

SMA Rules for Mediation (Revised 2016)

Article 1

Application of the Rules

- a) Whenever, by contract or agreement, parties decide to settle dispute/s under the Mediation Rules of the Society of Maritime Arbitrators, Inc. ("SMA Mediation Rules") these rules shall apply.
- b) Any dispute or any issue related to the dispute, including procedural issues, may be submitted for mediation with the agreement of all parties upon the execution of a written agreement to mediate.
- c) The parties may agree to exclude or vary any of these rules at any time.

Article 2

Initiation of Mediation Proceedings

- a) A party to a dispute initiates mediation by advising the other party, in writing, briefly identifying the nature of the dispute. If there is no provision for mediation in the contract, the claimant may invite the other party to agree to mediation.
- b) The receiving party shall reply within fifteen (15) days from the date sent or such longer period of time as specified in the invitation.

Article 3

Appointment of the Mediator

- a) Within ten business days of agreeing to submit the matter to mediation, the parties shall choose a mediator acceptable to both. If they cannot agree upon a mediator, the Parties may request the Corporate Secretary of the SMA to submit to the parties a list of SMA members who are experienced in mediation or who have received training in mediation. In the event that the parties still cannot agree upon a mediator, the President of the SMA shall appoint the mediator.
- b) The mediator shall present to the Parties an Agreement to Mediate, to be signed by all parties to the mediation, specifying the mediator's fee, the confidentiality of the proceedings and stipulating that the SMA Mediation Rules currently in force shall apply to the proceedings.**

Article 4

The Role of the Mediator

- a) The mediator shall act in an independent, neutral and impartial manner to assist the parties.
- b) The mediator shall be guided by principles of objectivity, fairness and justice.
- c) The mediator shall not be liable for any act or omission arising from his/her role as mediator.

Article 5

Submission of Statements to the Mediator

- a) At least seven days prior to the scheduled mediation session, the parties shall exchange and submit to the mediator written summaries describing the nature of the dispute and identifying the issues to be resolved. In addition, at the mediator's or any party's request, the parties shall submit confidential statements to the mediator describing the nature of the dispute and the submitting party's view of the issues to be resolved.
- b) The mediator may request either or each party to submit further explanation of its position, supplemented by any documents or other information deemed appropriate. **The mediator may have separate or joint telephone calls and or exchange emails with the parties or either of them for this purpose.**

Article 6

Date, Time and Place of Mediation

- a) Unless otherwise agreed, the mediation shall be held in the City of New York at a convenient location agreeable to the mediator and the parties.
- b) The date, time and place for the first **mediation session, and any subsequent sessions if required**, shall be determined by the mediator in consultation with the parties.
- c) The mediator, the parties and their representatives may meet in person or by telephone conference call at the mediator's discretion, in joint sessions or in separate caucuses.

Article 7

Representation

The parties have the right to be represented by counsel, but each party shall have present an individual with decision-making authority to discuss, negotiate and conclude a settlement. The parties may appear pro se if they so choose but may seek counsel at any time during the mediation.

Article 8

Mediation Session

- a) At the commencement of the mediation session, the parties shall make oral presentations explaining their positions.
- b) The mediator may question the parties to clarify their positions.
- c) The mediator shall, in separate caucuses, review the strengths and weaknesses of each party's contentions and make suggestions accordingly. However, any information supplied by a party to the mediator on a confidential basis shall not be disclosed to the other party without advance agreement of the party furnishing the information.

d) The mediator shall have no authority to impose a settlement but shall act as a neutral and impartial facilitator to help the parties narrow their differences and reach a resolution of their dispute.

e) If requested by the parties, the mediator may at any stage of the proceedings offer settlement proposals with discretion to provide or not provide reasons therefor.

f) No formal record or transcript of the mediation shall be made.

Article 9

Vacancy

If the mediator resigns or is otherwise unwilling or unable to serve, a replacement mediator will be selected in the manner provided in Article 3.

Article 10

Termination of the Mediation

a) Mediation is voluntary and any party may withdraw from the proceedings at any time prior to the execution of a written settlement agreement by giving written notice to the mediator and the other parties.

b) Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by the parties.

Article 11

Settlement Agreement

If the mediation is successful, a settlement memorandum **shall** be prepared by the mediator **or by counsel for each party** and signed by all parties. Alternatively, the parties may prepare a formal settlement agreement specifying the terms and conditions of settlement, including a time frame for implementation and finalization, if appropriate.

Article 12

Resort to Arbitral or Judicial Proceedings

a) Unless the parties agree otherwise, the submission to mediation shall not stay or otherwise delay the arbitration or litigation of a pending matter.

b) Any arbitral or judicial proceeding in relation to the dispute may be initiated or continued notwithstanding the mediation if such proceedings are deemed necessary by a party for protecting its rights and/or defenses.

Article 13

Costs

Prior to commencing the mediation, the mediator shall give the parties his/her best estimate of the costs of the mediation.

"Costs," unless otherwise agreed, shall include:

- (a) Mediator's Fee, which shall be agreed to by the parties prior to commencement of the proceedings,
- (b) Travel and other expenses of the mediator.

The costs of the mediation shall be borne equally by the parties. All other expenses incurred by a party shall be borne by that party.

Article 14

Confidentiality

The parties and the mediator agree not to disclose, transmit, introduce or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the proceedings by the parties or the mediator as evidence in any lawsuit, arbitration or other proceeding, unless authorized in writing by all parties to the mediation or compelled by law. The fact that a mediation has occurred or is continuing shall not be considered confidential. **The mediator cannot be subpoenaed nor act as a witness or arbitrator in the dispute.**

Article 15

Role of the Mediator in Other Proceedings

- a) The parties and the mediator undertake that the mediator will not act as an arbitrator, witness, consultant, expert, representative, or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings, unless all parties and the mediator agree otherwise in writing.
- b) The mediator shall not transmit or otherwise disclose confidential information provided by one party to any other unless specifically authorized in writing by the party providing the confidential information.

Model Mediation/Arbitration Clause

If a dispute arises under this contract, the parties **may agree to seek** an amicable settlement of that dispute by mediation under the Mediation Rules of the Society of Maritime Arbitrators, Inc. (SMA) of New York then in force. If **there is then** a mediation **but it** does not result in a settlement, or if the parties do not agree to mediate, the dispute shall be referred to arbitration before three commercial arbitrators under the Arbitration Rules of the Society of Maritime Arbitrators, Inc. (SMA), one to be appointed by each of the parties and the third by the two so chosen and their decision or that of any two of them shall be final and binding. **Alternatively, the parties may refer the dispute to one commercial arbitrator under the SMA Rules for Shortened Arbitration Procedure (“SMA Shortened Rules”) whose decision shall be final and binding. In either case,** judgment upon such arbitration award may be entered in the U.S. Federal District Court for the Southern District of New York.