



## **FENEX RULES OF ARBITRATION** (applicable as from 1 May 2018)

Arbitrators have accepted their appointment in accordance with article 23, paragraphs 1-4 of the Dutch Forwarding Conditions and these Fenex Rules of Arbitration and consequently have also accepted the operation and applicability of the following rules of arbitration:

### **Arbitration by one arbitrator**

#### *Article 1.*

1. Insofar as, in accordance with article 23, paragraph 2 of the Dutch Forwarding Conditions, parties have appointed one arbitrator to settle the dispute, where these Fenex Rules of Arbitration read 'arbitrators', this also refers to 'arbitrator'.

### **Contact between arbitrators and parties**

#### *Article 2.*

1. Every contact must take place between the plaintiff, defendant and the arbitrators. Therefore neither the plaintiff nor the defendant are allowed to contact arbitrators unilaterally, neither is an arbitrator allowed to approach the plaintiff or the defendant unilaterally. When approaching one arbitrator or one of the parties, the other party and (insofar as more than one arbitrator exists) the other arbitrators, must simultaneously be sent a copy of the correspondence. Contact by telephone is therefore not permitted, unless both parties and arbitrators participate in a joint conference call.

### **The commencement of the arbitration**

#### *Article 3.*

1. The party desiring a decision of the dispute shall inform the secretariat of Fenex thereof by registered letter or by fax, describing:
  - a. a short description of the dispute and its claim; and
  - b. the request to
    - i. appoint the arbitrators; or
    - ii. to continue with the appointment of arbitrators;sending an amount to Fenex for service charges established by the board of Fenex in compensation of the administrative involvement of Fenex in an arbitration.
2. Insofar as, in the application for arbitration there is a request to appoint the arbitrators (as referred to in this article paragraph 1 sub b under i), also payable along with the application for arbitration is an initial advance payment on the deposit, established by the board of Fenex.
3. Insofar as, with the application for arbitration, a request to continue with the appointment of the arbitrators is made (as referred to in this article paragraph 1 sub b under ii), both the plaintiff and the defendant can ask for continuation. At the time at which the plaintiff or defendant asks for continuation, the plaintiff must immediately pay the advance payment referred to in this article paragraph 2, established by the board of Fenex.
4. As soon as the chairperson has been appointed, Fenex will pay the deposit referred

to in paragraphs 2 and 3 of this article.

5. A case is pending on the day on which the aforementioned registered letter or fax is received by the secretariat of Fenex. If, within three weeks of the relevant submission of the application for arbitration or following the request to appoint the arbitrators the administration costs or the first advance payment have not been received by the secretariat of Fenex from the claimant, the plaintiff shall be deemed to have withdrawn the arbitration.

#### *Article 4.*

1. Following receipt of the aforementioned application for arbitration, the secretariat of Fenex will confirm the application for arbitration as soon as possible and will send a copy thereof to the other party.
2. Insofar as, with the application for arbitration, the request is made to appoint the arbitrators, the secretariat of Fenex will also send a copy of the application for arbitration, a copy of the Dutch Forwarding Conditions and a copy of these Fenex Rules of Arbitration to the chairperson of Fenex and to the President of the Netherlands Bar Association as soon as possible, asking them to each appoint an arbitrator and to inform the Fenex secretariat of the names and addresses of the arbitrators who have been appointed.
3. Following receipt of the communication referred to in paragraph 2 of this article, the secretariat of Fenex shall inform the two designated arbitrators as soon as possible of their appointment and shall send them a copy of the application for arbitration, a copy of the Dutch Forwarding Conditions and a copy of these Fenex Rules of Arbitration, with the request to appoint the third arbitrator and to inform the Fenex secretariat who has been appointed as such.
4. Following receipt of the communication mentioned in paragraph 3 of this article, the secretariat of Fenex shall inform the third arbitrator of his/her appointment as soon as possible and shall send them a copy of the application for arbitration, a copy of the Dutch Forwarding Conditions and a copy of these Fenex Rules of Arbitration. The secretariat of Fenex will then inform both parties who have been appointed as arbitrators.
5. If within two months following the request to appoint the arbitrators the appointment of all three arbitrators has not taken place, by means of a simple petition all arbitrators, at the request of the first party to take action, shall be appointed by the Preliminary Relief Judge before the competent Dutch court in the forwarder's place of business.

#### *Article 5.*

1. The arbitrator appointed by the President shall act as the arbitrators' chairperson. If the arbitrators are appointed by the President of the District Court, the arbitrators shall themselves decide who is to function as chairperson. In the event of settlement by one arbitrator as referred to in article 23 paragraph 2 of the Dutch Forwarding Conditions, this arbitrator is also the chairperson.
2. The place of arbitration shall be the place where the chairperson of the arbitrators is established.
3. The arbitrators shall make their award as good men in equity, subject to their liability to observe the applicable imperative legal stipulations. Where applicable they shall also apply the provisions of the international transport treaties, among which, inter alia, the Convention on the Contract for the International Carriage of Goods by Road.
4. By accepting their appointment, the arbitrators accept the operation and applicability of the Fenex Rules of Arbitration established by Fenex. The arbitrators shall otherwise determine the procedure of the arbitration, subject to the parties being given the opportunity to put forward their cases in writing and to elucidate the same orally.

## **Arbitrators' costs**

### *Article 6.*

1. Arbitrators shall work based on the fixed hourly rate published and established annually by Fenex on the 1st of January.
2. Following their appointment, but prior to dealing with the arbitration, the arbitrators shall require from the claimant an advance payment in relation to the costs of arbitration, to be paid to a third party funds account of (the office of) the chairperson, or in the absence thereof, in the manner sought by the chairperson; during the arbitration process, they can ask for an additional amount to be deposited. The advance payment of the costs of arbitration is based on the number of hours that the arbitrators estimate they will require to settle the dispute and the aforementioned fixed hourly rate. If within three weeks following a relevant request, the deposit requested by the arbitrators from the claimant has not been paid, this party shall be deemed to have withdrawn the arbitration.
3. If the defendant brings a counter-claim, the defendant's arbitrators who have brought the counter-claim can also ask for an advance payment on the costs of arbitration. This amount has to have been paid within three weeks after the arbitrators have asked for payment of this advance payment, in the absence of which the arbitrators shall declare the counter-claim inadmissible.

## **Rules of procedure**

### *Article 7.*

1. The arbitrators shall determine the rules of procedure. When doing so, they shall take into account as far as possible the mutual wishes of the parties. They will uphold the rules of procedure and shall ensure expeditious progress of the arbitration proceedings. Unless at the unanimous request of the parties the arbitrators decide otherwise, the proceedings shall take place as outlined below.

### *Article 8.*

1. Within four weeks following receipt of the notification referred to in article 4 paragraph 4 from the secretariat of Fenex of the appointed arbitrators, or following notification by one of the parties to the secretariat of Fenex of the jointly appointed arbitrator in accordance with art. 23 paragraph 2 of the Dutch Forwarding Conditions, the Claimant can put forward his case in writing by submitting five copies of a statement setting out the grounds, with accompanying exhibits, to the chairperson. The chairperson shall send this conclusion immediately to the defendant.
2. If the claimant feels that a referral to the application for arbitration sent to the secretariat of Fenex and the appendices mentioned therein will suffice, they must also communicate this within four weeks of receipt.
3. In the event that arbitrators are of the opinion that the application for arbitration is too concise, they shall inform the claimant of that within 14 days of the aforementioned notification, with the request to submit within four weeks a statement setting out the grounds. This extension is considered to be an extension within the meaning of art. 10 of these Fenex Rules of Arbitration.

### *Article 9.*

1. Within four weeks of receipt of the statement setting out the grounds, the Defendant must provide five copies of a statement setting out the grounds with accompanying exhibits to the chairperson of the arbitration board, in the absence of which the arbitrators can, by default, amend the award. If the defendant wishes to bring a counter-claim, this must be formulated simultaneously with the statement setting out the grounds.

*Article 10.*

1. At the reasoned request of one of the parties, the arbitrators may permit a once-only extension of the periods mentioned in these rules of procedure. If a party requires a further extension, this shall only be permitted if both the other party in the proceedings and all arbitrators agree to the further extension.

*Article 11.*

1. Both in the claim or in the counter-claim, arbitrators can offer parties the opportunity to reply or submit a rejoinder within the periods of time to be established by the arbitrators, in which case the arbitrators will coordinate the proceedings in the claim or in the counter-claim as closely as possible. The parties also have the right to immediately request an oral procedure; the arbitrators are entitled to reject this request, after which the parties must submit replies and rejoinders in writing. If a counter-claim is brought, the other party will be given in any case the opportunity to respond to that.

*Article 12.*

1. Following any replies and rejoinders, the arbitrators will determine as soon as possible the place and time on which the parties will be given the opportunity to explain their case orally. The arbitrators shall inform the parties of this in writing within a reasonable period of time. If both parties declare that they do not require an oral explanation, the arbitrators will make their award based on the documents, apart from if the arbitrators require further information or wish to attempt a settlement. In that case, they will decide on an oral hearing.

**End of the arbitration**

*Article 13.*

1. Following the (possible) oral explanation by the parties, the arbitrators will make an award as soon as possible but in any case within 10 weeks.
2. The arbitrators shall continue in office until the final award. They shall deposit their award at the Registry of the District Court with the district of which the seat of the arbitration is situated, while a copy thereof shall be sent to each of the parties and to the secretariat of Fenex.
3. In their award, the arbitrators shall order which of the two parties shall bear the costs of arbitration or what proportion thereof each party shall bear. These costs shall comprise the arbitrators' fees and disbursements, the amount of the administrative costs paid to Fenex with the application for arbitration and the costs incurred by the parties insofar as the arbitrators deem the same to be reasonably necessary. The sums due to the arbitrators shall to the extent possible be taken from the amounts deposited.

**Final provisions**

*Article 14.*

1. The legal relationship between, on the one hand, Fenex and/or its board members and, on the other hand, a party or an arbitrator, is governed by Dutch law and disputes between them are subject to the exclusive jurisdiction of the Dutch court, in the first instance, the Court of Rotterdam.
2. Fenex, a board member in person, or an arbitrator is not liable for any act or omission with regard to an arbitration to which these Fenex Rules of Arbitration apply, unless

there is a question of intention or deliberate recklessness on the part of the relevant (legal) entity in respect of the damage sustained in that specific case.

3. Both Fenex as the board of Fenex are authorised to publish the award without disclosing the names of the parties and omitting any further information that may disclose the identity of the parties, unless a party has objected to this in writing within one month after receipt of the award, to Fenex.

*Article 15.*

1. The Dutch language text of these rules is the only genuine text. In the event of differences between the Dutch text and a text in another language, the Dutch text shall prevail.