



Vancouver Maritime Arbitrators Association

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MEDIATION RULES

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Application and Purpose of Rules

1. These rules apply to mediation of disputes arising out of, or relating to, a contractual or other legal relationship where the parties:
 - (a) agree that the rules shall apply; or
 - (b) have agreed that the arbitration rules of the Vancouver Maritime Arbitrators Association shall apply.
2. These rules may be varied by the agreement of the parties at any time.

Commencement and Registration of Mediation Proceedings

3. A mediation is commenced by one party sending a written invitation to any other party to mediate under the rules, briefly setting out the nature of the dispute, or on written agreement of the parties, and by delivering a copy of the written invitation or the written agreement to the president of the VMAA along with a \$250.00 administration fee payable to the VMAA. The VMAA will then provide a registration number for the parties.
4. If the other party or one of the other parties rejects the invitation, or if any of the other parties fails to respond to the invitation within 14 days, there will be no mediation involving the party who rejects or fails to respond. If there are more than two parties, the mediation may proceed between the party making invitation and the party or parties accepting the invitation.
5. If mediation has been initiated under rule 1(b), a rejection to mediate or a failure to respond to an invitation to mediate may be communicated by either party to the arbitrators after an award on the merits has been made.

Appointment of Mediator

6. If the parties cannot agree on a mediator within 7 days of the acceptance of an invitation to mediate, they may apply in writing to the President of the VMAA, or designate, for the appointment of a mediator. The application must set out a brief summary of the matters in dispute and may include the names of proposed mediators. The parties may send a joint application and summary or separate applications and summaries to the President. Following receipt of the application, or applications, and summary, or summaries, the President, or designate, shall appoint a mediator and notify the parties of the mediator's name and address.

7. Within 10 days of the mediator's appointment each party shall submit to the mediator a written statement describing the matter or matters in dispute, and each party shall provide a copy of its statement to the other party or parties. The written statement of each party shall not exceed 5 double spaced typewritten pages.
8. The mediator may request the parties or any of them to submit further written statements of their position and the facts and grounds relied on in support thereof, accompanied by any documents or other evidence considered relevant by the party. Copies of such statements and documents and descriptions of evidence shall be sent to the other party or parties.
9. The mediator may at any stage of mediation require a party to submit such additional information, which the mediator considers, may assist in the mediation.
10. The mediator shall, following consultation with the parties, fix the time and location of each mediation session.

Duties of the Mediator

11. The mediator shall assist the parties in an independent and impartial manner to reach an amicable settlement of their dispute.
12. The mediator shall be guided by principles of objectivity, fairness and justice, and shall give consideration to, among other matters, the rights and obligations of the parties, the usages of the trade involved in the dispute, the circumstances surrounding the dispute, and any previous commercial business practices between or among the parties.
13. The mediator may conduct the mediation in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes the parties may express, including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.
14. The mediator may at any stage of the mediation make proposals for a settlement of the dispute, but has no authority to impose a settlement on the parties. Such proposals need not be in writing and need not be accompanied by a statement of the reasons for them.
15. The mediator may, with the consent of the parties, hear any witness who may be able to assist in the mediation.
16. Where the mediator receives information concerning the dispute from a party, the mediator shall disclose the substance of that information to the other party or parties so that the other party or parties have the opportunity to present any explanation which they consider appropriate. However, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to any other party.

Communications Between Mediator and Parties

17. The mediator may meet or communicate with the parties together or with each of them separately. Communication may be orally or in writing.

Co-operation of Parties with the Mediator

18. The parties shall co-operate with the mediator in good faith and shall endeavour to comply with the requests by the mediator to submit written materials, provide evidence and attend meetings.

Settlement

19. Each party may, on its own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.
20. When it appears to the mediator that there exists elements of a settlement that would be acceptable to the parties, the mediator shall formulate the terms of a possible settlement and submit them to the parties for their observations, and may reformulate the terms of a possible settlement, having such observations in mind.
21. If a settlement is agreed, the mediator, or the parties, shall prepare a settlement agreement, which shall be signed by the parties and witnessed by the mediator.
22. The parties, by signing the settlement agreement, end 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 the parties agree it is enforceable as an arbitration award under the laws of British Columbia, Canada and those other states in the world that have acceded to the 1958 United Nations Convention and the Recognition and Enforcement of Foreign Arbitral Awards.

Confidentiality

23. The mediator shall keep confidential any information disclosed in the course of the mediation including all written material provided to the mediator.
24. The parties shall keep confidential any information disclosed in the course of the mediation including all written material provided, unless otherwise agreed by all the parties.
25. The parties agree that mediation sessions are settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except as permitted by law. The parties agree not to subpoena or otherwise require the mediator to testify or produce records or notes in any further proceedings. No transcripts will be kept of the mediation and no recordings shall be made.
26. The parties agree that they shall not rely on or introduce as evidence in subsequent arbitral or judicial proceedings:
 - (a) any view expressed, or suggestion made, by the other party in respect of the possible settlement of the dispute;
 - (b) any admissions made by the other party in the course of the mediation;
 - (c) the fact that the other party had indicated a willingness to accept a proposal or recommendation for settlement made by the mediator; or
 - (d) proposals made or views expressed by the mediator.

Termination of Mediation

27. The mediation is terminated by:
- (a) the execution of a settlement agreement by the parties;
 - (b) a written or oral declaration of one or more parties that the mediation is terminated; or
 - (c) a written or oral declaration by the mediator that further efforts at mediation would not be helpful.
28. Such termination shall be recorded by the mediator with provisions for any agreed issues and allocation of the costs of the mediation which should, if possible, be signed by the parties.

Prohibition Against Arbitral or Judicial Proceedings

29. 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 such proceedings are considered necessary for preserving rights.

Costs

30. Costs are limited to the \$250.00 administration fee paid to the VMAA in accordance with rule 3 and the fee of the mediator, which shall be reasonable in amount and agreed to by the parties in writing, as well as the travel and other expenses of the mediator.
31. Within 10 days of the mediator's appointment, each party shall submit any deposit required by the mediator.
32. The above costs shall be borne equally by the parties unless otherwise agreed. All other expenses incurred by a party shall be borne by that party.

Other Proceedings

33. The mediator undertakes not to act as an arbitrator, witness, representative, or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the mediation.

Exclusion of Liability

34. A mediator shall not be liable for anything done or omitted in the discharge or purported discharge of their mediation functions unless the act or omission is shown to have been in bad faith.
