

## Claims, Disputes & MMTA Arbitration

### Disputes and Arbitration

Members' attention is drawn to the facility which exists whereby brief details of a contractual problem may be submitted to the Committee, in order that an impartial consensus view, based on the background of committee members' combined experience, may provide a clarification, thereby hopefully assisting the parties to resolve their problem and so obviate the need to ultimately proceed to arbitration.

Any dispute arising out of a contract, which cannot be resolved by negotiation or mediation, is to be submitted to arbitration, which shall be conducted under the Association's published rules; another arbitration body may be used if mutually agreed upon. It shall be expected of members that principal point(s) of contractual law arising from an arbitration may be disseminated to the Membership - without the divulging of the concerned parties' names - to enable other members to thereby avoid a similar problem.

The MMTA Panel of Arbitrators list is available on request from the Executive Team at: [executive@mmta.co.uk](mailto:executive@mmta.co.uk)

#### 1. Introduction

- 1.1. These arbitration rules ("the Rules") will apply when the parties to the contract have agreed in writing that disputes in relation to that contract be settled in accordance with the arbitration rules from time to time of the MMTA.
- 1.2. Prior to the commencement of arbitration proceedings, the parties are strongly advised, but not obliged, to attempt to settle the dispute through a conciliation or mediation procedure offered by the Minor Metals Trade Association (MMTA).
- 1.3. Unless otherwise agreed among the parties, these Rules shall be governed by and construed in accordance with English Law. Except where the arbitration rules provide otherwise, all arbitrations hereunder will be conducted in accordance with the provisions of the Arbitration Act 1996 of England as amended from time to time. The seat of the arbitration shall be England, unless otherwise agreed among the parties.
- 1.4. Unless otherwise ordered by the tribunal, all notices required by these Rules shall be in writing. Notices and all other documents submitted in the dispute shall be sent by first class post where available, or by airmail, fax, telex, electronic message or delivered by hand.

#### 2. Arbitration Panel

- 2.1. The Committee of the MMTA ("the Committee") shall appoint as members of the MMTA panel of arbitrators ("the Panel"), individuals who by reason of their experience in the minor metals trade, or by membership of the Chartered Institute of Arbitrators, or possession of other suitable arbitration expertise, the Committee considers competent to act as arbitrators under the Arbitration Rules.
- 2.2. The Committee shall appoint, from members of the Association, an Arbitration Committee and a Chairman, with powers to act under the Rules.

#### 3. Commencing an Arbitration

- 3.1. The party commencing the Arbitration (the Claimant) shall serve a Notice to Arbitrate on the other party (the Respondent), by sending a copy of the Notice to Arbitrate to the Secretary of the MMTA ("the Secretary"), accompanied by a Registration Fee and Deposit in the amount as may be specified by the Arbitration Committee from time to time.

#### 4. Notice to Arbitrate

- 4.1. The Notice to Arbitrate shall include at least the following:
  - 4.1.1. The name and address for service of the Claimant

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- 4.1.2. The name and address of the Respondent to whom the Notice to Arbitrate is sent
- 4.1.3. A reference to the arbitration clause or agreement that is involved
- 4.1.4. A brief statement of the nature and circumstances of the dispute, including a reference to the contract out of which the dispute arises.
- 4.1.5. A brief statement of the relief claimed
- 4.1.6. The Claimant's proposal with regard to the number of arbitrators to form the Tribunal (one or three)
- 4.1.7. The Claimant's nomination of one arbitrator from the Panel, who is prepared to act.
- 4.2. The Secretary shall acknowledge receipt of the Deposit and Registration Fee, with a copy of the acknowledgement to the Respondent. The Notice of Arbitration shall be valid on receipt by the Secretary of the Deposit and Registration Fee. The date of receipt of a valid Notice to Arbitrate by the Respondent shall be the date of commencement of the Arbitration.
- 4.3. Within 21 days of receipt of the Notice to Arbitrate, the Respondent shall send to the Claimant, with a copy to the Secretary, a Counter Notice, which shall contain:
  - 4.3.1. The name and address for service of the Respondent
  - 4.3.2. Confirmation that the Respondent agrees to the number of arbitrators proposed by the Claimant, or the Respondent's Counter Proposal
  - 4.3.3. If relevant, the Respondent's nomination of one arbitrator from the Panel, who is prepared to act.
- 4.4. If the Respondent fails to serve the Counter Notice then, on application in writing to the Secretary, the Secretary shall proceed with the appointment of a Tribunal as set out in the Rules.

## 5. Appointment of the Tribunal

- 5.1. The Tribunal:
  - 5.1.1. may consist of one or three arbitrators;
  - 5.1.2. shall, except in the circumstances set out in sub clause 5.1.3 or where the parties agree otherwise, be composed of an arbitrator or arbitrators chosen from the Panel;
  - 5.1.3. shall include at least one member who is a Member of the Chartered Institute of Arbitrators ("the Institute"). Should (a) no member of the Panel or (b) no member of the Panel available and willing to act as an arbitrator in the instant case be a Member of the Institute, or (c) in the case of a Tribunal to be composed of 3 arbitrators, should neither of the arbitrators to be appointed by the parties be Members of the Institute, then the arbitrator to be appointed in each such case shall be chosen from the list of the Institute and the relevant provisions of the Rules governing appointment of such arbitrator shall be so construed.
- 5.2. Within seven days of receipt of the Counter Notice, or of the Claimant's Application referred to in Rule 3.1, the Secretary shall:
  - 5.2.1. If the Tribunal is to consist of a single arbitrator:
    - 5.2.1.1. Appoint the Arbitrator agreed by the parties; or
    - 5.2.1.2. If the parties do not agree on the arbitrator, ask the Arbitration Committee to appoint an arbitrator who may, but need not be, an arbitrator nominated by one of the parties
  - 5.2.2. If the Tribunal is to consist of three arbitrators:
    - 5.2.2.1. Appoint the arbitrator nominated by the Claimant: and

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- 5.2.2.2. The arbitrator nominated by the Respondent; or
- 5.2.2.3. In default, an arbitrator appointed by the Arbitration Committee
- 5.2.3. Send to each arbitrator a copy of the Notice to Arbitrate and the Counter Notice, if any, and any accompanying documents;
- 5.2.4. Notify the parties of steps taken pursuant to Rules 5.2.1, 5.2.2 and 5.2.3.
- 5.3. If the Tribunal is to consist of three arbitrators, the two arbitrators appointed under Rule 5.2.2 shall within seven days of their appointment nominate the third arbitrator, who is prepared to act, and notify the Secretary of their choice or inform the Secretary they are unable to agree. In such an event, the Secretary shall, within 7 days thereafter:
  - 5.3.1. Ask the Arbitration Committee to nominate a third arbitrator, able and willing to act
  - 5.3.2. On his nomination, send the third arbitrator a copy of the Documents referred to in Rule 5.2.3
  - 5.3.3. Notify the parties and other arbitrators of steps taken pursuant to Rules 5.3.1 and 5.3.2
- 5.4. For the purpose of these Arbitration Rules, the Tribunal shall be taken to have been appointed on the date the Secretary sends notification to the parties, pursuant to the above Rules.
- 5.5. The third arbitrator shall be the Chairman of the Tribunal.
- 5.6. All arbitrators, whether or not nominated by the parties, shall remain at all times wholly independent and impartial and shall not act as advocates for either party.
- 5.7. If at any time after his appointment, any arbitrator is unable or unwilling to act for any reason, then within seven days of receipt of a written request from the arbitrator himself, any of the other members of the Tribunal, or either party, the Arbitration Committee shall, subject to Rule 5.3, appoint a replacement.
- 5.8. If the arbitrator to be replaced pursuant to Rule 5.7, is one whom either party nominated originally, that party shall be entitled to nominate the replacement. If the arbitrator to be replaced is the third arbitrator, the other two shall be entitled to nominate the replacement. The Arbitration Committee, before appointing the replacement, shall, through the Secretary, consult with the parties or arbitrators accordingly, and appoint the arbitrator so nominated.
- 5.9. Either party may challenge the appointment of an arbitrator within 28 days of his appointment, or if later within 28 days of becoming aware of the circumstances on which the challenge is based, be it on grounds of non-independence, partiality, unfitness or inability to act, by sending a written statement of its reasons for the challenge to the Secretary. Unless the other party agrees to the challenge or the arbitrator withdraws within seven days, the Secretary shall refer the matter to the Arbitration Committee who shall determine whether the challenge should be sustained, and if so and subject to Rule 5.7, appoint a replacement within seven days of such decision.
- 5.10. The Tribunal shall have power, on the application of either party or on his own motion and on notice to both parties, to extend or abridge any of the time limits specified in these Rules.

## **6. Procedure to be Adopted**

- 6.1. In the absence of any express provision in these Rules, the Tribunal shall have the widest discretion permitted by law to determine the procedure to be adopted, and to ensure the fast, expeditious, economical and final determination of the dispute.

## **7. Notices and Communication**

- 7.1. Documents sent between the parties shall be sent to the other parties' address for service, failing which to the principal place of business of the other party to the contract. In every case where either party sends any document to the Secretary or the Tribunal, that party shall where relevant

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provide copies for each member of the Tribunal, and also at the same time send a copy to the other party.

7.2. Documents sent by post shall be deemed to have been received:

7.2.1. if posted in the United Kingdom to an address in the United Kingdom, 2 working days after posting:

7.2.2. in all other cases, 5 working days after posting.

Faxes, telexes or electronic messages shall be deemed to have been received at the time transmission ceases.

7.3. Deliveries by hand shall be deemed to have been received at the time of delivery to the address stated on their face.

7.4. All notices and other documents received on a day which is not a working day, or after 5.00pm working time on any working day, shall be deemed to have been received on the next following working day.

## 8. Submission of Documents

8.1. Unless otherwise ordered by the Tribunal, the procedure following the appointment of the Tribunal shall be as set out in the rest of this Rule.

8.2. Within 21 days after the appointment of the Tribunal, the Claimant shall send to the Tribunal and to the Respondent written points of claim which set out any facts or contentions of law on which it relies, and the relief claimed. The Claimant may serve the points of claim on the Respondent at the same time as the Notice to Arbitrate.

8.3. Within 21 days of receipt of the points of claim, the Respondent shall send to the Tribunal and to the Claimant written points of defence, stating which of the facts or contentions of law in the points of claim it admits or not, and on what grounds, and on what other facts and contentions of law it relies. Any counter claims shall be submitted with the points of defence in the same manner as claims are set out in the points of claim. A Registration Fee and Deposit for the counter claims must be paid to the Secretary at the same time that the points of defence are sent to the Tribunal and to the Claimant.

8.4. Within 21 days of receipt of the points of defence, the claimant may send to the Tribunal and to the Respondent written points of reply which, where there are counter claims, shall include points of defence to counter claims.

8.5. If the points of reply contain points of defence to counter claims, the Respondent may within 21 days of receipt, send to the Tribunal and to the Claimant written points of reply regarding counter claims.

8.6. No further submissions shall be served without an order from the Tribunal.

8.7. Unless the parties agree otherwise, the language of the arbitration shall be English. Any documents not in the agreed language shall be accompanied by a translation into that language, if so ordered by the Tribunal.

8.8. If the parties so request or agree, the Tribunal may decide the case on the relevant documents alone.

8.9. Within 7 days after the Close of Pleadings, the Tribunal shall give directions for the subsequent procedure of the arbitration and may convene a hearing for that purpose.

8.10. The Tribunal may in advance of hearings submit to the parties a list of questions, which it wishes them to treat with special attention.

8.11. Unless otherwise agreed by the parties, the Tribunal shall draw up on the basis of the documents or in the presence of the parties a document defining its Terms of Reference, which may include:

- 8.11.1. a summary of the parties' respective claims
- 8.11.2. definition of the issues to be determined
- 8.11.3. the place, time and date of the hearing
- 8.11.4. any particulars of the applicable procedural Rules. This document shall be signed by the parties and the Tribunal

## 9. Party Representatives

- 9.1. Neither party shall be represented at any hearing by a legal practitioner without the consent of the Tribunal, such consent to be requested not later than the Close of Pleadings. If such consent is granted by the Tribunal to one party, the other party shall automatically have an equivalent right. Nothing in this Rule shall preclude either party from otherwise seeking legal advice.
- 9.2. Subject to the above Rule, either party may be represented at any hearing by any representative, subject to such proof of authority as the Tribunal may require.

## 10. Witnesses

- 10.1. The parties shall give notice to the Tribunal of the identity of witnesses they intend to call, and shall exchange statements of evidence to be given by the witnesses not later than 14 days before the date of the hearing.
- 10.2. Any witness giving oral evidence may be questioned by each of the parties or their representative, under the control of the Tribunal. The Tribunal may put questions to the witnesses at any stage of the examination.
- 10.3. Evidence of witness may be represented in written form, and the witness may be requested to attend the hearing for oral examination. If he fails to attend, the Tribunal may place such weight on the written evidence as it thinks fit.

## 11. Powers of the Tribunal

- 11.1. Without prejudice to any powers which may be given to the Tribunal elsewhere by law or in these Arbitration Rules, the Tribunal shall have power either on its own motion or on the application of either party:
  - 11.1.1. to extend or abridge any time limits specified in these Rules
  - 11.1.2. to continue with the reference in default of appearance or any other act by either party, in the event that a party fails, after peremptory notice by the Tribunal, to do any act required by these Rules within a specified or reasonable time, or to comply with any order by the Tribunal.
  - 11.1.3. to order either party to produce and supply copies of any documents in that party's possession or custody, which, in the event of dispute, the Tribunal considers relevant
  - 11.1.4. to order the inspection, preservation, storage or interim custody of any property relevant to the Arbitration under the control of either party
  - 11.1.5. to appoint an expert investigator to report to the Tribunal on specified issues
  - 11.1.6. to take such legal advice as the Tribunal thinks fit
  - 11.1.7. to order either party to provide security for the legal or other costs of the other party in any manner the Tribunal may think fit

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- 11.2. Unless otherwise agreed by the parties, the Tribunal may rule on its own substantive jurisdiction, that is, as to whether there is a valid arbitration agreement or whether the Tribunal is properly constituted.
- 11.3. A plea that the Tribunal does not have jurisdiction shall be raised not later than in the points of defence.

## 12. Awards

- 12.1. The Tribunal shall make its award in writing, and give its reasons for the award.
- 12.2. If the Tribunal consists of three arbitrators, and they fail to agree on any issue, they shall decide by a majority, whose signatures will be sufficient for the validity of the award.
- 12.3. The Tribunal shall have power to award interest at such rate and for such period as it considers fit for any sum after its due date whether before or after commencement of the Arbitration.
- 12.4. In the event of a settlement, the Tribunal may make an award recording the settlement, if either party so requests.
- 12.5. Awards shall be final and binding on the parties as from the date they are made.
- 12.6. The award of the Tribunal shall be deposited by them with the Secretary of the MMTA, who shall notify each party of such receipt. Either party may then take up the award on payment by that party of the costs and expenses of the Arbitration (including the remuneration of the arbitrators) notwithstanding any direction in the award as to the ultimate responsibility for same. Upon the award being taken up by either party, a copy thereof shall be sent forthwith by the Secretary to the other party.
- 12.7. In the event of the award not being taken up by either party within 28 days of notification by the Secretary, the deposit(s) referred to in Rules 3.1 and 8.3 shall be forfeited. The Secretary may in his discretion call upon the parties, or either of them, to take up the award and to pay forthwith the costs and expenses of the award, including the remuneration of the arbitrators.

## 13. Cost and Deposit

- 13.1. The Tribunal shall specify in the award the amount of the Costs of the Arbitration (which include the remuneration of the Tribunal, the Registration Fee, the administration charges of the MMTA, costs of the venue of hearing, fees of experts called by the Tribunal, if any, and incidental costs), and shall determine the proportions in which they shall be borne by the parties.
- 13.2. The Tribunal shall have power:
  - 13.2.1. to order in its award that all or part of the legal or other costs of one party be paid by the other party.
  - 13.2.2. to determine or assess the amount of these costs, at the request of either party, and for this purpose shall not be "functus officio".
- 13.3. If the Arbitration is abandoned or concluded, by agreement or otherwise, the parties shall be jointly and severally liable to pay the costs of the arbitration.
- 13.4. The Tribunal shall in its award provide for the return or disposal of the Deposit(s) to such persons as it shall in its discretion see fit.

## 14. Exclusion of Liability

None of the Secretariat, the Committee of the MMTA, the MMTA Arbitration Committee or any arbitrator shall be liable to any party for any act or omission in connection with any arbitration other than the consequences of conscious and deliberate wrongdoing.

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