



**Society of Maritime Arbitrators, Inc.**

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**RECREATIONAL  
and  
SMALL COMMERCIAL VESSEL  
SALVAGE ARBITRATION**

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**MODEL CLAUSE**

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"Any dispute arising out of this Agreement shall be referred to arbitration in the U.S. under the Rules for Recreational and Small Commercial Vessel Salvage Arbitration of the Society of Maritime Arbitrators, Inc. Arbitrators shall be commercial persons familiar with maritime salvage. Any award made hereunder shall be final and binding, and for the purpose of enforcement may be entered for judgment in any Court of competent jurisdiction."

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**RULES**

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**I. Qualifications of Arbitrators**

The Society of Maritime Arbitrators, Inc. (SMA) shall maintain a list of arbitrators among its membership who are familiar with maritime salvage. Copies of the resumes of those arbitrators shall be made available upon request to parties seeking to appoint arbitrators in salvage cases.

**II. Appointment of Arbitrator(s)**

(a) Upon a demand for arbitration by either side, the parties shall choose a sole arbitrator by agreement. However, if the parties are unable to agree upon a sole arbitrator within 15 days after the demand for arbitration, each is then to submit the names of three acceptable arbitrators from the SMA list to the President of the SMA, who shall select by random process one of the six names so submitted.

Notwithstanding the foregoing, the parties may agree upon a tripartite panel of arbitrators. In such case each shall choose an arbitrator, and the two so chosen shall choose a third who shall also chair the panel for administrative and procedural purposes. In the event they cannot agree on a third within 15 days, the two party-appointed arbitrators shall request the President of the SMA to appoint one at random from the SMA list of salvage arbitrators.

(b) In the event there is more than one salvor involved in the dispute (excluding subcontractors), and all of the salvage agreements incorporate these Rules, the disputes shall be consolidated before a sole arbitrator unless all parties have agreed upon a tripartite panel. In either case, all of the salvors shall be considered one party for the purposes of this

section and the appointment of arbitrators shall be governed by the provisions of subparagraph (a) above.

### **III. Failure to Respond**

Should the respondent fail to respond within 15 days from the demand for arbitration, the arbitrator named by the claimant shall serve as the sole arbitrator, with the same authority as if agreed between the parties.

### **IV. Submission of Evidence, Hearing**

(a) Within 15 days from the date of appointment, or completion of the panel, the arbitrator(s) shall establish a schedule for the submission of documentary evidence.

(b) In order to minimize the costs of the arbitration, the parties shall submit their positions in writing for decision by the arbitrator(s). The submissions should include documentary evidence to support their positions (such as, but not limited to salvage reports, valuations, insurance certificates, photographs, survey reports, repair estimates and receipts, etc.), and such sworn testimony by affidavit as is relevant to the issues.

(c) Upon request by either party within 15 days after written submissions have been made, a single hearing will be convened for the purpose of oral argument by the parties and/or their counsel to supplement the written presentations. No witnesses other than the parties themselves will be heard, and unless mutually agreed and arranged by the parties, no transcript of the hearing shall be taken. The hearing shall be held at any location agreed upon by the parties and the arbitrator(s).

(d) At the sole discretion of the arbitrator(s), each side may be permitted one postponement for good cause shown, the duration of which shall be determined by the arbitrator(s) depending on the circumstances.

(e) Within 15 days after the hearing, or 15 days after the submission of documents if no hearing has been held, both parties may submit final written argument to summarize their positions, following which the proceeding shall be closed.

(f) The arbitrator(s) shall at all times have the sole discretion to modify the procedure set forth in this section if warranted by special circumstances.

### **V. Award**

(a) The arbitrator(s) shall issue a written award within 30 days after the proceeding has been closed, which shall set forth the arbitrator(s) findings of fact and decision clearly and concisely. Failure to issue the award within 30 days, however, shall not constitute grounds for appeal or vacatur of the award. The award may be published by the SMA.

(b) In a tripartite proceeding, the decision of any two arbitrators shall be final and binding. In such case, the award will include the dissenting arbitrator's opinion.

(c) The arbitrator(s) shall have the discretion to assess costs, including attorneys' fees and the fees and expenses of the arbitrator(s), in whole or in part against either party.

### **VI. Limited Appeal of Award**

(a) If, and only if, the dispute is before a sole arbitrator, the decision of the arbitrator may be appealed. In the event the parties cannot agree upon an arbitrator to hear the appeal, the appellant(s) may, within 15 days after issuance of the original award, make a written request to the President of the SMA to appoint one. Upon receipt of such request, the President of the SMA shall choose an arbitrator at random from the SMA list of salvage arbitrators.

(b) The appeal arbitrator shall review the original decision. His review shall be limited to clear error, and he shall either affirm or modify the award on this basis alone. His decision shall be issued within 15 days after his receipt of the award and evidence relevant to the appeal, and shall be absolutely final and binding upon the parties.

## **VII. Arbitrator(s) Fee(s) and Expenses**

(a) A sole arbitrator's fee shall not exceed \$1,000. In a tripartite proceeding, the fee of each arbitrator shall not exceed \$750, except that the chairman shall be entitled to an additional compensation of \$250. These fees are based upon submissions made pursuant to §IV (b) and (e). In addition, the arbitrator(s) shall be entitled to reimbursement for the expenses of the arbitration, including telephone and facsimile charges, photocopying, postage, etc. at cost. Alternatively, the arbitrator(s) may charge \$100 in lieu of an account of such expenses.

(b) The fee for a hearing pursuant to §IV (c) shall be \$300 per arbitrator.

(c) An appeal arbitrator shall be entitled to a fee not to exceed \$500.

## **VIII. Security for Arbitrator(s) Fee(s) and Expenses**

At any time prior to issuance of the award the arbitrator(s) may require each party to post security for 100% of the estimated arbitrator(s) fee(s) and expenses. Upon such demand, each side shall promptly post the required amount in the Escrow Account of the SMA, or in any other manner acceptable to the arbitrator(s).

## **IX. Application of Rules**

Except as hereinbefore provided, the Maritime Arbitration Rules of the Society of Maritime Arbitrators, Inc. in effect at the time the arbitration is commenced shall otherwise apply to any proceeding hereunder.

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