

SMA Rules for Conciliation - May 16, 1988

ARTICLE 1 - Application of the Rules

- a. These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the Conciliation Rules of the Society of Maritime Arbitrators, Inc. apply.
- b. The parties may agree to exclude or vary any of these Rules at any time.

ARTICLE 2 - Commencement of Conciliation Proceedings

- a. The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the nature of the dispute.
- b. Conciliation proceedings commence when the other party accepts in writing the invitation to conciliate.
- c. If the other party rejects the invitation, there will be no conciliation hearings.
- d. If the party initiating the conciliation does not receive a reply within thirty days from the date on which it sent the invitation, or within such period of time as specified in the invitation, it may elect to treat this as a rejection of the invitation to conciliate. If it so elects, it informs the other party accordingly.

ARTICLE 3 - Number of Conciliators and Appointment

The parties shall reach an agreement on a sole conciliator.

ARTICLE 4 - Submission of Statements to the Conciliator

- a. The conciliator, upon his appointment, is to request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall provide a copy of its statement to the other party.
- b. The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. Each party shall send copies of its statements and documents to the other party.
- c. At any state of the conciliation proceedings the conciliator may request a party to submit to him such additional information as he deems appropriate.

ARTICLE 5 - Role of Conciliator

- a. The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- b. The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous commercial practices between the parties.
- c. The conciliator shall conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes expressed by the parties, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- d. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.
- e. The conciliator shall not be liable for any act or omission arising from his role as conciliator.

ARTICLE 6 - Communication Between Conciliator and Parties

- a. The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- b. Unless the parties have agreed upon the place where the meetings with the conciliator are to be held, such place will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

ARTICLE 7 - Disclosure of Information

When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which it considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

ARTICLE 8 - Cooperation of Parties with the Conciliator

- a. The parties will in good faith cooperate with the conciliator and, in particular, will endeavor to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.
- b. If the conciliator has reason to believe that either or both parties are unduly delaying the conciliation proceeding, the conciliator has the authority to terminate the conciliation forthwith, upon giving written notice thereof to the parties.
- c. Each party shall be represented at all conciliation meetings by an individual authorized to discuss, negotiate and conclude a settlement.

ARTICLE 9 - Suggestions by Parties for Settlement of Dispute

Each party may, on its own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

ARTICLE 10 - Settlement Agreement

- a. When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- b. If the settlement is agreed, the conciliator shall draw up the settlement agreement and submit it to the parties.
- c. The parties, by signing the settlement agreement, put an end to the dispute and are bound by the agreement which shall, for the purposes of its enforcement, be treated as an award pursuant to an arbitration agreement, and is enforceable in accordance with the provisions of Title 9 of the United States Code.

ARTICLE 11 - Confidentiality

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

ARTICLE 12 - Termination of Conciliation Proceedings

The conciliation proceedings are terminated:

- a. By signing of the settlement agreement by the parties, on the date of the agreement; or
- b. By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- c. By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- d. By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

ARTICLE 13 - Resort to Arbitral or Judicial Proceedings

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for protecting its rights.

ARTICLE 14 - Costs

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and shall give written notice thereof to the parties. The term "costs" includes only:

- a. The fee of the conciliator, which shall be reasonable in amount and advised to and agreed to by the parties prior to commencement of the conciliation proceeding.
- b. The travel and other expenses of the conciliator.
- c. The costs, as defined above, are to be borne equally by the parties. All other expenses incurred by a party shall be borne by that party.

ARTICLE 15 - Role of the Conciliator in Other Proceedings

The parties and the conciliator undertake that the conciliator will not act as an arbitrator, witness, representative, or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

ARTICLE 16 - Admissibility of Evidence in Other Proceedings

Unless the parties to the dispute shall otherwise agree, neither party to the conciliation proceedings shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceeding, or the report or recommendations made by the conciliator.

MODEL CONCILIATION CLAUSE

"Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Rules for Conciliation of the Society of Maritime Arbitrators, Inc. of New York then in force."

These Rules for Conciliation and related Model Conciliation Clause have been approved by the Society of Maritime Arbitrators, Inc. of New York, and are promulgated as of May 16, 1988.