

NORTH PACIFIC DISPUTE RESOLUTION SERVICE¹

RULES FOR INTERNATIONAL AND DOMESTIC ARBITRATION AND MEDIATION (July 20, 1998)

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¹ Over several years in the 1990s, I participated with three other marine industry professionals in developing rules and arbitrator/mediator training to meet the needs we perceived of maritime businesses for efficient resolution of disputes arising from the contracts and non-contractual disputes those businesses wished to resolve on an *ad hoc* basis. Through an entity we created, the North Pacific Dispute Resolution Service, we developed and published rules and trained mediators and arbitrators. We found that the institution of the NPDRS, with its administrative overhead, was not widely used. The NPDRS, as an entity, no longer exists.

I believe that the NPDRS Arbitration Rules can be incorporated by reference into maritime transaction agreements and their use, in whole or in part, in *ad hoc* arbitration can greatly reduce the expense of resolution of disputes arising under those agreements. Some of the provisions, especially the provisions of Rule 18, sections 18.4 and 18.6-8, are unique in providing for reliable evidence at a minimal cost. To facilitate reference to the NPDRS Rules, I am publishing them on the internet at www.davismarine.com. To the best of my knowledge, no copyright is claimed in these rules.

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NORTH PACIFIC DISPUTE RESOLUTION SERVICE

ARBITRATION RULES

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 Rules of the North Pacific Dispute Resolution Service. The parties may agree in writing to modification of any provision of these Rules.
- 1.2 *Definitions.* In these Rules:
- (1) “NPDRS” means the North Pacific Dispute Resolution Service;
 - (2) “Chair” means the Chairman or Chairwoman of NPDRS;
 - (3) “Registrar” means the Chief Executive Officer of NPDRS;
 - (4) “Tribunal” means a sole arbitrator or all of the arbitrators where more than one is appointed;
 - (5) “He” means he or she;
 - (6) “He”, “his”, “it”, or “its”, in referring to a party, means any individual or entity.
 - (7) “Rules” means the Rules for Arbitration of the North Pacific Dispute Resolution Service that shall at the time be in effect.

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 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 telephone facsimile transmitted and received at the place of business 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 notification of the appointment of an arbitrator referred to in Paragraph 8.1.
- (3) 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.
- 3.4 The Claimant shall file with the Registrar a copy of the Notice of Arbitration served on the Respondent.
- 3.5 The parties shall also file with the Registrar a copy of any other notice, including a notification, communication or proposal concerning the arbitral proceedings.
- 3.6 If the parties have agreed on an appointing authority other than the Chair, they shall inform the Registrar of the name of that authority.

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) 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.
- 4.2 The Response may also include:
 - (1) comment in response to proposal for the appointment of a sole arbitrator; and
 - (2) the notification of appointment of an arbitrator.
- 4.3 The Respondent shall send a copy of the Response to the Registrar and shall confirm to the Registrar that copies have been served on each other party.
- 4.4 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, and the Registrar, 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.
- 5.2 The Registrar shall, at the request of the Tribunal or any party, make available, or arrange for, such facilities and assistance for the conduct of arbitration proceedings as may be required, including suitable accommodation for sittings of the Tribunal, secretarial assistance and interpretation facilities. NPDRS shall be entitled to charge the parties reasonable charges for such assistance and facilities.

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 thirty 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, upon the written request of any one of the parties, the sole arbitrator shall be appointed by the Chair. In making the appointment, the Chair shall use the following list-procedure, unless all parties agree in writing that the list-procedure should not be used or unless the Chair determines in his or her discretion that the use of the list-procedure is not appropriate for the case:
- (1) At the request of any one of the parties the Chair shall communicate to all parties an identical list of proposed arbitrators containing at least two more names than the number of parties participating in the arbitration.
 - (2) Within fourteen days after the receipt of this list, each party may return the list to the Chair after having deleted one name to which that party elects to strike and numbered the remaining names on the list in the order of that party's preference.
 - (3) After the expiration of the above period of time the Chair shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties.
 - (4) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise his or her discretion in appointing the sole arbitrator.
- 7.3 In making the appointment, the Chair shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well experience and expertise of the arbitrator in the areas of industry, business or law from which the dispute arose.
- 7.4 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

- 8.1 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, the parties shall notify the Registrar that more than two parties are involved, the Chair shall appoint two arbitrators, and the two arbitrators thus appointing shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
- 8.2 If within fourteen days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request NPDRS to appoint the second arbitrator.
- 8.3 If within fourteen days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by NPDRS in the same way as a sole arbitrator would be appointed under Section 7.2.

RULE 9 - REQUESTS TO APPOINT ARBITRATORS, DOCUMENTS

- 9 When NPDRS is requested to appoint an arbitrator pursuant to Rules 7 or 8, the party which makes the request shall provide the Registrar a copy of the Notice of Arbitration, a copy of the contract out of or in relations to which the dispute has arisen and a copy of the arbitration

agreement if it is not contained in the contract. The Registrar may require from each party such information as he deems necessary to fulfil NPDRS's function.

RULE 10 - INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 Any arbitrator shall be an independent contractor, not and agent or an employee of NPDRS. Any arbitrator may refuse an arbitration appointment, may remove his or her name from the NPDRS panel, or change information given to NPDRS at any time. Arbitrators and NPDRS, as the arbitration administrator, are entitled to a qualified good faith immunity from suit.

RULE 11 - CHALLENGE OF ARBITRATORS

- 11.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 11.2 A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.
- 11.3 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 10.3 and 11.1.
- 11.4 The challenge shall be notified to the other party, to the Registrar, 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.
- 11.5 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.
- 11.6 If the other party or parties to the arbitration do not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Chair.
- 11.7 If the Chair 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 12 - REPLACEMENT OF AN ARBITRATOR

- 12.1 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.

- 12.2 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.
- 12.3 If under Sections 12.1 or 12.2 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of NPDRS.

RULE 13 - CONDUCT OF THE PROCEEDINGS

- 13.1 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.
- 13.2 The parties may agree on the arbitral procedure, and are encouraged to do so.
- 13.3 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.
- 13.4 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.
- 13.5 In the case of a three-member Tribunal, the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.
- 13.6 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.
- 13.7 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 14 - SUBMISSION OF WRITTEN STATEMENTS AND DOCUMENTS

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.
 - 14.5 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.
 - 14.6 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.
 - 14.7 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.
 - 14.8 Copies of all statements referred to in this Rule shall be served on each arbitrator of the Tribunal and on each opposing party. A copy shall be mailed or otherwise provided to NPDRS.
 - 14.9 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.
 - 14.10 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 15 - PLEAS AS TO JURISDICTION OF THE TRIBUNAL

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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 16 - DISCOVERY

- 16.1 Interrogatories and Requests for Production. The following interrogatories and requests for production may be submitted by any party, response to be made within 30 days after receipt:
- (1) State the amount of general damages being claimed.
 - (2) State each item of special damages being claimed and the amount thereof.
 - (3) List the name, address and telephone number of each person known to have any knowledge of facts regarding liability or defenses to liability for any damages claimed.
 - (4) List the name, address and telephone number of each person known to have any knowledge of facts regarding the damages claimed.
 - (5) List the name, address and telephone number of each expert the responding party intends to call as a witness in the arbitration, for each expert 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.
 - (6) Produce a copy of any document within the party's possession or control which the party contends constitutes an agreement, contract or other document upon which claim is being made.
 - (7) Produce a copy of: (1) any bill of lading, contract of affreightment, delivery receipt, equipment interchange 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; (2) any invoice or memorandum of sale referring to any goods or other property that is the subject of claim; (2) any log book, report or other record maintained in the ordinary course of business which refers to the loss, casualty or injury that is the subject of the claim or the conditions that may have contributed to the loss, casualty or injury; and (3) any report of accident, casualty, loss, damage or injury submitted to any governmental agency, third party, or insurer (other than the responding party's liability or indemnity insurer) that reports or makes claim for the casualty, loss, damage or injury that is the subject of the claim; or any promissory notes, security agreement, mortgage, or similar document that evidences any contractual obligation or legal rights arising from a contractual obligation that is the subject of a claim or counterclaim in the case.
 - (8) Produce a copy of any bill or estimate for items for which special damage is being claimed.
- 16.2 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.]²
- 16.3 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

² This "person most knowledgeable" provision, analogous to a Federal Rules of Civil Procedure Rule 30(b)(6) designation, is not included in the NPDRS rules. CMD

discovery shall be allowed, except as the parties may stipulate or as the Tribunal may allow upon good cause being shown.

RULE 17 - HEARINGS

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 Any hearing may be recorded electronically or otherwise by any party or the Tribunal.
- 17.5 The Tribunal may in advance of hearings submit to the parties a list of questions which it wishes them to treat with special attention.
- 17.6 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.
- 17.7 All meetings and hearings shall be in private unless the parties agree otherwise.
- 17.8 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 18 - EVIDENCE AND WITNESSES

- 18.1 Oath or affirmation. The Tribunal shall place a witness under oath or affirmation before the witness presents testimony.
- 18.2 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.
- 18.3 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.
- 18.4 Disclosure of witnesses. If witnesses are to be heard at an oral hearing, at least fourteen days before the hearing each party shall communicate to the Tribunal and to the other party the names and addresses of all witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
- 18.5 The Tribunal has discretion to allow, refuse, or limit the appearance of witnesses, whether witnesses of fact or expert witnesses.
- 18.6 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 17.1, 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.
- 18.7 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.

- 18.8 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 19 - COMPELLING ATTENDANCE OF WITNESSES

- 19.1 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.
- 19.2 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 20 - EXPERTS APPOINTED BY THE TRIBUNAL

- 20.1 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.
- 20.2 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 21 - APPLICABLE LAW

- 21.1 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.
- 21.2 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.
- 21.3 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 22 - SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

- 22.1 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.
- 22.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Paragraph 22.1, 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.
- 22.3 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 23 shall apply.

RULE 23 - THE AWARD

- 23.1 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.
- 23.2 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.
- 23.3 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.

- 23.4 The sole arbitrator or presiding arbitrator shall be responsible for delivering the award to the Registrar and a copy to each of the parties. Upon the request of any party, the Registrar shall provide to the requesting party a certified copy of the award.
- 23.5 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 25. Such awards shall be enforceable.
- 23.6 The award shall be made in writing and shall be final and binding on the parties.
- 23.7 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.
- 23.8 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.
- 23.9 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.
- 23.10 An award may be published unless within 10 days of receipt of the award any party provides written notice to NPDRS of a request for confidentiality stating that the party requests that the award not be published.
- 23.11 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 24 - INTERPRETATION OF THE AWARD

- 24.1 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.
- 24.2 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 25 - CORRECTION OF AWARDS AND ADDITIONAL AWARDS

- 25.1 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 Registrar 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.

- 25.2 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.
- 25.3 When an additional or reconsidered award is made after reopened proceedings, the provisions of Rule 23 shall apply.

RULE 26 - ADDITIONAL POWERS OF THE TRIBUNAL

- 26.1 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.
- 26.2 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 26.

RULE 27 - ORIGINAL EXHIBITS AND DOCUMENTS

- 27 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 and NPDRS 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 28 - COSTS

- 28.1 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;
 - (6) Any fees and expenses of NPDRS.
- 28.2 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 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.
- 28.3 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 to NPDRS. 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 to NPDRS, the latter shall have the right to recover the appropriate amount from the former.
- 28.4 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 29 - DEPOSITS AND SECURITY

- 29.1 The Tribunal may at any time after it has been constituted direct each party to deposit an equal amount with the Registrar as an advance for the costs referred to in Rule 28.1, paragraphs (1), (2), (3) and (6).
- 29.2 During the course of the arbitral proceedings the Tribunal may request supplementary deposits from the parties.
- 29.3 The Tribunal shall have the power to order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner the Tribunal deems fit.
- 29.4 This Rule is without prejudice to the right of any party to apply to a competent court for pre-award conservatory measures, including the rights of *in rem* and *quasi in rem* security for claims and counterclaims.

- 29.5 If the required deposits are not paid in full within thirty days after the receipt of the request, the Tribunal shall so inform the parties in order that one or another of them make the required payment. If such payment is not made, the Tribunal may order the suspension or termination of the arbitral proceedings. The Tribunal also may disregard claims or counterclaims by the non-complying party, although it may proceed to determine claims or counterclaims by complying parties.
- 29.6 After the award has been made, the Registrar promptly shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

RULE 30 - WAIVER OF RULES

- 30 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 31 - EXCLUSION OF LIABILITY

- 31.1 Neither NPDRS nor any 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 (but not NPDRS) may be liable for the consequences of conscious and deliberate wrongdoing.
- 31.2 After the award has been made and the possibilities of correction and additional awards referred to in Rule 25 have lapsed or been exhausted, neither NPDRS nor any arbitrator shall be under any obligation to make any statement to any person about any matter concerning the arbitration, nor shall any party seek to make any arbitrator or any officer of NPDRS a witness in any legal proceedings arising out of the arbitration.

RULE 32 - MODEL ARBITRATION CLAUSE

- 32 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 North Pacific Dispute Resolution Service Rules for the time being in force, 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.