

## SEALIFT CLAIMS HANDLING RULES

### **1. Definitions**

- a. In these Rules, the following terms shall have the following meanings:

"ADR Chambers" means the ADR services division of ADR Chambers Inc.

"Arbitration" means the dispute resolution process leading to a binding decision by the Arbitrator based on a review of written submissions from the parties as described in these Rules.

"Arbitrator" means the arbitrator appointed from the Panel to conduct the Arbitration and mediation for the matter in question.

"Cargo" means goods presented by the Shipper or the Shipper's agent for transport by the Carrier and goods received for transport by the Carrier to the places of discharge under the Sealift Program.

"Carrier" means the owner or the charterer who enters into a contract of carriage with the Shipper.

"Claim" means the set of all claims made by the Shipper for loss or damage in respect of Cargo, no matter how many units of cargo are involved.

"Coordinator" means the person or persons at ADR Chambers acting as the ADR Chambers Sealift Coordinator responsible for administration of Arbitrations and Mediations under these Rules.

"Discharge Date" means the date Cargo is actually delivered to the contracted destination, or in the case of Lost Cargo, means the scheduled Discharge Date of that Cargo.

"Fast Track Process" means the dispute resolution process applicable to any Claims for which the total value of all losses is \$2500 or less, no matter how many units of cargo are involved.

"General Average Act" is any extraordinary sacrifice or expenditure, known as a general average sacrifice and a general average expenditure, respectively, that is voluntarily and reasonably incurred in time of peril for the purpose of preserving the property from peril in a common adventure.

"General Average Loss" is a loss caused by or directly consequential on a general average act, and includes a general average sacrifice and a general average expenditure.

"GN" means the Government of Nunavut.

"Lost Cargo" means cargo that the Shipper believes has not been delivered on the Discharge Date and may be lost.

"Mediation" means a non-binding settlement negotiation facilitated by the Arbitrator.

"Panel" means the Sealift Arbitral Panel established by ADR Chambers.

"Panel Head" means the Head of the Sealift Arbitral Panel to exercise the powers of an appointing authority.

"Party" or "Parties" means a party or parties to a Claim under these Rules.

"Representative" means legal counsel for or an authorized representative of a Party.

"Resolution Facilitation" means an informal non-binding attempt to resolve a dispute under these Rules which will be facilitated by the Sealift Claims Officer.

"Rules" means the Sealift Claims Handling Rules in force at the time of the filing of the Application for Arbitration (Form 4).

"Sealift Program" means the program for the Arctic Resupply of Dry Cargo services as contemplated by the provisions of the Agreement - Arctic Resupply of Dry Cargo between the Government of Nunavut and the Carrier, in effect at the time of transport.

"Shipper" means the named shipper of the Cargo, and any person who owns the Cargo and any person who receives the Cargo at the place of delivery, or their authorized representative or insurer.

"Standard Process" means the dispute resolution process applicable to:

- a) any Claims for which the total value of all losses is more than \$2500, no matter how many units of cargo are involved; and

b) any Claims involving a General Average Loss.

- b. Where appropriate in these Rules, words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa.
- c. These Rules shall be interpreted liberally with the goal that the Arbitration will be as inexpensive and expeditious as reasonably possible, consistent with a process that is fair and suitable to the circumstances of the particular case. Any procedural question or controversy on which the Parties are not agreed may be resolved by the application of the discretion of the Arbitrator in conducting the Arbitration, or of the Coordinator in the exercise of his functions.

## **2. Application**

These Rules apply to any Claims by a Shipper against a Carrier relating to the carriage of goods under the Sealift Program. All procedural and administrative issues relating to these Claims shall be resolved by reference to these Rules and related forms alone or to the discretion of the Arbitrator where applicable. No other rules of arbitration or dispute resolution shall be applicable except where expressly incorporated by these Rules. Depending on the nature of the Claim the applicable dispute resolution process used may be either the Fast Track Process or the Standard Process as set out below.

## **3. Delivery of Documents**

- a. For the purposes of these rules, all documents may be delivered by fax, e-mail, hand delivery, registered mail, courier, or regular mail, the preferable method being fax or email.
- b. Any notification or communication from ADR Chambers or the Coordinator to a Party or its Representative may be delivered to its last known address. Such notification or communication shall be deemed to have been received on the date sent, if sent by fax or email.
- c. Delivery to the Coordinator shall be made to:

ADR Chambers Sealift Coordinator  
112 Adelaide Street East  
Toronto, Ontario M5C 1K9  
Toll Free Phone: 1-800-856-5154

Toll Free Fax: 1-800-862-8825  
Email: sealift@adr.ca

#### **4. Language of Record**

The official languages for use in submitting Claims under these Rules are English and French. If assistance is required to translate documents into English, the GN will provide such translation assistance at its cost. Standard forms are available in English, French, Inuktitut and Inuinnaqtun on the GN website ([www.gov.nu.ca/sealift](http://www.gov.nu.ca/sealift)) and at Sealift offices, or upon request from the GN or the Carrier.

#### **5. Time**

When documents are submitted to the GN for translation, the time from the date of submission of the documents to the GN for translation up to and including the date of receipt by the Party of the translated documents will not count against the time requirements in these Rules.

### **MAKING A CLAIM**

#### **6. Notice of Claim**

A Notice of Claim (Form 1) must be sent by the Shipper to the applicable Carrier within 10 days of the Discharge Date in the case of visible damage to Cargo, or within 30 days of the Discharge Date in the case of concealed damage or Lost Cargo. The Notice of Claim (Form 1) must contain the requested information and be accompanied by copies of all relevant supporting documentation. A copy of the Notice of Claim (Form 1) is available on the websites of the GN and the applicable Carrier. **If the Shipper does not submit a Notice of Claim (Form 1) in the time limits stated, the Shipper's Claim will be time-barred.**

#### **7. Acknowledgement**

Within 30 days of receipt by the Carrier of a Notice of Claim (Form 1), the Carrier must send a written Acknowledgement (Form 2) to the Shipper, acknowledging receipt of the Claim and identifying any relevant evidence that is necessary to the processing of the Claim but that has not yet been provided by the Shipper.

#### **8. Documentation to be completed by Shipper**

The Shipper has 30 days from the receipt of the Acknowledgement (Form 2) to deliver to the Carrier copies of any additional documentation requested by the Carrier that the Shipper wishes the Carrier to consider in respect of the Claim. The Carrier can only make a decision based on the information in its

possession. Failure to submit the requested information in the time line as set out above may result in a costs award against the Shipper.

#### **9. Carrier Processes Claim and Sends Notice of Decision**

Within 180 days of the Discharge Date, the Carrier must send a Notice of Decision (Form 3) to the Shipper outlining the Carrier's final decision on the Claim, along with any reasons for the decision.

#### **10. Sealift Complaints Officer**

- a. If the Claim is rejected in whole or in part, either the Shipper or the Carrier may register a complaint with the Government of Nunavut's Sealift Complaints Officer ("SCO") **by phone or in writing at:**

**Phone:** 867-975-5437

**Email:** [sealift@gov.nu.ca](mailto:sealift@gov.nu.ca) (Attention: Sealift Complaints Officer)

- b. Upon request, the Carrier shall provide a copy of the Notice of Decision (Form 3) and all relevant supporting documentation to the SCO. The SCO shall, within 30 days of notification of the complaint, contact the Carrier and Shipper and attempt a Resolution Facilitation using phone caucuses or conference calls unless otherwise agreed by the Parties.
- c. Resolution Facilitation by the SCO is an informal non-binding process. If the Parties do not reach agreement in a Resolution Facilitation, they may proceed to the next step in the claims process. Taking part in a Resolution Facilitation attempt does not alter the timing of the Fast Track Process, nor is it a pre-requisite to accessing the Fast Track Process. Resolution Facilitation may continue in parallel with the Fast Track Process.

### **WHICH CLAIMS HANDLING PROCESS APPLIES**

#### **11. If Claim is Rejected Wholly or Partially by Carrier**

- a. If the total of all Claims being made by the Shipper is for more than \$2500 or the Claim involves a General Average Loss, the Shipper must continue its Claim under the Standard Track Process set out below.
- b. If the total of all Claims being made by the Shipper is for \$2500 or less, the Shipper must continue its Claim under the Fast Track Process set out below. The Fast Track Process is not to be used if a General Average Loss is declared.

### **STANDARD TRACK PROCESS**

## 12. Standard Track Process

- a. Under the Standard Track Process, the Shipper must commence a Claim in the Supreme Court of Nunavut or Federal Court of Canada **within one year of the Discharge Date otherwise the Shipper's Claim will be time-barred**. This time limit does not apply to Claims for contribution or indemnity under the *Marine Liability Act*. If such a Claim is commenced, Shipper and Carrier agree that all pretrial hearings will be heard by video or teleconference to the extent possible, so as to encourage cost-effective procedures, and to request that the trial of the action will be heard in Nunavut unless the parties mutually agree otherwise. If video or teleconference access is not available, proceedings shall take place in Nunavut. Parties will make reasonable efforts to minimize the procedural costs of any Claim.
- b. Where all relevant Parties mutually agree, the Parties may send Standard Track claims to Arbitration under the Fast Track Process, or use any other form of arbitration or dispute resolution, on either a binding or non-binding basis.

### FAST TRACK PROCESS

## 13. Shipper files Application for Arbitration

- a. To commence a Claim under the Fast Track Process, the Shipper must send a completed Application for Arbitration (Form 4) and copies of all required supporting documentation to the Coordinator **within 45 days of receipt of the Notice of Decision (Form 3), failing which, the Claim will be time-barred**. The Application for Arbitration (Form 4) should include a summary statement of the subject matter and amount of the Claim. The supporting documents required include copies of the Notice of Decision (Form 3), the Notice of Claim (Form 1) and the Acknowledgment (Form 2) as well as all relevant evidence in support of the Claim that clearly establishes the facts (such as receipts, repair estimates, photographs etc.).
- b. The Shipper must include with his or her Application for Arbitration (Form 4) a non-refundable filing fee of \$565.00 (\$500 plus HST), made payable to ADR Chambers Inc., which shall be the Shipper's share of the Arbitration fees.
- c. Upon receipt of an Application for Arbitration (Form 4), the Coordinator shall acknowledge its receipt and shall forthwith send a copy of that Application for Arbitration (Form 4) to the applicable Carrier.

#### 14. Carrier's Response

- a. Within 30 days of receipt by the Carrier of the Application for Arbitration (Form 4), the Carrier shall deliver a Carrier's Response (Form 5) which includes its defence and copies of all relevant supporting documentation to the Coordinator. **Failure to submit a Carrier's Response (Form 5) in the time line set out above may result in a costs award against the Carrier.**
- b. The Carrier must include with the Carrier's Response (Form 5) a non-refundable filing fee of \$565.00 (\$500 plus HST), made payable to ADR Chambers Inc., which shall be the Carrier's share of the Arbitration fees.
- c. Upon receipt of the Carrier's Response (Form 5), the Coordinator shall acknowledge its receipt and shall forthwith send a copy of the Carrier's Response (Form 5) and all supporting documentation to the Shipper.

#### 15. Shipper's Reply

- a. Within 15 days of receipt of the Carrier's Response (Form 5), the Shipper may **send** a Shipper's Reply (Form 6) to the Coordinator. Such Shipper's Reply (Form 6) should include any further argument and all related supporting documentation, but must be limited to a reply to new issues raised in the Carrier's Response (Form 5) and should not simply reargue issues already addressed in the Application for Arbitration (Form 4). **Failure to submit the Shipper's Reply (Form 6), if applicable, in the time line set out above, may result in a costs award against the Shipper.**
- b. Upon receipt of a Shipper's Reply (Form 6), the Coordinator shall forthwith send a copy of that Shipper's Reply (Form 6) to the applicable Carrier.

#### 16. Carrier's Reply

- a. Within 15 days of receipt of the Shipper's Reply (Form 6), the Carrier may deliver a Carrier's Reply (Form 7) to the Coordinator. Such Carrier's Reply (Form 7) should include any further argument and copies of all related supporting documentation, but must be limited to a reply to new issues raised in the Shipper's Reply (Form 6) and should not simply reargue issues already raised by the Application for Arbitration (Form 4) and/or the Carrier's Response (Form 5). **Failure to submit a Carrier's Reply (Form 7), if applicable, in the time line set out above may result in a costs award against the Carrier.**

- b. Upon receipt of a Carrier's Reply (Form 7), the Coordinator shall forthwith send a copy of that Carrier's Reply (Form 7) to the Shipper.
- c. If no Shipper's Reply (Form 6) was filed, no Carrier's Reply (Form 7) is permitted.

#### **17. Appointing an Arbitrator/Mediator**

- a. Within **30 days** of the receipt by the Shipper of the Carrier's Response (the "Selection Period"), the Parties shall, by mutual agreement, appoint an Arbitrator from the Panel and notify the Coordinator of their appointment in writing using the Notice of Appointment (Form 8). The Coordinator will confirm the appointment of the Arbitrator in writing and provide a copy of all file documents to the Arbitrator.
- b. If the Parties cannot agree on an Arbitrator within the Selection Period, each Party may deliver submissions (not exceeding 2 pages) prior to the end of the Selection Period, to the Coordinator as to whom they would prefer as an Arbitrator, and what they are looking for in an Arbitrator. Within 5 business days of the end of the Selection Period, the Panel Head will choose a single member of the Panel to act as the Arbitrator in the case and notify the Parties of the selection. There is no appeal from the appointment of an Arbitrator by the Panel Head.
- c. Once an Arbitrator has been appointed, the Coordinator, the Arbitrator and the Parties must select a mutually agreeable date for a Mediation to take place by phone no later than **60 days** after the date of appointment of the Arbitrator.
- d. If all parties cannot agree on a time for the Mediation, the Panel Head will appoint a time, based on consultation with the Parties and the Arbitrator, which time may depart from the timing in these Rules, if necessary.
- e. Any Arbitrator who is unable to serve or continue to serve due to disqualification, death, disability or other valid reason shall be replaced in the same manner as noted above, failing which the replacement Arbitrator shall be appointed by the Panel Head.

#### **18. Communications with the Arbitrator**

- a. All communication with the Arbitrator must be in writing except for the phone Mediation, and must be directed through the Coordinator.



- b. For the purpose of facilitating the commencement of the Arbitration or the appointment of the Arbitrator, the Coordinator may hold a telephone conference with the Parties or their Representatives to discuss any matter of a preliminary or administrative nature.
- c. Notification of any request for adjournment or settlement, may be made by telephone but shall be confirmed in writing, ideally by fax or e-mail, to the Coordinator.

#### **19. Early Settlement**

- a. If the Coordinator receives written notice, prior to the appointment of the Arbitrator, that all claims have been settled on consent, each Party is entitled to the return of half of its filing fee (if already paid). The remainder of any filing fee already paid is non-refundable. The total fee payable to ADR Chambers Inc. in such a case would be \$500 plus HST, which is payable in equal shares by the Parties to ADR Chambers Inc.
- b. In all other circumstances, all filing fees are non-refundable, whether or not the Claims settle.

#### **20. Arbitrator's Decision**

- a. Prior to the scheduled date of the Mediation, the Arbitrator will review the written submissions and render a written decision with brief reasons in Form 9 (the "Decision"). The Decision shall include a decision on the merits of the claim and a decision on costs, if any, that are payable between the Parties. The Decision will be placed in a sealed envelope and submitted to the Coordinator, but will not be released to the Parties in any form until after the Mediation, as set out below.

#### **b. Costs Award**

The Arbitrator may, in his or her sole discretion, award costs above and beyond the filing fees, or have each Party bear their own costs. Such costs are not to exceed \$500 and will be payable directly by the penalized Party to the awarded Party, subject to any offset for Delay Costs as set out below.

#### **c. Interest**

The Arbitral Tribunal may order the payment of simple or compound interest, including pre-award and post-award interest.

#### **d. Delay Costs Award**

Under the Fast Track Process, except where otherwise set out, failure to comply with a timeline in the process, by either Party, will result in that Party having to pay delay costs of \$100 ("Delay Costs") unless there are compelling reasons for the delay (as determined by the arbitrator). Delay Costs will be payable to the other Party regardless of the result at Arbitration, unless otherwise agreed by the Parties. Reasons explaining any delay in meeting the time limits of these Rules must be submitted in writing to the Arbitrator prior to the Arbitration date.

## **21. Phone Mediation**

- a.** At the scheduled time, the Arbitrator will conduct a phone Mediation with the Parties that may last up to one hour and may involve one or more individual caucus calls and/or conference calls. The purpose of the Mediation is to attempt a facilitated resolution between the Parties. The conduct of the Mediation is in the discretion of the Arbitrator, and may include the giving of an opinion.
- b.** The Parties acknowledge and agree that the Mediation is a confidential settlement process, and is without prejudice. All offers, promises and proposals, whether oral or written, actions, determinations, representations and statements (including but not limited to admissions) made in the course of the Mediation by any of the Parties, their agents, employees, experts or Representatives and by the Arbitrator, and all notes, documents and reports prepared or exchanged during the Mediation are "without prejudice" and for the purpose of negotiation only. Such offers, promises, proposals, actions, determinations, representations, statements, notes, documents and reports shall not be disclosed to any third party and they shall not be offered as evidence in any arbitration, judicial or other proceeding.
- c.** The Arbitrator will not disclose to anyone who is not a party to the Mediation anything said or any materials submitted to the Arbitrator, except:
  - 1.** to the lawyers or other professionals retained on behalf of the Parties, or to non-parties consented to in writing by the Parties, as deemed appropriate or necessary by the Arbitrator;
  - 2.** to any other individual, providing the Parties have provided written consent;
  - 3.** for research or education purposes on an anonymous basis;

4. where ordered to do so by a judicial authority, or where required to do so by law; or
  5. where the information suggests that there will be actual or potential threat to human life or safety, or that there will be the commission of a crime in the future.
- d. The Parties shall participate in the Mediation with full authority to settle.
  - e. Neither the Arbitrator, nor any of ADR Chambers' employees shall be compelled to appear as a witness or an expert in any pending or future adversarial or judicial proceeding involving any one or more of the Parties or relating in any way to the subject matter of the Mediation.
  - f. The Mediation shall not alter the Decision (Form 9) in any way.

## **22. Arbitrator Releases Decision**

- a. If the Claim has settled by agreement and the Coordinator has received an executed release of all Claims between the Parties prior to the release of the Decision (Form 9), the Coordinator and the Arbitrator shall destroy all copies of the Decision (Form 9) and shall not distribute the Decision (Form 9) in any form.
- b. If the Claim has not settled within 15 days of the Mediation date, the Coordinator shall notify the Parties forthwith of the Arbitrator's Decision, delivering a copy of the Decision (Form 9) to each Party, provided that the Arbitrator, for good reason, may extend that time with the consent of the Parties.
- c. The Decision of the Arbitrator shall be binding on the parties with no right of appeal to the courts or otherwise.

## **GENERAL PRINCIPLES**

### **23. Costs and Fees**

- a. If one Party defaults in making any of the payments described in these Rules, the other Party may make that payment and is thereby entitled to include that amount in any claims against the defaulting Party.

- b. The Parties shall be jointly and severally responsible for the payment of all accounts rendered by ADR Chambers unless the Parties and ADR Chambers have otherwise agreed and have confirmed those arrangements in writing with ADR Chambers.

#### **24. Independence and Impartiality**

- a. Unless otherwise agreed by the Parties, an Arbitrator shall be and remain at all times wholly independent.
- b. An Arbitrator shall be and remain wholly impartial and shall not act as an advocate for any Party to the Arbitration or Mediation.

#### **25. Immunity**

Neither ADR Chambers nor its employees, nor any member of the Panel shall be liable to any Party or any counsel, officer, director, employee or witness for any Party for any act or omission in connection with any Arbitration or Mediation. The Parties shall jointly and severally indemnify and hold harmless ADR Chambers and its employees and the members of the Panel in respect of all such claims. Despite s. 27 below, the members of the Panel and ADR Chambers shall have the same protections and immunities as a judge of the Superior Court of the Province of Ontario.

#### **26. Privacy and Confidentiality of Arbitration**

- a. All Arbitrations held under these Rules are private and confidential.
- b. No information concerning the existence of the Arbitration or anything which occurs or is disclosed within the Arbitration shall be disclosed or used outside of the Arbitration proceedings or for any other purpose by a Party except:
  - 1. For the purpose of conducting the Arbitration itself;
  - 2. In connection with an application to a court to recognize or enforce an award; or
  - 3. Where a Party is required to do so by law or by a court or competent regulatory body.

#### **27. Governing Law**

The governing law of the Arbitration, unless where expressly set out otherwise in these Rules, shall be Canadian Maritime Law.

*These Rules come into force effective June 1, 2010.*

