Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Tribunal may proceed with the arbitration and rule on such a plea in its final award.

#### **RULE 15 - DISCOVERY & PREHEARING SUBMISSIONS**

- 15.1 **Disclosure of evidence and witnesses.** The parties shall cooperate in good faith in the informal exchange of all non-privileged documents and other information relevant to the claims asserted in the arbitration. Within 34 days of the receipt of the Notice of Arbitration referred to in Rule 3, each party shall exchange with all other parties copies of relevant non-privileged documents within the party's possession or control including, without limitation, that party intends to rely upon in support of its claims and defenses in the arbitration, identities of each individual it may call as a witness in the arbitration, and, with respect to any expert who may be called as a witness, stating the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. together with each report of an expert that may be introduced in the arbitration. If a party becomes aware of new documents or witnesses, including experts, that party shall promptly make disclosure through supplemental responses. Witnesses and documentation that have not, been disclosed shall not be considered in the arbitration except as may be agreed by the parties or upon a showing of good cause.
- 15.2 **Depositions.** A party may take the deposition of another party, unless the Tribunal orders otherwise. In the case of a corporation or other party that is not an individual, the party requesting a deposition may request that the party being deposed designate the "person most knowledgeable" with respect to the facts of the matter in dispute.
- 15.3 **Other and Additional Discovery.** A party may request from the Tribunal authority to request of any other party a production of documents as is allowed under Federal Rules of Civil Procedure CR 34, requests for admissions from a party under CR 36, and, in appropriate cases, physical and mental examinations of person, under CR 35. No additional discovery shall be allowed, except as the parties may stipulate or as the Tribunal may allow upon good cause being shown.
- 15.4 **Prehearing Submissions.** Subject to any scheduling order that may be adopted or ordered by the Tribunal, and at the discretion of the Tribunal, each party shall submit to each

arbitrator a statement that includes the following: (1) a list of each witness it intends to call, including any expert; (2) a summary description of the anticipated testimony of each witness; and (3) a list of all exhibits the party intends to use at the hearing; (4) a copy of each such exhibit. The parties shall cooperate to number all exhibits and shall attempt to resolve disputes as to admissibility of exhibits before any hearing. Subject to instructions from the Tribunal to the contrary, each party may submit a concise summary of positions, facts and evidence that party intends to present, discussion of applicable law, and the basis for any award or denial sought by the party.

#### **RULE 16 - HEARINGS**

- 16.1 Unless the parties have agreed on documents-only arbitration, the Tribunal shall, if either party so requests, hold hearings for the presentation of evidence by witnesses, or for oral argument.
- 16.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitration, and the sole or presiding arbitrator shall give the parties reasonable notice thereof.
- 16.3 If any party to the proceedings fails to appear at a hearing, without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the award on the evidence before it.
- 16.4 Any hearing may be recorded electronically or otherwise by any party or the Tribunal.
- 16.5 The Tribunal may in advance of hearings submit to the parties a list of questions which it wishes them to treat with special attention.
- 16.6 Each member of the Tribunal may examine parties, their representatives, and witnesses on questions of fact, and may examine parties not represented on issues of law.
- 16.7 All meetings and hearings shall be in private unless the parties agree otherwise.
- 16.8 The Tribunal may declare the hearings closed if the parties have no further proof to offer or witnesses to be heard or submissions to make. The Tribunal may on its own motion or upon application of a party but before any award is made, reopen the hearings.

#### **RULE 17 - EVIDENCE AND WITNESSES**

- 17.1 **Oath or affirmation.** The Tribunal shall place a witness under oath or affirmation before the witness presents testimony.
- 17.2 **Rules of evidence, generally.** Evidence shall be admissible to the extent determined by the Tribunal to promote justice. The Tribunal shall be the judge of the relevancy and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary, except as to privilege and work product.
- 17.3 **Burdens of proof.** Except as otherwise may be provided by law applicable to the issue in dispute, each party shall have the burden of proving the facts relied on to support its claim or defense.
- 17.4 **Appearance of witnesses.** The Tribunal has discretion to allow, refuse, or limit the appearance of witnesses, whether witnesses of fact or expert witnesses.
- 17.5 **Written testimony.** The testimony of witnesses, including the written report of an expert witness, and including a statement of opinion which the witness would be allowed to express if testifying in person, may be presented in written form, either as signed statements executed under penalty of perjury or by sworn affidavits. Subject to Rule 16.1, any party may request that such a witness should attend for oral examination at a hearing. If he fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or exclude it altogether.



- 17.6 **Copies of documents presumed authentic.** Documents submitted in evidence in copy shall be deemed authentic unless good cause is shown why the copy should not be deemed authentic, provided the original document has been made available for reasonable inspection by any party on demand.
- 17.7 **Certain Documents Presumed Admissible.** The documents listed below, if relevant, are presumed admissible at an arbitration hearing, but only if (1) the party offering the document serves on all parties a notice, accompanied by a copy of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing in which the document will be offered; and (2) the party offering the document similarly furnished all other parties with copies of all other related documents from the same author or maker. This Rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the Tribunal's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. The documents presumed admissible under this Rule are:
- (1) A bill or statement of account from any provider of medical or dental services, drugs, appliances or related expenses, on a letterhead or billhead.
  - (2) A bill or statement of account, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid;
  - (3) A report of a surveyor or adjuster.
  - (4) A bill of lading, contract of affreightment, dock receipt, mate's receipt, trucker's delivery receipt, over, short and damage report, or similar documentation prepared by any person in the ordinary course of business with respect to carriage of goods that are subject to the dispute in arbitration.
  - (5) A photograph, x-ray negative or positive, drawing, map, chart, blueprint or similar documentary evidence, to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification.
  - (6) A document not specifically covered by any of the foregoing provisions but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the interests of justice.

#### **RULE 18 - COMPELLING ATTENDANCE OF WITNESSES**

- 18.1 On the written notice of a party, each other party shall produce for the arbitration hearing all specified witnesses in that party's employ or control, without a subpoena or summons.
- 18.2 The Tribunal may summon in writing any person to attend as a witness, and to bring with him any book, record, document or other evidence which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees for witnesses before masters of the United States Courts or, if the matter of the arbitration is not within the definitions of "maritime transactions" and "commerce" stated in 9 U.S.C. § 1, in the superior courts of the State of Washington.
- 18.3 Said summons shall issue in the name of arbitrator or arbitrators, or a majority of them, and be signed by one of them, and shall be directed to the person and shall be served in the same manner as subpoenas to testify before a United States district court (or, for matters not within the definitions of "maritime transactions" and "commerce" stated in 9 U.S.C. § 1, a court of record in the state where the Tribunal is sitting and/or where any hearing at which the

witness shall be required to attend if summoned to testify). If any person so summoned to testify shall refuse or neglect to obey such summons, the Tribunal may authorize petition to a court of competent jurisdiction to compel the attendance of such person before the Tribunal, or punish said person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of the United States (or of the state of where the witness is to testify).

#### **RULE 19- EXPERTS APPOINTED BY THE TRIBUNAL**

- 19.1 Unless otherwise agreed by the parties, the Tribunal:
- (1) may appoint one or more experts to report to the Tribunal on specific issues;
  - (2) may require a party to give any such expert any relevant information or to produce, or to provide access to any relevant documents, goods or property for inspection by the expert.
- 19.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing at which the parties shall have the opportunity to question him, and to present expert witnesses in order to testify on the points at issue.

#### **RULE 20 - APPLICABLE LAW**

- 20.1 The Tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- 20.2 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 20.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

#### **RULE 21 - SETTLEMENT OR OTHER GROUNDS FOR TERMINATION**

- 21.1 If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award.
- 21.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Paragraph 21.1, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 21.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Rule 22 shall apply.

#### **RULE 22 - THE AWARD**

- 22.1 The Tribunal shall render its award in writing as expeditiously as possible but in no case later than thirty days from the date on which the hearings are closed, unless another time period is agreed by the parties.

- 22.2 If any arbitrator refuses or fails to comply with the mandatory provisions of any applicable law relating to the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators shall proceed in his absence.
- 22.3 When there is more than one arbitrator and they fail to agree on any issue, they shall decide by a majority. Failing a majority decision on any issue, the presiding arbitrator of the Tribunal shall make the award alone as if he were sole arbitrator. If an arbitrator refuses or fails to sign the award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 22.4 The sole arbitrator or presiding arbitrator shall be responsible for delivering the award to the parties. Upon the request of any party, the sole arbitrator or presiding arbitrator shall provide to the requesting party a certified copy of the award.
- 22.5 In addition to making a final award, the Tribunal shall be entitled to make interim, interlocutory, or partial awards or different issues at different times, which shall be subject to correction under the procedure specified in Rule 24. Such awards shall be enforceable.
- 22.6 The award shall be made in writing and shall be final and binding on the parties.
- 22.7 The Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given. The stated reasons may be in an opinion separate from the award. Findings of fact and conclusions of law shall not be required, unless the parties otherwise agree.
- 22.8 If award of pre-award interest is allowed under applicable law (including where allowed by law when it is provided for by contract), the award shall include interest as to each item of damages provided in the award. The award shall specify the date(s) from which and the rate(s) at which any pre-award interest shall run. When allowed by applicable law, the Tribunal shall award prejudgment interest at the rate provided by such law, including the rate provided by any enforceable contractual agreement between the parties. Where there is no enforceable contractual agreement, the Tribunal shall award interest at the rate provided by applicable law. In the absence of any rate provided by applicable law, unless the Tribunal directs otherwise, an award of pre-award interest shall be computed at the same rate authorized in 28 USC § 1961, providing for interest on judgments, as of the date the party awarded damages for that item incurred the loss which is the subject of the award.
- 22.9 An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
- 22.10 By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may be validly made. Awards shall be final and binding on the parties as from the date they are made. The parties agree that an order confirming the award and judgment may be entered on any award made pursuant to the arbitration upon application by any party to a court having jurisdiction.

### **RULE 23 - INTERPRETATION OF THE AWARD**

- 23.1 Within fifteen days after the receipt of the award, either party, with notice to the other party, may request that the Tribunal give an interpretation of the award.
- 23.2 The interpretation shall be given in writing within 30 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Rule 23 shall apply.

### **RULE 24 - CORRECTION OF AWARDS AND ADDITIONAL AWARDS**

- 24.1 Within fifteen days of receipt of the award, unless another period of time has been agreed upon by the parties, a party may by notice to the Tribunal request the Tribunal to reconsider an award, to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award, or to correct in the award any error in computation, any clerical or typographical errors or any errors of a similar nature. Another party need not respond to such a request unless and until the Tribunal notifies such party that it requests a response, which notice shall state the time period in which a response shall be made. If the Tribunal considers the request to be justified, it shall make the corrections within thirty days of receipt of the request or, if response of another party is requested by the Tribunal, within 15 days after receipt of such response, unless the Tribunal determines that further hearing or evidence is required, in which case the Tribunal shall reopen the arbitration for such additional proceedings as it deems necessary to determine if an error has occurred and the appropriate action to correct any error. Any award on reconsideration or correction, which shall take the form of a separate memorandum, shall become part of the award.
- 24.2 The Tribunal may correct any error in computation, any clerical or typographical errors or any errors of a similar nature on its own initiative within thirty days of the date of the award.
- 24.3 When an additional or reconsidered award is made after reopened proceedings, the provisions of Rule 22 shall apply.

#### **RULE 25 - ADDITIONAL POWERS OF THE TRIBUNAL**

- 25.1 Unless the parties at any time agree otherwise, and subject to any mandatory limitations of any applicable law, the Tribunal shall have the power, on the application of any party or of its own motion, but in either case only after giving the parties a proper opportunity to state their views, to:
- (1) determine what are the rules of law governing or applicable to any contract, or arbitration agreement or issue between the parties;
  - (2) order the correction of any such contract or arbitration agreement, but only to the extent required to rectify any mistake which it determines to be common to all the parties and then only if and to the extent to which the rules of law governing or applicable to the contract permit such correction;
  - (3) allow other parties to be joined in the arbitration with their express consent, and make a single final award determining all disputes between them;
  - (4) allow any party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
  - (5) extend or abbreviate any time limits provided by these Rules or by its directions;
  - (6) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;
  - (7) order the parties to make property or things available for inspection, in their presence, by the Tribunal or any expert;
  - (8) order the parties to be available on reasonable notice and reasonable terms for discovery on such terms as the Tribunal may establish;
  - (9) order any party to produce to the Tribunal, and to the other parties for inspection and to supply copies of, any documents or classes of documents in their possession or power of control which the Tribunal determines to be relevant.
  - (10) order the preservation, storage, sale or other disposal of any property or thing under the control of any party.
- 25.2 By agreeing to arbitration under these Rules the parties shall be taken to have agreed to apply only to the Tribunal, and not to any court of law or other judicial authority, for an order under this Rule 25.

## **RULE 26 - ORIGINAL EXHIBITS AND DOCUMENTS**

26 Unless otherwise agreed by the Tribunal and the parties, original exhibits shall not be maintained by the Tribunal after final award, but promptly after expiration of any period for correction of a final award and application for additional award, shall be returned to the party which provided the exhibit. The Tribunal shall not be obligated to retain originals or copies of any documents submitted by the parties after expiration of any period for correction of a final award and application for additional award.

## **RULE 27 - COSTS**

- 27.1 The Tribunal shall fix the costs of arbitration (other than the legal or other costs incurred by the parties themselves) in its award. The term “costs” includes only:
- (1) The fees of the Tribunal to be stated separately as to each arbitrator and to be fixed by the Tribunal itself;
  - (2) The travel and other expenses incurred by the arbitrators;
  - (3) The costs of expert advice and of other assistance required by the arbitral tribunal;
  - (4) The travel and other expenses of witnesses to the extent such expenses are approved by the Tribunal;
  - (5) Where agreement of the parties provides for award of reasonable attorney fees to any party, the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Tribunal determines that the amount of such costs is reasonable;
- 27.2 The fees of the Tribunal shall be reasonable in amount, taking into account primarily the time reasonably spent by the arbitrators which shall consider the amount in dispute, the complexity of the subject-matter, and any other relevant circumstances of the case. Unless agreed otherwise in advance, Arbitrators shall charge on an hourly basis and each arbitrator designates his or her hourly fee. Time spent by an arbitrator may include but is not limited to arbitration hearings, review of exhibits and written submissions, legal research, travel, deliberations, and preparation of awards and opinions.
- 27.3 The Tribunal shall specify in the award the total amount of the costs of the arbitration. Unless the parties shall agree otherwise the Tribunal shall determine the proportions in which the parties shall pay all or part of them. If the Tribunal has determined that all or any part of the costs of the arbitration shall be paid by any party other than a party which has already paid them, the latter shall have the right to recover the appropriate amount from the former.
- 27.4 If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay the costs of the arbitration as determined by the Tribunal. In the event that the costs so determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing agreement in the same proportions as the deposits were made.

## **RULE 28 - WAIVER OF RULES**

28 Any party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

### **RULE 29 - EXCLUSION OF LIABILITY**

- 29.1 No arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, save that the arbitrator may be liable for the consequences of conscious and deliberate wrongdoing.
- 29.2 After the award has been made and the possibilities of correction and additional awards referred to in Rule 24 have lapsed or been exhausted, no arbitrator shall be under any obligation to make any statement to any person about any matter concerning the arbitration. Any arbitrator shall be incompetent to testify as a witness in any legal proceedings arising out of the arbitration or the dispute that is the subject of the arbitration.
- 29.3 The parties shall defend or pay the costs of defense of an arbitrator from any subpoena or other legal action arising from the arbitration, including a subpoena or other action by any person not a party to the arbitration.

### **RULE 30 - MODEL ARBITRATION CLAUSE**

- 30 The following clause is recommended for inclusion in any agreement to provide for arbitration under these Rules:

Any dispute, controversy or claim arising out of or relating to this contract, including any question regarding breach, termination or invalidity thereof, shall be resolved by arbitration in accordance with the ARBITRATION RULES FOR MARITIME DISPUTES (NO INSTITUTIONAL ADMINISTRATION), as shall be posted at <http://davismarine.com/> at the time of agreement, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be [one or three]. The parties waive, to the extent permitted by law, any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction. The parties agree that any arbitration award may be entered by any court having jurisdiction.