

**T.A.M.S.
RULES OF
ARBITRATION**

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FOREWORD

Texas Arbitration Mediation Services, Inc. has adopted Rules on arbitration. The Rules have as their objective the establishment of an efficient and effective method of initiation and conduct of the arbitration process that meets the special needs of the business community.

The Rules conform to the provisions of Article 249-1 of Vernon's Annotated Revised Civil Statutes of the State of Texas.

Included are Model Arbitration Clauses.

Preamble

T.A.M.S. recognizes that appropriate dispute resolution, conciliation and/or arbitration, is a desirable solution for commercial and business disputes.

RULES OF ARBITRATION

Article 1.

Texas Arbitration Mediation Services, Inc., is a private, professional firm located in El Paso, Texas--**The Pass of the North**-- whose function is to provide for the settlement by arbitration of business disputes in accordance with these Rules.

These Rules shall govern the arbitration, except that where there is any conflict with any law applicable to arbitration from which the parties cannot derogate, that provision shall apply.

Article 2.

Interpretation

1

In this part:

"Arbitral award" means any decision of an arbitral tribunal on the substance of a dispute submitted to it and includes interim, interlocutory, or partial award.

"Arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

"Party" means a party to an arbitration agreement.

"T.A.M.S." means Texas Arbitration Mediation Services, Inc., the arbitral institution or the appointing authority.

Article 3.

The arbitral tribunal

1

Texas Arbitration Mediation Services, Inc., provides the impartial administration of arbitration proceedings, appoints or confirms the appointments of arbitrators in accordance with these Rules and provides the rules of procedure and standards of conduct prescribed by law.

2

The disputes may be settled by one arbitrator or by three arbitrators. The word **arbitrator** denotes a single or three arbitrators as the case may be.

3

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, they may nominate him for confirmation by **T.A.M.S.**

If the parties fail to nominate a sole arbitrator within thirty (30) days from the date the Request for Arbitration has been filed with **T.A.M.S.**, the parties may:

- (a) request an identical list containing at least three (3) names, each party deleting one (1) name and returning the list within ten (10) days after receipt to **T.A.M.S.**

T.A.M.S. shall appoint the sole arbitrator from the approved list returned to it and in accordance with the preference indicated by the parties.

- (b) If for any reason the appointment cannot be made according to this procedure, **T.A.M.S.** may exercise its discretion in appointing the sole arbitrator.

4

If three (3) arbitrators are to be appointed, each party in the Request for Arbitration and Answer, shall nominate one (1) arbitrator for confirmation by **T.A.M.S.** If a party fails to nominate an arbitrator, the appointment shall be made by **T.A.M.S.**

The third arbitrator, who will act as presiding arbitrator of the arbitral tribunal, shall be appointed by **T.A.M.S.**, unless the parties have provided that the two arbitrators thus appointed and confirmed shall choose the third arbitrator.

Should the two arbitrators fail, within the time-limit fixed by the parties or **T.A.M.S.**, to reach an agreement on the appointment of the third arbitrator, **T.A.M.S.** shall make the appointment.

5

Where the parties have not agreed upon the number of arbitrators or the arbitration clause is silent on the number, **T.A.M.S.** shall appoint a sole arbitrator, except where it appears to **T.A.M.S.** that the dispute is of such a nature that warrants the appointment of three arbitrators, under the procedure provided in paragraph 4, Article 3.

Every arbitrator appointed or confirmed by **T.A.M.S.** must be and remain independent of the parties to the dispute and involved in the arbitration.

6

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence or personal knowledge of disputed evidentiary facts concerning the proceeding.

7

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, independence, or possession of qualifications on which the parties have agreed.

A party who intends to challenge an arbitrator shall send notice of his challenge within ten (10) days after the appointment of the challenged arbitrator or within ten (10) days after circumstances hereinabove mentioned became known to that party. Notice shall be sent to **T.A.M.S.**, the other party, and the arbitrator.

The notifications shall be in writing and shall state the reasons for the challenge.

8

If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge shall be made:

- (a) by **T.A.M.S.** after the other party, and the arbitrator concerned, comment in writing within a suitable time.

If the challenge is sustained, a substitute arbitrator shall be appointed and confirmed by **T.A.M.S.** as provided in paragraph 3, Article 3.

9

An arbitrator shall be replaced upon his death, upon acceptance of a challenge by **T.A.M.S.** or upon the arbitrator's resignation.

A substitute arbitrator shall be appointed and confirmed by **T.A.M.S.** as provided in paragraph 3, Article 3.

If an arbitrator fails to act or in the event of the **de jure** or **de facto** impossibility of his performing his functions, the procedures in respect to the challenge and replacement of an arbitrator as provided in paragraph 7 and 8 of Article 3 shall apply.

10

Decisions of **T.A.M.S.** as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

The reasons for the decisions made by **T.A.M.S.** shall not be communicated.

11

If under the preceding articles the sole arbitrator or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced such previous hearings may be repeated at the discretion of **T.A.M.S.**

Article 4

Notice of Arbitration

1

The party initiating recourse to arbitration (referred to as **claimant**) shall give notice to the other party (referred to as **respondent**) by a Request for Arbitration on forms provided by **T.A.M.S.**

2

Arbitral proceedings shall be deemed to begin on the date on which the Request for Arbitration is received by the Respondent.

3

The Request for Arbitration shall include the following:

- (a) names in full, description, and addresses of the parties.

- (b) the facts supporting the claim, the points at issue, and the relief or remedy sought.
- (c) the relevant agreements, and in particular the agreement to arbitrate, and such documents the party considers relevant or reference to the documents or other evidence the party will submit.
- (d) a proposal as to the number of arbitrators, if the parties have no prior agreement.

T.A.M.S. shall send a copy of the Request and documents filed to the Respondent for his Answer.

4

The Respondent shall within thirty (30) days from the receipt of the Request for Arbitration communicate his statement of defense in writing to Claimant and **T.A.M.S.** The Answer shall include:

- (a) comment on the proposals, if any, on the number of arbitrators.
- (b) reply to the particulars of Claimant's claim, the points at issue, and the relief or remedy sought by Claimant.
- (c) all relevant documents on which he relies for his defense or may add a reference to the documents or other evidence he will submit.

In exceptional circumstances the Respondent may apply to **T.A.M.S.** for an extension of time for the filing of his defense and his documents, which period of time shall not exceed twenty (20) days.

5

A copy of the Answer and documents, if any, shall be communicated to Claimant and **T.A.M.S.**

6

Unless otherwise agreed by the parties, a party may amend or supplement a claim or defense during the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Article 5

Counter-Claim

1

If the Respondent wishes to file a counter-claim, he shall file the same with **T.A.M.S.**, at the same time as his Answer is filed.

2

It shall be open to the Claimant to file a Reply with **T.A.M.S.** within twenty (20) days from the date when the counter-claim was communicated to him.

Article 6

No Agreement to Arbitrate

1

Where there is no agreement between the parties to arbitrate or where there is an agreement but it does not specify **T.A.M.S.** as the arbitral institution, and if the Respondent does not file an Answer within the period provided in paragraph 4, Article 4, or refuses arbitration by **T.A.M.S.**, the Claimant shall be informed that the arbitration cannot proceed.

Article 7

Agreement to Arbitrate

1

Where the parties have agreed, by written agreement or otherwise, to submit to arbitration by **T.A.M.S.**, they shall be deemed thereby to have submitted *ipso facto* to the present Rules.

Article 8

Default

1

If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.

If the Respondent without showing sufficient cause fails to communicate the statement of defense as provided in paragraph 4, Article 4, the arbitral tribunal shall continue the proceedings without treating that failure as an admission of the claimant's allegations.

If a party without showing sufficient cause fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award based on the evidence before it.

Article 9

Competence of arbitral tribunal

1

The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

2

The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 9, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules 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 **ipso jure** the invalidity of the arbitration clause.

3

An objection to the jurisdiction of the arbitral tribunal shall be raised not later than in the statement of defense or, with respect to a counter-claim, in the reply to the counter-claim.

4

The arbitral tribunal may proceed with the arbitration and rule on such an objection in their final award. However, nothing precludes the arbitral tribunal from ruling on such an objection as a preliminary question.

Article 10

Costs of arbitration

1

T.A.M.S. as the arbitral institution shall fix the amount of the advance on costs in a sum likely to cover the costs of arbitration of all claims and counter-claims submitted to it.

T.A.M.S. may fix separate advances on costs for the principal claim and any counter-claims submitted.

2

The administrative expenses shall be in accordance with the scale set out in Appendix 1.

3

Unless otherwise agreed by the parties, the costs shall be payable in equal shares by the Claimant or Claimants and the Respondent or Respondents.

4

T.A.M.S. may transmit the file to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the advance on costs to **T.A.M.S.**

5

When the Terms of Proceedings are communicated to **T.A.M.S.** in accordance with Article 14, **T.A.M.S.** shall verify whether costs have been paid.

The Terms of Proceedings as provided in Article 14 shall become operative and the arbitration proceedings begun in respect of those claims for which the advance on costs has been duly paid to the arbitral institution.

Article 11

Compensation of Arbitrators

1

Arbitrators shall be compensated based upon their amount of service, taking into account the size and complexity of the case. **T.A.M.S.** shall arrange the daily rate with the parties prior to the commencement of the arbitration. If parties fail to agree on fees, **T.A.M.S.** shall set an appropriate rate.

Article 12

Rules governing the proceedings

1

Subject to these Rules, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate.

The parties shall be treated with equality and each party shall have a full opportunity of presenting his case.

2

At any stage of the proceedings, either party may request of the arbitral tribunal to hold a hearing for presentation of evidence by witnesses, including expert witnesses, or for oral argument.

In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearing or whether the proceedings shall be conducted on the basis of documents and other materials.

3

All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

Article 13

Place of Arbitration

The parties may agree on the place of arbitration.

If the parties do not agree, the place of arbitration shall be determined by **T.A.M.S.**, the arbitral institution, having regard for the circumstances of the case, including the convenience of the parties.

Notwithstanding the above, the arbitral tribunal may meet any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for the inspection of documents, goods or other property.

Article 14

Terms of proceedings

1

The arbitrator shall draw up, on the basis of all evidence submitted, prior to preparation of case, and in the presence of the parties if they so request, a document defining the Terms of the Proceedings, which shall include:

- (a) full names and description of parties.
- (b) complete address of the parties to which notifications or communications may validly be made.

- (c) summary of the parties' claims.
- (d) definitions of issues to be determined.
- (e) arbitrator's full name and address.
- (f) place of arbitration.
- (g) whether the parties have agreed that the arbitral tribunal shall have the power to act as **amiable compositeur** or **ex aequo et bono**.
- (h) particulars of the applicable rules of procedure.
- (l) particular rules of law designated by the parties as applicable to the substance of the dispute.

2

The document mentioned in paragraph 1 of this Article shall be signed by the parties and arbitrator within sixty (60) days of the date the file was transmitted to the arbitrator.

The arbitrator shall transmit the document to **T.A.M.S.** after all parties have executed the document.

If one of the parties refuses to take part in drawing up said document or refuses to sign, if the case is one of those mentioned in paragraph 1, Article 7 and paragraph 1, Article 8, **T.A.M.S.** shall set a time-limit for the signature of the Terms of Proceedings by the defaulting party and on expiration of the time-limit the arbitration shall proceed and the award shall be made.

3

The parties shall be free to determine the law to be applied by the arbitrator to the substance of the dispute. If the parties do not make a designation, the arbitral tribunal shall apply the law determined by the conflict of law rules that it considers applicable.

4

In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 15

The arbitral proceedings

1

Each party shall have the burden of proving the facts relied on to support his claim or defense.

2

The arbitral tribunal may require the parties, within such a period of time as the arbitral tribunal shall decide, to submit a summary of documents and other evidence the parties intend to present to support the fact issues as stated in the statement of claim or statement of defense.

3

The arbitral tribunal may require the parties at any time during the arbitral proceedings to produce documents, exhibits or other evidence within the time-limits set by the arbitral tribunal.

4

If a party or parties request an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

5

If witnesses are to be heard, each party shall communicate to the arbitral tribunal the names and addresses of the witnesses, subject upon and the languages in which such witnesses will present their testimony, at least fifteen (15) days before the hearing.

6

The arbitral tribunal or arbitral institution, **T.A.M.S.**, shall make the arrangements for the translation of oral statements made at a hearing and for a record of the hearing, if deemed necessary by the tribunal or if the parties have agreed thereto and have advised the arbitral tribunal or **T.A.M.S.** of such agreement at least fifteen (15) days before the hearing.

7

Hearings shall be held **in camera** unless the parties agree otherwise.

The witnesses may be retired during the testimony of other witnesses.

The arbitral tribunal shall determine the manner in which witnesses are examined.

8

Witness statements, signed by them, may be presented.

9

The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 16

Interim measures

1

Unless otherwise agreed by the parties, the arbitral tribunal, at the request of a party, may order a party to take an interim measure of protection that the arbitral tribunal considers necessary concerning the subject matter of the dispute, including measure for the conservation of goods, such as ordering a deposit with the arbitral institution or the sale of perishable goods.

Such interim measures may be entered in the form of an interim award.

The arbitral tribunal shall be entitled to require security for the costs of such measures.

A request for interim measures made by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 17

Experts

1

Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

2

The arbitral tribunal may require the parties to give the expert or experts any relevant information or produce for inspection any relevant documents or goods, or other property.

3

Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties. The parties shall be given an opportunity to express, in writing, their opinion on the report.

4

Unless otherwise agreed by the parties, if a party requests or if the arbitral tribunal considers it necessary, the expert or experts shall, after delivery of a written or oral report, participate in an oral hearing, under the provisions of paragraphs 4, 5, 6, and 7, Article 15.

5

A party shall be entitled to examine any document on which the expert has relied in his report.

Article 18

Language

1

The parties may agree on the language or languages to be used in the arbitral proceedings.

2

If the parties do not agree, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

3

The arbitral tribunal may order that any documentary evidence be accompanied by a translation into the language or languages agreed on by the parties or determined by the arbitral tribunal.

Article 19

Settlement

1

If, during arbitral proceedings or before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall, if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an award on agreed terms.

No reasons shall be given for such an award.

2

An award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Article 20

Termination of proceedings

1

If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason, other than settlement, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings.

2

Any party may raise justifiable grounds for objection to such an order of termination.

Article 21

Form and content of arbitral award

1

An arbitral award must be in writing and signed by the members of the arbitral tribunal.

Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

If there be no majority, the award shall be made by the presiding arbitrator alone.

2

The award must state its date and place of arbitration, and the award shall be considered to have been made at that place.

3

The award shall be final and binding on the parties, and the parties undertake to carry out the award without delay.

4

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.

5

The award may be made public only with the consent of all parties.

6

If the law of the place where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal or arbitral institution shall comply with the requirement within the period of time required by law.

Article 22

Correction of awards and additional awards

1

Within thirty (30) days of receipt of the award, a party may with notice to **T.A.M.S.** request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature.

If the arbitral tribunal considers the request to be justified, it shall make the corrections within fifteen (15) days of receipt of the request. Any correction, which shall take the form of a separate memorandum, shall become part of the award.

2

A party may, within thirty (30) days of receipt of the award, and with notice to the other party or parties, request the arbitral tribunal to make an additional award as to claims or counterclaims presented in the proceedings but not dealt with in the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within thirty (30) days.

3

The provisions of Article 21 shall apply **mutatis mutandis** to a correction of the award and to any additional award.

Article 23

Division of costs

1

The arbitral tribunal shall fix the costs of arbitration in its award, and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.

2

The costs of arbitration shall include the arbitrator's fees and the administrative costs fixed by the arbitral institution, **T.A.M.S.**, and the expenses, if any, of the arbitrator, the fees and expenses of any experts, and legal fees and expenses.

3

No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award.

Article 24

Notification of Award

1

Once an award has been made, the arbitral institution, **T.A.M.S.**, shall notify the parties that the award has been signed by the arbitrator; provided always that the costs of the arbitration have been fully paid to **T.A.M.S.** by the parties or by one of them.

2

Certified copies of the award shall always be available to the parties at their request, but to no one else.

Article 25

Finality and enforceability of award

1

The arbitral award shall be final.

2

By submitting the dispute to arbitration by **T.A.M.S.**, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

Article 26

Exclusion of liability

1

Neither **T.A.M.S.** nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

2

After the final award has been made or any corrections or additional awards as provided in Article 22 have been made, neither **T.A.M.S.** nor any arbitrator shall be under any obligation to make any statement to any person about any matter concerning the arbitration, nor shall any party seek to make any arbitrator or any officer of **T.A.M.S.** a witness in any legal proceeding arising out of the arbitration.

Article 27

General rules

1

A party who knows that any provision of, or requirement under these Rules has not been complied with and fails to object to such non-compliance, shall be deemed to have waived its right to object.

2

In all matters not expressly provided for in these Rules, **T.A.M.S.** and the arbitrator shall act in the spirit of these Rules and shall make every reasonable effort to ensure that the award is legally enforceable.

Article 28

Confidentiality

The parties, administrator of **T.A.M.S.**, and the arbitrator or arbitrators will maintain the confidential nature of the arbitration proceeding and the Award, including the hearing and the written explanation of the Award, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by or judicial decision.

MODEL T.A.M.S. ARBITRATION AND CONCILIATION CLAUSES

T.A.M.S. recommends that parties wishing to make reference to **T.A.M.S.** arbitration in their contracts make use of the following standards clauses.

Parties are cautioned to have legal counsel review the contract and the language of the clauses as the laws of certain countries may require specific language, sometimes in a precise and particular manner.

English

"All disputes arising in connection with the present contract shall be finally settled under the Rules of Arbitration of Texas Arbitration Mediation Services, Inc., of El Paso, Texas, by one or more arbitrators appointed in accordance with the said Rules."

OR

"Any disputes, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled under the Rules of Arbitration of Texas Arbitration Mediation Services, Inc., of El Paso, Texas.

Note--Parties may want to add:

- (1) The number of arbitrators shall be...
- (2) The place of arbitration shall be...
- (3) The language(s) to be used in the arbitral proceedings shall be...

Spanish

"Todas las desavenencias que se deriven de este contrato serán resueltas definitivamente de acuerdo con el Reglamento de Conciliación y Arbitraje de Texas Arbitration Mediation Services, Inc., por uno o más árbitros nombrados conforme a este Reglamento."

O

"Toda desavenencia, controversia, o reclamación que resulte de este contrato, o relacionada con este contrato, o la contravención, terminación, o invalidéz del mismo, será resuelta de acuerdo con las Regulaciones de Conciliación y Arbitraje de Texas Arbitration Mediation Services, Inc., de El Paso, Texas.

Nota: Si gustan, las partes pueden incluir:

- (1) El número de árbitros será....
- (2) El lugar donde la conciliación y/o arbitraje se celebrará será....
- (3) El idioma (los idiomas) que se usará(n) en el proceso arbitral sera(n).....

APPENDIX 1

Administrative Costs

Arbitration

1. **Filing Fees**

- a) \$750.00 per party filing fee will be charged and due immediately upon receipt of first **T.A.M.S. Statement**.

2. **Daily Hearing Fees**

- a) A minimum \$100.00 per party per day, or actual costs if **T.A.M.S.** offices are not used for hearing.

3. **Arbitrator's/Conciliator's Fees**

- a) Shall be set by **T.A.M.S.** and agreed to by the parties.
Range: \$3,000.00 per day to \$5,000.00*
- b) All fees are due and payable 30 days prior to date of Arbitration Hearing. If either party fails to pay set arbitration fees, Administrator will send a Notice of Suspension of Proceeding giving that party fifteen (15) days to pay fees and suspending hearing. If fees are received within 15 days, a new Arbitration setting will be made, If fees are not paid within 15 days, Administrator will send a Notice of Termination of Proceeding, terminating and closing Arbitration file.

*Depending on the complexity & the amount of the case and number of parties.

4. **Expenses**

- a) Lodging and per diem expenses for arbitrators residing outside El Paso County, if chosen from the list of available arbitrators, shall be billed at actual expenses incurred. Travel time fee will be quoted.

GLOSSARY

De jure	rightful, legitimate, just or constitutional.
De facto	illegal or illegitimate.
Ipsa facto	by the fact itself; by the mere fact.
Ipsa jure	by the law itself; by the mere operation of law.
Amiable compositeur	arbitrator's authority to abate something of the strictness of the law in favor of natural equity.
Ex aequo et bono	justice and fairness; what is good and just in equity.
In camera	a chamber, a room.
Mutatis mutandis	matters or things are generally the same, but to be altered when necessary.

For More Information or Scheduling contact:

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