

**PART 8**  
**ARBITRATION REGULATIONS**

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These Arbitration Regulations form part of the Rules and Regulations of the Exchange. They may also be used as a stand-alone document. Contractual arrangements may include a reference to arbitration in accordance with these Arbitration Regulations. For the avoidance of doubt, such a reference does not of itself mean those contractual arrangements are subject to the remaining Rules and Regulations of the Exchange, nor that any resulting contract is an LME Contract.



## PART 8: ARBITRATION REGULATIONS

### 1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Arbitration Regulations, the following words and expressions shall, unless the context otherwise requires, bear the meanings set opposite them:-

"Administrative Procedure"	a notice published by the Exchange containing a procedure for implementing the Rules or any part thereof;
"Arbitration Regulations"	the regulations set out in Part 8 of the Rules;
"Chief Executive"	includes the Deputy Chief Executive and any other person for the time being appointed to perform the duties of Chief Executive of the Company;
"Chief Operating Officer"	the Chief Operating Officer and any other person for the time being appointed to perform the duties of the Chief Operating Officer;
"Claimant"	the person commencing an arbitration by serving a Notice to Arbitrate;
"Close of Pleadings"	the end of a period of 28 days after the time for submission of the points of reply, unless otherwise ordered by the Tribunal;
"the Company"	The London Metal Exchange;
"Counter Notice"	a notice served by the Respondent pursuant to Regulation 2.5 of Part 8 of the Rules;
"Deposit"	such sum as may be specified by Administrative Procedure from time to time;
"the Directors"	the Board of Directors of the Company;
"Member"	a member of the Exchange;
"Notice to Arbitrate"	a Notice served by the Claimant pursuant to Regulation 2.1 of Part 8 of the Rules;
"Panel"	the Arbitration Panel of the Company;
"Panel Committee"	a committee appointed by the Directors to oversee the conduct of arbitrations pursuant to the Arbitration Regulations, and in particular to perform the functions and powers referred to in the Arbitration Regulations;
"Registration Fee"	such sum as may be specified by Administrative Procedure from time to time;
"Respondent"	the person receiving a Notice to Arbitrate served by the Claimant;

"Rules"	means these rules and regulations as the same may be amended in accordance with the Articles;
"Secretary"	any person appointed to perform the duties of Secretary of the Company, and for the purpose only of Part 8 of the Rules, any person to whom the functions and powers of the Secretary referred to therein may be delegated from time to time;
"Tribunal"	the tribunal of one, two or three arbitrators appointed in accordance with Regulation 3 of Part 8 of the Rules;
"Working Day"	any weekday, Monday to Friday inclusive, which is not a public holiday in England and Wales.

1.2 Reference to a period of days shall mean consecutive days, calculated with reference to London Time, whether or not they are Working Days. Where an act is required to be done within a specified period of days after a specified event, the first day of the period shall be the day after the specified event occurs. The period shall end at 5.00pm (London Time) on the last day of the period.

1.3 (a) Words importing the singular shall, where the context permits, include the plural and *vice versa*. Words importing gender shall include each gender. Words importing persons shall, where the context permits or requires, include partnerships and corporations.

(b) Where reference is made to a Regulation in any Part of the Rules it shall be deemed to be a reference to a Regulation in that Part unless the context otherwise requires.

1.4 The headings in these Arbitration Rules are inserted for convenience only and are to be ignored for the purposes of construction.

## 2. COMMENCEMENT

2.1 A Claimant shall commence an arbitration pursuant to these Arbitration Regulations by serving a Notice to Arbitrate on the Respondent, and by sending a copy of the Notice to Arbitrate to the Secretary accompanied by the Registration Fee and Deposit. The Deposit shall be any of the methods detailed in the Arbitration section of the website of the Exchange, as updated from time to time.

2.2 Subject to Regulation 6.3, the Notice to Arbitrate shall contain at least the following information:-

- (a) the address for service of the Claimant;
- (b) a brief statement of the nature and circumstances of the dispute including a brief description of any contract, sufficient to enable the Respondent to identify it, to which the dispute relates;
- (c) a brief statement of the relief claimed;
- (d) the Claimant's proposal with regard to the number of arbitrators to form the Tribunal;

- (e) the Claimant's nomination of one arbitrator from the Panel; and
  - (f) the person and address of the Respondent to which the Notice to Arbitrate has been sent.
- 2.3 The Secretary shall acknowledge receipt of the Deposit and Registration Fee, indicating the date on which payment was made, and shall copy such acknowledgement to the Respondent. The Notice to Arbitrate shall not be valid, and time shall not start to run for the purpose of any other provisions of these Arbitration Regulations until the Deposit and Registration Fee have been paid and all the above information has been supplied to the Respondent and to the Secretary.
- 2.4 The date of receipt by the Respondent of a valid Notice to Arbitrate shall be deemed to be the date on which the arbitration has commenced.
- 2.5 Within 21 days of receipt of the Notice to Arbitrate, the Respondent shall send to the Claimant, with a copy to the Secretary, a Counter Notice which shall contain:-
- (a) the address for service of the Respondent;
  - (b) confirmation that the Respondent agrees to the number of arbitrators proposed by the Claimant, or the Respondent's counter proposal;
  - (c) if relevant, the Respondent's nomination of one arbitrator from the Panel.
- 2.6 If the Respondent fails to serve the Counter Notice then, on application by the Claimant in writing to the Secretary, the Secretary shall proceed with the appointment of the Tribunal as set out in Regulation 3.
- 3. APPOINTMENT OF TRIBUNAL**
- 3.1 Subject to Regulation 3.5, two arbitrators shall form the Tribunal unless the parties to the dispute agree that either one or three arbitrators should form the Tribunal.
- 3.2 Within 7 days of receipt of the Counter Notice, or of the Claimant's application referred to in Regulation 2.6, the Secretary shall:-
- (a) if the Tribunal is to consist of a single arbitrator
    - (1) appoint the arbitrator agreed by the parties; or
    - (2) if the parties do not agree on the identity of the arbitrator, appoint an arbitrator who may, but need not, be an arbitrator nominated by one of the parties;
  - (b) unless the Tribunal is to consist of a single arbitrator, appoint
    - (1) the arbitrator nominated by the Claimant; and
    - (2) the arbitrator nominated by the Respondent or, in default, an arbitrator;
  - (c) send to each arbitrator a copy of the Notice to Arbitrate and the Counter Notice, if any, and any accompanying documents;

- (d) notify the parties of steps taken pursuant to Regulations 3.2(a), 3.2(b) and 3.2(c).
- 3.3 If the Tribunal is to consist of three arbitrators, the two arbitrators appointed pursuant to Regulation 3.2(b) shall, within 7 days of their appointment, nominate the third (in accordance with the criteria in Regulation 3.6) and notify the Secretary of their choice or inform the Secretary that they are unable to agree. The Secretary shall within 7 days thereafter:-
- (a) appoint the third arbitrator if necessary having made the choice of third arbitrator himself (in accordance with the criteria in Regulation 3.6);
  - (b) send the third arbitrator a copy of the documents referred to in Regulation 3.2(c);
  - (c) notify the parties and other arbitrators of steps taken pursuant to Regulations 3.3(a) and 3.3(b).
- 3.4 For the purpose of these Arbitration Regulations, the Tribunal shall be taken to have been appointed on the date the Secretary sends notification to the parties pursuant to Regulation 3.2(d) or 3.3(c) as the case may be.
- 3.5 If the Tribunal consists of two arbitrators then, upon request to the Secretary by
- (a) either party at any time prior to 14 days after Close of Pleadings, or
  - (b) either of the arbitrators at any time before an award is made,
- the Secretary shall, in consultation with the existing arbitrators and providing, in the event the request is made by a party, at least one arbitrator is of the view that a third arbitrator should be appointed, appoint a third arbitrator (in accordance with the criteria in Regulation 3.6).
- 3.6 The third arbitrator, who shall be the chairman of the Tribunal, shall be a lawyer unless the other arbitrators are both lawyers, in which case the chairman shall be a non-lawyer.
- 3.7 Any arbitrator chosen and appointed by the Secretary shall be chosen from the Panel.
- 3.8 In every case in which the Secretary appoints an arbitrator he shall, before doing so, ascertain the arbitrator's ability and willingness to act. If any arbitrator is unable or unwilling to act, the Secretary shall, subject to Regulation 3.13, appoint a replacement.
- 3.9 The arbitrators may only nominate arbitrators who are members of the Panel.
- 3.10 All arbitrators, whether or not nominated by the parties, shall be and remain at all times wholly independent and impartial and shall not act as advocates for either party.
- 3.11 If at any time after his appointment any arbitrator is unable or unwilling to act for any reason, then within 7 days of receipt of a written request from the arbitrator himself, any of the other members of the Tribunal, or either party, the Secretary shall, subject to Regulation 3.13, appoint a replacement.
- 3.12 Either party may challenge the appointment of an arbitrator within 28 days of the appointment of that arbitrator or, if later, within 28 days of becoming aware of the facts and circumstances on which the challenge is based, on grounds of non-independence, partiality, unfitness or inability to act by sending a written statement of its reasons for the challenge to

the Secretary. Unless the other party agrees to the challenge or the arbitrator withdraws within 7 days, the Secretary shall refer the matter to the Panel Committee who shall determine whether the challenge should be sustained and, if so and subject to Regulation 3.13, the Secretary shall appoint a replacement within a further 7 days.

- 3.13 If the arbitrator to be replaced pursuant to Regulations 3.7, 3.11 or 3.12 is one who either party was originally entitled to nominate, that party shall be entitled to nominate the replacement (in accordance with the criteria in Regulation 3.6). If the arbitrator to be replaced was the third arbitrator, the other two shall be entitled to nominate the replacement. The Secretary, before appointing the replacement, shall consult with the parties or arbitrators accordingly. The Secretary shall appoint the arbitrator so nominated or, in default of any such nomination within a time specified by the Secretary, choose and appoint the replacement arbitrator (if applicable, in accordance with the criteria in Regulation 3.6).
- 3.14 The Secretary shall have power, on the application of either party or on his own motion, and on notice to both parties, to extend or abridge any of the time limits specified in this Regulation 3 or in Regulation 2.

#### 4. **PROCEDURE**

In the absence of any express provision in these Arbitration Regulations the Tribunal shall have the widest discretion permitted by law to determine the procedure to be adopted, and to ensure the just, expeditious, economical and final determination of the dispute.

#### 5. **NOTICES AND COMMUNICATIONS**

- 5.1 Unless otherwise ordered by the Tribunal, all notices required by these Arbitration Regulations shall be in writing. Notices and all other documents shall be sent by first class post where available, or airmail, electronic message or delivered by hand.
- 5.2 Documents sent between the parties shall be sent to the other party's address for service or, if none has yet been specified, to the address of the other party specified in the contract containing the agreement to refer the dispute to arbitration, failing which to the principal place of business of the other party.
- 5.3 In every case in which either party sends any document to the Secretary or the Tribunal that party shall where relevant provide sufficient copies for each member of the Tribunal, and shall also at the same time send a copy to the other party.
- 5.4 Subject to satisfactory evidence being produced by the sender and unless the intended recipient proves otherwise:-
- (a) documents sent by post shall be deemed to have been received;
    - (1) if posted within the United Kingdom to an address in the United Kingdom, 2 Working Days after posting;
    - (2) in all other cases, 5 Working Days after posting;
  - (b) electronic messages shall be deemed to have been received at the time transmission ceases;

- (c) by hand deliveries shall be deemed to have been received at the time of delivery to the address stated on their face.

In the event that the sender utilises more than one of the methods above then documents shall be deemed to have been received by the faster method used.

References in these Arbitration Regulations to receipt of documents shall be construed accordingly. In the event of a dispute prior to the appointment of the Tribunal the Secretary shall in his absolute discretion determine if and/or when receipt is deemed to have occurred.

- 5.5 Unless these Arbitration Regulations otherwise state, or unless otherwise directed by the Secretary (if no Tribunal has been appointed) or by the Tribunal, all notices and other documents received on a day which is not a Working Day, or after 5.00 pm on any Working Day, shall be deemed to have been received on the next following Working Day. Time of receipt shall be determined with reference to local time in the place where the notice or other document is received.

## 6. SUBMISSION AND DOCUMENTS

- 6.1 Unless otherwise ordered by the Tribunal, the procedure following appointment of the Tribunal shall be as set out in the rest of this Regulation.
- 6.2 Within 21 days after the appointment of the Tribunal, the Claimant shall send to the Tribunal and to the Respondent written points of claim which set out any facts or contentions of law on which it relies, and the relief claimed.
- 6.3 The Claimant may serve the points of claim on the Respondent at the same time as the Notice to Arbitrate. If so, the information required by Regulations 2.2(b) and 2.2(c) need not be contained in the Notice to Arbitrate, and no further copies of the points of claim need be served pursuant to Regulation 6.2.
- 6.4 Within 21 days of receipt of the points of claim, or of the appointment of the Tribunal if later, the Respondent shall send to the Tribunal and to the Claimant written points of defence stating in sufficient detail which of the facts and contentions of law in the points of claim it admits or not, or denies, on what grounds, and on what other facts and contentions of law it relies. Any counterclaims shall be submitted with the points of defence in the same manner as claims are set out in the points of claim.
- 6.5 Within 21 days of receipt of the points of defence, the Claimant may send to the Tribunal and to the Respondent written points of reply which, where there are counterclaims, shall include points of defence to counterclaims.
- 6.6 If the points of reply contain points of defence to counterclaims, the Respondent may, within 21 days of receipt, send to the Tribunal and to the Claimant written points of reply regarding counterclaims.
- 6.7 No further submissions shall be served without an order from the Tribunal.
- 6.8 All submissions referred to in this Regulation shall be accompanied by legible copies, or if they are especially voluminous, lists of all essential documents on which the party concerned relies, and where appropriate, by any relevant samples.



6.9 Any document not in English shall be accompanied by a translation into English and a note explaining who prepared the translation and his qualifications, if any, to do so. Translations may but do not need to be notarised. The authority to be accorded to any translation is a matter for the Tribunal.

6.10 Within 7 days after Close of Pleadings the Tribunal shall give directions for the subsequent procedure of the arbitration and may convene a hearing for this purpose.

6.11 Unless the parties agree to the contrary in writing, the parties, the Tribunal, the Secretary and the Panel Committee shall keep the award (and all other submissions, other documents and information introduced into the proceedings not otherwise in the public domain) confidential in perpetuity save to the extent that disclosure may be required by legal duty or to protect a legal right.

## **7. HEARINGS AND SEAT OF ARBITRATION**

7.1 Each party has the right to be heard before the Tribunal, unless the parties have agreed on a documents-only arbitration.

7.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof. Unless otherwise agreed as provided in Regulation 7.3, all meetings and hearings shall take place at a venue in England and Wales.

7.3 The Tribunal may, with the consent of each of the parties to the arbitration, authorise one or more meetings or hearings to be held at a venue outside England and Wales.

7.4 The Tribunal may in its discretion direct hearings to be conducted without the physical presence of each participant in the same place but on the basis that each participant is linked, for the duration of his participation, through a telecommunication or video link system permitting each participant clearly to hear and speak to every other participant and, if the Tribunal so directs, to see every other participant.

7.5 The Tribunal may in advance of hearings submit to the parties a list of questions which it wishes them to treat with special attention.

7.6 The language of the arbitration shall be English, provided that interpreters shall be permitted by the Tribunal for participants and witnesses for whom English is not their main language.

7.7 The seat of the arbitration shall be England and Wales.

## **8. PARTY REPRESENTATIVES**

8.1 Neither party shall be represented at any hearing by a legal practitioner without the consent of the Tribunal, such consent to be requested not later than Close of Pleadings. If such consent be granted by the Tribunal to one party the other party shall automatically have an equivalent right.

8.2 Nothing in Regulation 8.1 shall preclude either party from otherwise seeking legal advice.

8.3 Subject to Regulation 8.1, either party may be represented at any hearing by any representative, subject to such proof of authority as the Tribunal may require.

## 9. **WITNESSES**

- 9.1 Before any hearing, the Tribunal may require either party to give notice of the identity and qualification of witnesses it wishes to call and may require the parties to exchange statements of evidence to be given by the witnesses a specified time in advance of the hearing.
- 9.2 The Tribunal may allow, refuse, or limit the appearance of witnesses, whether witnesses of fact or expert witnesses.
- 9.3 Any witness who gives oral evidence may be questioned by each of the parties or their representative, under the control of the Tribunal. The Tribunal may put questions at any stage of the examination of the witnesses.
- 9.4 The Tribunal may allow the evidence of a witness to be presented in written form either as a signed statement or by a duly sworn affidavit. Subject to Regulation 9.2 either party may request that such a witness should attend for oral examination at a hearing. If he fails to attend, the Tribunal may place such weight on the written evidence as it thinks fit, or exclude it altogether.

## 10. **POWERS OF TRIBUNAL**

- 10.1 Without prejudice to any powers which may be given to the Tribunal elsewhere by law or in these Arbitration Regulations, the Tribunal shall have power either on its own motion or on the application of either party:-
- (a) to order either party to take specified steps within a specified time;
  - (b) to extend or abridge any time limits specified in these Arbitration Regulations, or in any order;
  - (c) to continue with the reference in default of appearance or of any other act by either party in like manner as a judge of the High Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of the court, including, for the avoidance of doubt and without limitation, power to strike out all or any part of any submission and to make any award consequent upon any such striking out, in the event a party fails
    - (1) within the time specified in these Arbitration Regulations or in any order or
    - (2) if no time is specified, within a reasonable time
 to do any act required by these Arbitration Regulations or to comply with any order;
  - (d) at any time to permit either party to amend any submissions;
  - (e) to stay arbitration proceedings in favour of proceedings in the High Court or other forum and, in an appropriate case, to make it a condition of the stay that one of the parties commence proceedings in the High Court or such other forum forthwith;
  - (f) to order either party to produce and to supply copies of, any documents in that party's possession, custody or power, which, in the event of dispute, the Tribunal determines to be relevant;

- (g) to order either party to answer interrogatories;
- (h) to require the parties to provide a written statement of their respective cases in relation to particular issues, to provide a written answer and to give reasons for any disagreement;
- (i) to order the inspection, preservation, storage, interim custody, sale or other disposal of any property or thing relevant to the arbitration under the control of either party;
- (j) to make orders authorising any samples to be taken, or any observation to be made, or experiment to be tried which may, in the Tribunal's discretion, be necessary or expedient for the purposes of obtaining full information or evidence;
- (k) to appoint one or more investigators or experts to report to the Tribunal on specified issues;
- (l) to order either party, "the payer", to make an interim payment to the other party, "the payee", of such amount as the Tribunal shall in its discretion think just, not exceeding a reasonable proportion of the monetary award which in the opinion of the Tribunal is likely to be recovered by the payee after taking into account any set-off or counterclaim on which the payer may be entitled to rely;
- (m) to order either party to provide security for all or part of any amount in dispute in the arbitration;
- (n) to make an interim order that either party shall pay to the other party or to the Tribunal or to the Company a proportion of any costs of an administrative nature necessarily incurred by that party or by the Tribunal or by the Company or by an investigator or expert in respect of the progress or conduct of the arbitration, with the intent that such costs should, so far as reasonably possible, be borne equally by the parties pending the final award of the Tribunal;
- (o) to order either party to provide security for the legal or other costs of the other party in any manner the Tribunal thinks fit;
- (p) to order specific performance of any contract;
- (q) to open up, revise and review any certificate, opinion or decision of any person whose certificate, opinion or decision is subject to reference to arbitration;
- (r) to order the rectification of any agreement subject to any rule of law which would restrict this power;
- (s) to delegate the power to make procedural rulings to the chairman of the Tribunal, including the power to determine in the event of dispute, whether a ruling is procedural.

10.2 The 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, or of the existence or validity of the contract of which the arbitration clause forms part. For this purpose, an arbitration clause which forms part of a contract and which provides for arbitration under these Arbitration Regulations shall be treated as an agreement independent of the other terms

of the contract. A decision by the Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

- 10.3 A plea that the Tribunal does not have jurisdiction shall be raised not later than in the points of defence. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Regulation 10.3 if it considers the delay justified.

## 11. CONSOLIDATION

- 11.1 On the appointment of a Tribunal, and whenever requested to do so by either party, the Panel Committee shall review pending arbitrations and, if it appears to the Panel Committee that

- (a) some common question of law or fact arises in two or more of them, or
- (b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) for some other reason it is desirable to make a direction under this Regulation, the Panel Committee shall so inform the parties to all relevant arbitrations and may, upon the application of one or more of the parties to any of the arbitrations, and after consultation with the Tribunals and the parties, direct those arbitrations to be consolidated on such terms as it considers just or may direct them to be heard at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them.

- 11.2 For the purposes of Regulation 11.1, the Panel Committee may require any party to any relevant arbitration to provide it with copies of all that party's submissions and other documents connected with the arbitration which appear to the Panel Committee to be relevant.

- 11.3 If two or more arbitrations are to be consolidated pursuant to Regulation 11.1 above, and all parties to the consolidated arbitration are in agreement as to the choice of arbitrators the same shall be appointed by the Secretary but if all parties cannot agree within 21 days after the date of the direction under Regulation 11.1 the Panel Committee shall have power to choose and appoint three arbitrators as the Tribunal for the consolidated arbitration and to choose and appoint any replacement arbitrators which may thereafter be necessary.

- 11.4 The Tribunal in any consolidated arbitration shall have power at any time, on the application of any party to the consolidated arbitration or on its own motion, and on such terms as it considers just to order that the arbitration as between any two or more parties proceed separately, but under the same Tribunal, from the arbitration as between any other two or more parties, and to make any directions consequent thereon as the Tribunal considers expedient for the future conduct of all such proceedings.

## 12. AWARDS

- 12.1 The Tribunal shall make its award in writing and give its reasons for the award.

- 12.2 Composition

- 12.2.1 If the Tribunal consists of two arbitrators and they fail to agree on any issue they shall request the Secretary to appoint a third arbitrator pursuant to Regulation 3.5.
- 12.2.2 If the Tribunal consists of three arbitrators and they fail to agree on any issue, they shall decide by a majority. If an arbitrator refuses or fails to sign the award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 12.3 Where a decision on any issue is by a majority, the award may contain reasons by the dissenting arbitrator for his dissent, in the discretion of that arbitrator.
- 12.4 Awards may be expressed in any currency claimed in the arbitration.
- 12.5 The award shall state the date by which payment shall be made for any sum due under the award. In addition to the statutory power to award interest, the Tribunal shall have the power to award interest at such rate and for such period as it considers fit on any sum after its due date but before commencement of the arbitration.
- 12.6 The Tribunal may make separate final awards on different issues at different times.
- 12.7 In the event of a settlement, the Tribunal may make an award recording the settlement if either party so requests.
- 12.8 Every award shall be final and binding on the parties as from the date that it is taken up by one of the parties. The parties undertake to carry out any award without any delay. Unless otherwise agreed by the parties in writing, the parties waive irrevocably any right to any form of appeal, review or resource to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.
- 12.9 If all members of the Tribunal consider that the award contains any points which are of significant importance or interest to Members, they shall communicate such points to the Legal Department of the Exchange. The Legal Department, in consultation with the Tribunal, shall determine whether and how such points should be brought to the attention of Members while keeping the names of the parties confidential.
- 12.10 The Tribunal shall notify the Secretary and each party to the arbitration of completion of its award (which expression shall include any partial or interim award). At the same time, the Tribunal shall notify the parties whether payment of the Tribunal's fees and any other costs and expenses of the arbitration (together, the "Costs"), by the parties or one of them, is required before release. Payment of the Costs may be made by either party or in part by each of them and shall be without prejudice to any order or subsequent order regarding ultimate liability for the costs of the arbitration.
- 12.11 Until the award is taken up by one or both of the parties it shall confer no rights upon either party. In the event of the award not being taken up by either party within a period of 28 days from the notification that it is available or such longer period as the Tribunal and Secretary may agree, the Deposit referred to in Regulation 2.1 above shall be forfeited, and (i) the Secretary may in his absolute discretion utilise the funds firstly to pay any sums due to the LME in relation to the proceedings and secondly to pay the fees due, or part thereof to the extent held, to the Tribunal, and (ii) the Secretary may in his absolute discretion call upon the parties for either of them (a) to take up the award and (b) to pay forthwith the Costs or any part or proportion thereof whereupon the party or parties so called upon shall forthwith pay the Costs as aforesaid and take up the award.

12.12 Regulations 12.12 to 12.16 shall apply to any agreement entered into on or after 1 June 2010 by a Category 1, 2 or 4 Member of the Exchange with another Category 1, 2 or 4 Member or with any other person which provides for any dispute arising out of or in connection with the agreement to be resolved by arbitration in accordance with these Regulations.

12.13 Where:-

- (a) the date for payment of any amount due under the award has elapsed,
- (b) the period for any appeal against the award under English law has elapsed, and
- (c) the party against whom the award was made has failed to make payment of any amount due under the award,

the party in whose favour the award was made may send a notice of application to the Secretary, and shall copy such notice of application to the other party, requesting that the Secretary communicate to Members such failure to make payment. The Secretary shall acknowledge receipt of the notice of application, indicating the date on which it was received, and shall copy such acknowledgement to the other party.

12.14 If, at any time following receipt of a copy of the notice of application pursuant to Regulation 12.12, the party against whom the award was made makes payment in full of all amounts due under the award, both (a) the party in whose favour the award was made and (b) the party against whom the award was made, shall promptly send to the Secretary a notice of confirmation in writing that payment of all amounts due under the award has been made in full, and shall copy such notice of confirmation to the other party.

12.15 If the Secretary has not, within 14 days of receipt of the notice of application in accordance with Regulation 12.12, received from both (a) the party in whose favour the award was made and (b) the party against whom the award was made, a notice of confirmation in writing that payment of all amounts due under the award have been made in full, the Secretary shall communicate to Members such failure to make payment.

12.16 If, following the making of any communication pursuant to Regulation 12.14, the Secretary receives from both (a) the party in whose favour the award was made and (b) the party against whom the award was made, a notice of confirmation in writing that payment of all amounts due under the award has been made in full, the Secretary shall communicate this to Members.

### 13. **COSTS AND DEPOSIT**

13.1 Unless otherwise agreed by the parties, the Tribunal may direct, at their discretion and not later than fourteen days after the date for receipt of points of reply, that the recoverable costs of the arbitration, or any part of the arbitration proceedings that it can order to be paid pursuant to Regulation 13.3(a), shall be limited to a specific amount.

13.2 The Tribunal shall have power to specify in the award the amount of the costs of the arbitration (which expression shall, for the purpose of this Regulation 13, include the Tribunal's own remuneration, and any costs relating to the progress or conduct of the arbitration incurred by the Tribunal or by the Company including the costs of and fees payable to any person who has reported to or advised the Tribunal or the Company on any matter and shall include any costs incurred in conducting one or more meetings or hearings

at a venue outside England and Wales pursuant to Regulation 7.3), and shall determine the proportions in which they shall be borne by the parties.

13.3 The Tribunal shall have power:-

- (a) to order in its award that all or part of the legal or other costs of one party be paid by the other party; and
- (b) to determine or assess the amount of those costs, at the request of either party, and for this purpose shall not be *functus officio*.

13.4 If the arbitration is abandoned, suspended, stayed or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay the costs of the arbitration, as determined by the Tribunal, and for this purpose the Tribunal shall not be *functus officio*.

13.5 In any determination or award made by the Tribunal pursuant to Regulations 13.2, 13.3 and 13.4 the Tribunal shall, or at any time on the application of either party the Tribunal may provide for the return or other disposal of the Deposit or any part thereof to such persons as it shall in its absolute discretion consider fit.

#### 14. **THE SECRETARY AND THE PANEL COMMITTEE**

14.1 Subject only to Regulations 14.2 and 14.3, the Secretary and the Panel Committee shall have sole and exclusive jurisdiction over all matters referred for decision to each of them respectively by any provision of these Arbitration Regulations, and their decisions upon such matters shall be final and binding.

14.2 The Panel Committee may exercise any of the functions and powers of the Secretary referred to in these Arbitration Regulations. It may delegate to the Secretary any of its own functions and powers, either generally or in relation to specific matters.

14.3 In the event of conflict between a decision of the Secretary and a decision of the Panel Committee, the latter shall prevail.

#### 15. **EXCLUSION OF LIABILITY**

None of the Secretary, the Panel Committee, any arbitrator, or the Company shall be liable to any party for any act or omission in connection with any arbitration, save that the Secretary, the Panel Committee and the arbitrators may be liable for the consequences of conscious and deliberate wrongdoing.

#### 16. **GOVERNING LAW**

These Arbitration Regulations shall be governed by and construed in accordance with English law. Except where the Arbitration Regulations provide otherwise, all arbitrations hereunder will be conducted in accordance with the provisions of the Arbitration Act 1996 as amended from time to time.