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ARBITRATORS & MEDIATORS



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## **IAMA Arbitration Rules**

# The Institute of Arbitrators & Mediators Australia (IAMA) - Arbitration Rules

## Introduction

These rules have been adopted by the Council of IAMA for use by parties who seek that their dispute be resolved by arbitration.

## Application

These Rules may be adopted in an arbitration agreement or by an agreement in writing at any time before or after a dispute has arisen. Provisions regarding the scope of application of these Rules are set out in Article 1.

## Suggested clauses

The following model clause may be adopted by the parties to a contract who wish to have any future disputes referred to arbitration in accordance with these Rules:

*Any dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to arbitration in accordance with, and subject to, the IAMA Arbitration Rules.*

Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the Rules, may agree to do so in the following terms:

*We the undersigned, agree to refer to arbitration under the IAMA Arbitration Rules all disputes or differences arising out of or in connection with:*

*[#insert brief description of contract under which disputes or differences have arisen or may arise]*

*Signed:* (Claimant)

*Signed:* (Respondent)

*Date:*

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# IAMA Arbitration Rules

## Section I. Introductory rules

### Scope of application

#### *Article 1*

- 1 On 17 April 2014 the Council of the Institute of Arbitrators & Mediators Australia (**IAMA**) resolved that from and including 2 May 2014, where one or more parties submit a dispute to arbitration in accordance with:
  - (a) The IAMA Arbitration Rules; or
  - (b) The IAMA Fast Track Arbitration Rules; or
  - (c) The Rules for the Conduct of Commercial Arbitrations (including the Expedited Commercial Arbitration Rules),these Rules shall apply.
- 2 These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

### Notice and calculation of periods of time

#### *Article 2*

- 1 A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
- 2 If an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.
- 3 In the absence of such designation or authorisation, a notice is:
  - (a) Received if it is physically delivered to the addressee; or
  - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
- 4 If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
- 5 A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice

transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

- 6 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

## **Notice of arbitration**

### *Article 3*

- 1 The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") and to IAMA a notice of arbitration. The claimant shall at the same time pay IAMA's registration fee as set out in Schedule 1, which shall be non refundable.
- 2 Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent or the date on which the registration fee is received by IAMA, whichever is the later.
- 3 The notice of arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and contact details of the parties;
  - (c) A copy of the arbitration agreement that is invoked; and
  - (d) A brief description of the claim and an indication of the amount involved, if any.
- 4 The notice of arbitration may also include:
  - (a) A copy of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (b) The relief or remedy sought;
  - (c) A proposal as to the number of arbitrators and place of arbitration, if the parties have not previously agreed thereon;
  - (d) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1; and
  - (e) Notification of the appointment of an arbitrator referred to in Article 9 or Article 10.
- 5 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

## **Response to the notice of arbitration**

### *Article 4*

- 1 Within 14 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:
  - (a) The name and contact details of each respondent;
  - (b) A response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3(c) and (d).
- 2 The response to the notice of arbitration may also include:
  - (a) A response to the information set forth in the notice of arbitration, pursuant to Article 3 paragraphs 4(a) to (c).
  - (b) Any submission that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
  - (c) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
  - (d) Notification of the appointment of an arbitrator referred to in Article 9 or Article 10;
  - (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
  - (f) A notice of arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
- 3 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

## **Representation and assistance**

### *Article 5*

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

### *Article 6*

Not used.



## Section II. Composition of the arbitral tribunal

### **Number of arbitrators**

#### *Article 7*

If the parties have not previously agreed on the number of arbitrators, and if within 21 days after the receipt by the respondent of the notice of arbitration the parties still have not agreed, one arbitrator shall be appointed.

### **Appointment of one arbitrator**

#### *Article 8*

- 1 If one arbitrator is to be appointed, either party may propose, the names of one or more persons, one of whom would serve as the sole arbitrator.
- 2 If within 14 days after receipt by a party of a proposal made in accordance with Article 8, paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the arbitrator shall be nominated by IAMA.

### **Appointment of three arbitrators**

#### *Article 9*

- 1 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third who will act as the chairperson of the arbitral tribunal.
- 2 If within 14 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request IAMA to nominate the second arbitrator.
- 3 If within 14 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the chairperson, IAMA shall, at the request of either party, nominate the chairperson.

### **Appointment of arbitrator in multi-party disputes**

#### *Article 10*

- 1 For the purposes of Article 8 and Article 9, the acts of multiple parties, whether as multiple claimants or multiple respondents, shall have no effect, unless the multiple claimants or multiple respondents have acted jointly.
- 2 If three arbitrators are to be appointed and the multiple claimants or multiple respondents do not act jointly in appointing an arbitrator, IAMA shall nominate each member of the arbitral tribunal and shall nominate one of them to act as chairperson, unless all parties agree in writing on a different method for the constitution of the arbitral tribunal.

## **Disclosure by arbitrators**

### *Article 11*

When a person is approached in connection with his or her possible nomination or appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to a real danger of bias on the part of the person in conducting the arbitration. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

## **Challenge of arbitrators**

### *Article 12*

- 1 Any arbitrator may be challenged if circumstances exist that give rise to a real danger of bias on that arbitrator's behalf.
- 2 A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

## **Procedure for the challenge of arbitrators**

### *Article 13*

- 1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 12. The other party, the arbitrator who is challenged, the other members of the arbitral tribunal and IAMA must be notified of this challenge. The notification shall be in writing and shall state the reasons for the challenge.
- 2 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also resign after the challenge. In neither case does this imply acceptance of the validity of the grounds for challenge. In both cases the procedure provided in Article 8 to Article 13 inclusive shall be used for the appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its rights to appoint or to participate in the appointment.
- 3 If the other party does not agree to the challenge within seven days and the challenged arbitrator does not resign within seven days, the decision on the challenge shall be made by the arbitral tribunal within a further 14 days.
- 4 If the arbitral tribunal sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure outlined in Article 8 to Article 13 inclusive.

## **Replacement of an arbitrator**

### *Article 14*

- 1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure outlined in Article 8 to Article 13 inclusive.

- 2 In the event that an arbitrator fails to act or in the event that it is impossible for an arbitrator to perform his or her functions, a substitute arbitrator shall be appointed or chosen pursuant to the procedure outlined in Article 8 to Article 13 inclusive.

## **Repetition of hearings in the event of the replacement of an arbitrator**

### *Article 15*

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

## **Section III. Arbitral proceedings**

### **Time limit**

#### *Article 16*

The arbitral tribunal shall use its best endeavours to deliver all awards within 365 days of the appointment of the arbitral tribunal. If the arbitral tribunal is unable to deliver all awards within 365 days of the appointment of the arbitral tribunal it shall notify IAMA and the parties of the reasons for the delay.

### **General provisions**

#### *Article 17*

- 1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
- 2 As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
- 3 Subject to Article 17, paragraph 6, if at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, and subject to Article 17, paragraph 6, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 4 All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties at the same time.
- 5 The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to

any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

- 6 If the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is less than the amount stated in Schedule 1 there shall be no hearings for the presentation of evidence by witnesses, including expert witnesses or for oral argument, unless requested in writing by all of the parties or directed by the arbitral tribunal.

## **Place of arbitration**

### *Article 18*

- 1 If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

## **Language**

### *Article 19*

- 1 Unless otherwise agreed by the parties, the language to be used in the proceedings is English.
- 2 The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a certified translation into the English language.

## **Statement of claim**

### *Article 20*

- 1 Unless otherwise directed by the arbitral tribunal, the claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in Article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
- 2 The statement of claim shall include the following particulars:
  - (a) The names and contact details of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought;
  - (e) The legal grounds or arguments supporting the claim.

- 3 A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
- 4 The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

## **Statement of defence**

### *Article 21*

- 1 Unless otherwise directed by the arbitral tribunal, the respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in Article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
- 2 The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (Article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
- 3 In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
- 4 The provisions of Article 20, paragraph 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2(f), and a claim relied on for the purpose of a set-off.

## **Amendments to the claim or defence**

### *Article 22*

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, provided the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

## **Pleas as to the jurisdiction of the arbitral tribunal**

### *Article 23*

- 1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail automatically the invalidity of the arbitration clause.
- 2 A submission that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-

off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a submission by the fact that it has appointed, or participated in the appointment of, an arbitrator. A submission that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later submission if it considers the delay justified.

- 3 The arbitral tribunal may rule on a submission referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

## **Further written statements**

### *Article 24*

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Periods of time**

### *Article 25*

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 30 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## **Interim measures**

### *Article 26*

- 1 The arbitral tribunal may, at the request of a party, grant interim measures.
- 2 An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - (a) Maintain or restore the status quo pending determination of the dispute;
  - (b) Take action that would prevent, or refrain from taking action that is likely to cause:
    - (i) current or imminent harm or
    - (ii) prejudice to the arbitral process itself;
  - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied;  
or
  - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

- 3 Without limiting paragraph (2), the arbitral tribunal may make orders with respect to any of the following:
- (a) Security for costs, but only where the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is more than the amount stated in Schedule 1;
  - (b) Discovery of documents, but subject to Article 26, paragraph 11;
  - (c) Interrogatories, but only where the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is more than the amount stated in Schedule 1;
  - (d) Giving of evidence by affidavit;
  - (e) The inspection of any property which is or forms part of the subject-matter of the dispute;
  - (f) The taking of photographs of any property which is or forms part of the subject-matter of the dispute;
  - (g) Samples to be taken from, or any observation to be made of or experiment conducted on, any property which is or forms part of the subject-matter of the dispute;
  - (h) Dividing, recording and strictly enforcing the time allocated for a hearing between the parties (a **stop clock** arbitration), but subject to Article 17, paragraph 6.
- 4 The party requesting an interim measure under paragraphs 2(a) to (c) shall satisfy the arbitral tribunal that:
- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 5 With regard to a request for an interim measure under paragraph 2(d), the requirements in paragraphs 4(a) and 4(b) shall apply only to the extent the arbitral tribunal considers appropriate.
- 6 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 7 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- 8 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- 9 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

- 10 A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.
- 11 There shall be no discovery of documents if the total amount of the claims, counterclaims and set-off defences (excluding interest and costs) is less than the amount stated in Schedule 1, unless requested in writing by all parties or directed by the arbitral tribunal.

## **Evidence**

### *Article 27*

- 1 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 2 Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
- 3 At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
- 4 Rules of evidence do not apply. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Hearings**

### *Article 28*

- 1 In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- 2 Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
- 3 Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, without good reason, be asked to retire.
- 4 The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

## **Experts appointed by the arbitral tribunal**

### *Article 29*

- 1 After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A



copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

- 2 The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of their qualifications and a statement of their impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 3 The parties shall give the expert any relevant information or produce for their inspection any relevant documents or goods that the expert may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
- 4 Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in their report.
- 5 At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of Article 28 shall be applicable to such proceedings.

## **Default**

### *Article 30*

- 1 If, within the period of time fixed by these Rules or the arbitral tribunal:
  - (a) The claimant has, without showing sufficient cause, failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - (b) The respondent has, without showing sufficient cause, failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
- 2 If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration without further notice.
- 3 If a party, directed by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it and may make such inferences as it sees fit in relation to the failure to produce documents, exhibits or other evidence.

- 4 If a party fails to comply with the directions of the arbitral tribunal, the arbitral tribunal may proceed with the arbitration and make such inferences as it sees fit in its award arising out of or in relation to the failure to comply with its directions.

## **Closure of hearings**

### *Article 31*

- 1 Subject to Article 17, paragraph 6, the arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
- 2 Subject to Article 17, paragraph 6, the arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

## **Waiver of right to object**

### *Article 32*

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **Section IV. The award**

### **Decisions**

#### *Article 33*

When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. Failing a majority decision on any issue, the opinion of the chairperson shall prevail.

### **Form and effect of the award**

#### *Article 34*

- 1 The arbitral tribunal may make separate awards on different issues at different times.
- 2 All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
- 3 The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 4 An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

- 5 An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
- 6 Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.
- 7 If all parties request in writing, and pay a fee in the amount as set out in Schedule 1, IAMA shall arrange for an award to be peer reviewed before that award is delivered to the parties.
- 8 Where the award peer review does take place, the arbitral tribunal has complete discretion as to whether or not it implements any of the suggestions of the peer reviewer. The suggestions of the peer reviewer shall not be made available to the parties.

## **Applicable law, amiable compositeur**

### *Article 35*

- 1 The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
- 2 The arbitral tribunal shall decide the substance of the dispute according to general standards of fairness and justice only if the parties have expressly authorised the arbitral tribunal to do so.
- 3 In all cases, the arbitral tribunal shall decide the substance of the dispute in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

## **Settlement or other grounds for termination**

### *Article 36*

- 1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
- 2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
- 3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 34, paragraphs 2, 4 and 5, shall apply.

## **Interpretation of the award**

### *Article 37*

- 1 Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
- 2 The interpretation shall be given in writing within 30 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 34, paragraphs 2 to 6, shall apply.

## **Correction of the award**

### *Article 38*

- 1 Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 30 days of receipt of the request.
- 2 The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 3 Such corrections shall be in writing and shall form part of the award. The provisions of Article 34, paragraphs 2 to 6, shall apply.

## **Additional award**

### *Article 39*

- 1 Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
- 2 If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 45 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
- 3 When such an award or additional award is made, the provisions of Article 34, paragraphs 2 to 6, shall apply.

## **Costs**

### *Article 40*

The arbitral tribunal shall fix the costs of arbitration in an award. The term 'costs of arbitration' includes only:

- (a) The fees of the arbitral tribunal, to be stated separately as to each arbitrator and to be fixed in accordance with Article 41;

- (b) The reasonable travel expenses and other reasonable expenses incurred by the arbitrators;
- (c) The costs of expert advice and other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other reasonable expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The legal costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs are reasonable and only to the cap set out in Schedule 1 unless otherwise agreed in writing or directed by the arbitral tribunal;
- (f) Other costs directly incurred by the successful party, such as room hire and transcript fees;
- (g) IAMA's nominee fee as set out in Schedule 1;
- (h) IAMA's registration fee as set out in Schedule 1;
- (i) The fee associated with the peer review (if any) as set out in Schedule 1.

## **Fees of the arbitral tribunal**

### *Article 41*

- 1 Unless otherwise agreed, the arbitrators shall be remunerated on the basis of an hourly rate.
- 2 The hourly rate shall be agreed between the parties and the arbitrators or, failing agreement, shall be determined by IAMA.
- 3 Unless otherwise agreed in writing, the hourly rate will be exclusive of GST.
- 4 Where IAMA is requested to determine the hourly rate, it shall take into account, inter alia:
  - (a) The nature of the dispute and the amount in dispute, insofar as it is aware of them;
  - (b) The standing and experience of the arbitrator.
- 5 Unless otherwise agreed in writing, the arbitrator's total remuneration shall be capped in accordance with Schedule 1.

## **Apportionment of costs**

### *Article 42*

- 1 Except as provided in Article 42, paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 2 With respect to the costs referred to in Article 40, paragraphs (e) and (f), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall

bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

- 3 When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 40 in that order or award.
- 4 No additional fees may be charged by an arbitral tribunal for correction of its award under Article 38.

## **Deposit of costs**

### *Article 43*

- 1 The arbitral tribunal may direct each party to deposit an amount as an advance for the costs referred to in Article 40.
- 2 With the consent of IAMA, the parties at the direction of the arbitral tribunal may lodge the deposits in a trust account maintained by IAMA. IAMA shall disburse those funds on the instructions of the arbitral tribunal. IAMA may charge for its trust account services.
- 3 If the required deposits are not paid in full within 30 days after the receipt of the direction, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
- 4 After the award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and direct the return of any unexpended balance to the parties.

## Section V. General

### **Decisions made by IAMA**

#### *Article 44*

- 1 Decisions made by IAMA will be made by a person or persons to whom the Council of IAMA has delegated decision making authority.
- 2 Decisions made by IAMA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the arbitral tribunal. IAMA shall not be required to give any reasons.
- 3 To the extent permitted by the law of the place of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by IAMA to any State court or other judicial authority.
- 4 Neither IAMA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

### **Liability of the arbitral tribunal and peer reviewer**

#### *Article 45*

The arbitral tribunal or any peer reviewer shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules, save where the act or omission is fraudulent or corrupt.

# Schedule 1

## Fees and costs

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<b>Amount in Dispute</b>	<b>Cap on legal costs pursuant to Article 40, paragraph 1(e)</b>	<b>IAMA nominee fee pursuant to Article 40, paragraph 1(g)</b>	<b>Cap on arbitrator's fee (per arbitrator) pursuant to Article 41, paragraph 5</b>
\$1–\$250,000	\$0.00	\$1,000	\$25,000
\$250,001–\$500,000	\$0.00	\$5,000	\$50,000
\$500,001–\$1 million	\$50,000	\$7,500	\$150,000
\$1,000,001–\$2,500,000	\$100,000	\$10,000	\$300,000
\$2,500,001–\$5 million	\$250,000	\$12,500	\$500,000
\$5,000,001–\$10 million	\$500,000	\$15,000	\$500,000
\$10,000,001–\$25 million	\$1 million	\$17,500	No cap
\$25,000,001–\$100 million	No cap	\$20,000	No cap
Over \$100 million	No cap	\$25,000	No cap
Other (non-monetary) Relief	\$0.00	\$5,000	\$50,000

Article 3, paragraph 1 – registration fee: \$500

Article 17, paragraph 6 – hearing limit: \$250,000

Article 26, paragraph 3(a) – security for costs limit: \$1 million

Article 26, paragraph 3(c) – interrogatories limit: \$2.5 million

Article 26, paragraph 11 – discovery limit: \$500,000

Article 34, paragraph 7 – peer review fee: \$2,500

\* All amounts quoted above are in Australian dollars and are exclusive of GST or any other tax unless otherwise stated.

\* IAMA will publish on its website further information about the IAMA nominee fee.