

## **THE L.M.A.A./BALTIC EXCHANGE MEDIATION TERMS (2009)**

### **ARTICLE 1 Preliminary**

1.1 These terms may be referred to as “the LMAA/Baltic Exchange Mediation Terms (2009)”.

1.2 In these Terms unless the context otherwise requires:-

- (a) “Association” means the London Maritime Arbitrators Association;
- (b) “Chairman” means the Chairman of the Baltic's Member and Membership Services Committee
- (c) “President” means the President for the time being of the Association;
- (c) “Mediation” means and includes mediation, conciliation and any form of dispute resolution other than litigation and arbitration;
- (d) “Mediator” means and includes one or more persons appointed or nominated for the purpose of mediation who shall be a member of the LMAA/Baltic Exchange Mediation Panel.

### **ARTICLE 2 Application and Purpose of the Terms**

2.1 These Terms apply to mediation of disputes arising out of or relating to a contractual or other legal relationship, whether commercial or maritime, where the parties seeking an amicable settlement of their disputes have agreed that the Terms shall apply.

2.2 The parties may agree to exclude or vary any of these Terms at anytime.

### **ARTICLE 3 Number of Mediators**

Unless the parties otherwise agree there shall be one Mediator who shall be appointed within 14 days from the commencement of the mediation procedure as mentioned in Article 4 below.

### **ARTICLE 4 Commencement of the Mediation Procedure**

4.1 The party initiating mediation shall send to the other party or parties a written invitation to mediate under these Terms, briefly setting out the matters in dispute.

4.2 The mediation procedure shall be deemed to have commenced when the other party or parties accept in writing the invitation to mediation.

4.3 If the other party, or if one of the other parties, rejects the invitation to mediation, or if the other party or parties fail to respond to the invitation within 14 days or any other period that may be stated in the invitation, there will be no mediation procedure for the time being. Provided that, if there are more than two parties and one accepts but the other or others do not, then mediation in accordance with these Terms between the party making the invitation and the party accepting shall take place if they so agree.

#### **ARTICLE 5 Appointment of Mediator**

5.1 If the parties to a dispute agree to mediate but are unable to agree on the appointment of a Mediator and one, or more, of the parties is not a member of the Baltic Exchange they may make an application in writing to the President, or such other person nominated for this purpose by the President, accompanied by payment of an administration fee of such sum as shall be fixed from time to time by the committee of the Association, plus VAT where applicable, for the appointment of a Mediator. If both, or all, parties are members of the Baltic Exchange they may make an application in writing to the Chairman for the appointment of a Mediator.

5.2 Any application for the appointment of a Mediator shall be accompanied by a brief summary of the matters in dispute. A copy of the application and summary shall be sent to the other parties to the mediation. The President, or such other person nominated for this purpose by the President, or the Chairman, may call for such further information as he may require. He shall then appoint the Mediator and shall notify the parties of his or her name and address.

5.3 Where the parties have agreed that each party should appoint a Mediator and one or more of the parties has failed to make the appointment, the party or parties who have made the appointment may apply in writing to the President, or such other person nominated for this purpose by the President, accompanied by payment of an administrative fee of such sum as shall be fixed from time to time by the committee of the Association, plus VAT where applicable, for the appointment of a Mediator on behalf of the defaulting party or parties. If both, or all, parties are members of the Baltic Exchange they may make an application in writing to the Chairman for the appointment of a Mediator on behalf of the defaulting party or parties. In case any application is made under the terms of this paragraph the procedure indicated in the preceding paragraph shall be followed.

5.4 None of the President, the Association, the Chairman and the Baltic Exchange or any agent or employee of any of them, shall be liable for (i) anything done or omitted to be done in the designation or appointment, or purported designation or appointment, of any Mediator unless the act or omission is shown to have been in bad faith or (ii) anything done or omitted to be done by any Mediator appointed by them in the discharge or purported discharge of his or her function as Mediator.

## **ARTICLE 6 Exchange of Information**

6.1 Each party will send to the Mediator within 14 days of his appointment, or such other period as may be agreed, copies of a concise Summary of its case in the dispute and all documents to which the Summary refers and any other documents to which it may wish to refer in the Mediation. A copy of the Summary and documents will be sent simultaneously to any other party to the Mediation.

6.2 In addition, each party may send to the Mediator and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not the other party or parties, clearly stating that such documentation is confidential to the Mediator.

6.3 The parties shall endeavour to agree a joint summary and set of documents or, if this is not possible, the maximum number of pages for each Summary and set of documents to accompany each Summary.

## **ARTICLE 7 Duties and Powers of the Mediator**

7.1 The Mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. He shall be guided by the principle of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade in question and the circumstances surrounding the dispute including any previous business practices between the parties or some of them.

7.2 The Mediator shall conduct the mediation in such manner as he considers appropriate, taking into account the circumstances of the case, the amount in dispute and any wishes the parties may express, including any request that the Mediator hear oral statements, together with the need for a speedy settlement of the dispute.

7.3 The Mediator may at any time make proposals for the settlement of disputes. Such proposal may be oral or in writing and need not be accompanied by any reasons therefor.

7.4 The Mediator 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 any of them separately. Where the Mediator receives factual information concerning the dispute from a party, he may disclose the substance of that information to the other party or parties so that that other party or those other parties may have the opportunity to present any explanation which it or they may consider appropriate. However, when a party gives information to the Mediator subject to the specific condition that it be kept confidential the Mediator shall not disclose that information to any other party.

7.5 The Mediator may, with the consent of the parties, call any witness he thinks may be able to assist in the mediation.

#### **ARTICLE 8 Co-operation of Parties with Mediator**

The parties will in good faith co-operate with the Mediator and in particular will endeavour to comply with requests by him to submit written materials, provide evidence and attend meetings.

#### **ARTICLE 9 Settlement Agreement**

9.1 Where it appears to the Mediator that there are elements of a settlement which would be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties for their observations. He may reformulate the terms in the light of such observations.

9.2 If the parties reach agreement on the settlement of the dispute they shall draw up and sign a written agreement. The Mediator may draw up, or assist the parties in drawing up, the settlement agreement.

9.3 The parties, by signing the settlement agreement, put an end to the dispute and are bound by the agreement.

9.4 The Mediator may, if so requested by the parties, draw up the settlement agreement in the form of an arbitration award or, where the matter has been referred to arbitration before the commencement of the mediation, the parties may agree that the settlement agreement be drawn up in the form of an arbitration award by the arbitration tribunal already appointed.

## **ARTICLE 10 Confidentiality**

The Mediator and the parties must keep confidential all matters relating to the mediation proceedings. Confidentiality extends also to the settlement agreement (or any arbitration award made) except where its disclosure is necessary for the purposes of implementation and enforcement.

## **ARTICLE 11 Termination of Mediation Procedure**

11.1 The mediation procedure is terminated:-

- (a) By the signing of the settlement agreement by the parties or by the signing of an arbitration award, on the date of such agreement or award;
- (b) By a written declaration of the parties to the effect that further efforts in mediation are no longer justified, on the date of the declaration;
- (c) By a written declaration by a party to the other party or parties to the effect that the mediation procedure is terminated, on the date of the declaration;
- (d) By a written declaration of the Mediator to the effect that further efforts at mediation are no longer justified, on the date of the declaration.

## **ARTICLE 12 Resort of Arbitration or Judicial proceedings**

Where the disputes referred to mediation are the subject of any arbitration or judicial proceedings either party may advise the arbitration tribunal or Court that they have agreed to mediation. The arbitration or judicial proceedings shall however continue during the conduct of the mediation subject to any right the arbitration tribunal or Court may exercise to take the mediation timetable into account when setting any timetable in those proceedings. The mediation procedure may not interrupt time limits and either party may initiate arbitration or judicial proceedings at any time where in his opinion such proceedings are necessary for preserving his rights.

## **ARTICLE 13 Costs**

### **13.A The Mediator's costs**

13.A.1 An appointment fee shall be payable to the Mediator by each party to the mediation procedure. The appointment fee shall be £250 per party or such other sum as the Committee of the Association may from time to time decide.

13.A.2 Upon termination of the mediation procedure the Mediator shall fix the costs of the mediation and shall give written notice thereof to the parties who shall, unless otherwise ordered by the Mediator, be liable to pay the same in equal proportions. Such costs shall include the Mediator's fees, which, unless agreed beforehand, shall be reasonable in amount, having regard to the time involved, the amount in dispute and the complexity of the case, any out of pocket expenses and the expenses of any witnesses called by the Mediator with the consent of the parties.

13.A.3 If any party fails to pay the Mediator's costs or its proportion thereof within 30 days from the termination of the mediation procedure, the other party or parties shall be jointly and severally liable to indemnify the Mediator in respect of such failure.

13.A.4 The Mediator may, on his appointment or at any time or times thereafter, order the parties to pay to him a deposit on account of his costs.

### **13.B The Parties' Costs**

13.B.1 Normally each party shall bear its own costs.

13.B.2 However, if the Mediator should be of the opinion that any party has not genuinely tried to cooperate in the mediation or has been obstructive so that the mediation procedure has been thwarted or has been made more expensive, he may order that that party shall pay all or part of the costs of any other party; and, if such costs cannot be amicably agreed, the Mediator may assess and decide the amount to be paid and a certificate signed by the Mediator shall be conclusive and binding on the parties.

## **ARTICLE 14 Role of the Mediator in other proceedings**

The parties and the Mediator undertake that the Mediator shall not act as arbitrator, witness, lawyer, adviser or representative of any party in arbitration or judicial proceedings in respect of the dispute that is the subject of the mediation procedure.

## **ARTICLE 15 Admissibility of evidence in other proceedings**

15.1 Unless all parties to the mediation procedure otherwise agree, the parties undertake not to reveal, introduce or rely on the following as evidence in any arbitration or judicial proceedings, whether or not those proceedings relate to the dispute that is the subject of the mediation procedure:-

(a) Views expressed or proposals made by any party with a view to possible settlement of the dispute;

- (b) Admissions made by the party in the course of the mediation procedure;
- (c) Proposals made by the Mediator;
- (d) The fact that a party has indicated its willingness to accept a proposal to settle made by the Mediator.

15.2 The parties further undertake, unless all other parties otherwise agree, not to refer to or rely on any documents which might have been disclosed during the mediation procedure, whether voluntarily or at the request of the Mediator or other party but which would otherwise have been privileged and to return all such documents and copies thereof to the party disclosing them.

#### **ARTICLE 16 Liability of the Mediator**

The Mediator shall not be liable for anything done or omitted in the discharge or purported discharge of his or her functions as Mediator unless the act or omission is shown to have been in bad faith.