

## 仲裁文書範例 - 仲裁申請書

### 仲裁申請書 APPLICATION FOR ARBITRATION

申訴人：MM 公司                      The Plaintiff： M. M. Corp.

地址：                                  Address：

被訴人：VV 有限公司                The Defendant： V. V. Co., Ltd.

地址：                                  Address：

(一)事實依據：

#### I. Statement of Facts：

申訴人 MM 公司和被訴人 VV 有限公司之間的爭議的原因在於被訴人沒有履行於 1992 年 5 月 14 日締結的由其提供 8,000 公噸鋁錠的 470E 和 471E 號合同義務。

This dispute existing between the Plaintiff, M. M. Corp. and the Defendant, V. V. Co., Ltd was brought about by the Defendant's failure to commit itself to the contracts 470E and 471E concluded on the 14th of May, 1992 for the supply of 8000 metric tons of Aluminum Ingots.

根據上述兩個合同規定，8,000 公噸鋁錠本應在 1992 年 7 月至 12 月期內從歐洲數個港口全部發出，月裝貨量按合同具體規定執行。本公司，即申訴人，於 1992 年 6 月 7 日通過中國銀行倫敦分行開出了 E25520 和 E25733 兩張信用證。

According to the stipulations of the said contracts, 8000 metric tons of Aluminum Ingots should have been completely delivered from European ports during a period from July to December, 1992, and each month a quantity specified thereby should have been shipped. This Corporation, the Plaintiff, issued letters of credit E25520 and E25733 on the 7th of June, 1992 through the Bank of China, London.

鑒於上述兩個合同分別規定將漢堡、鹿特丹和安特衛普及漢堡和鹿特丹作為各自的發貨港，故申訴人曾多次發電傳給被訴人，要求其將發貨港的具體名稱及準備發貨的時間告知申訴人，以便本公司派船。然而，被訴人對申訴人的電傳卻採取躲避態度，一直不予答復。

As these two contracts stipulate Hamburg/Rotterdam/Antwerp and Hamburg/Rotterdam respectively for the port of loading, the Plaintiff had therefore sent faxes on many occasions to the Defendant, asking them to advise the Plaintiff of the exact name of this Corporation to

send vessels. But, the Defendant had failed to reply to those faxes dispatched by the Plaintiff by taking an evasive attitude.

直到申訴人電傳和寫信一再催促，並經我方駐某某城商務代表處協助洽商，被訴人才於 1992 年 11 月 26 日通過我方駐某某城商務代理處遞交給申訴人一封信函，通知申訴人新的裝貨安排。按照這個新的裝運安排，8,000 公噸鋁錠須在 1993 年 1 月 6 日期間內才能全部發出。

It was not until the Plaintiff sent faxes and letters time and again to urge on and with the help of our Commercial Office in [ ] city to negotiate with the Defendant, that the Defendant finally forwarded a letter on the 26th November, 1992 to the Plaintiff through our Commercial Office in [ ] city, informing the Plaintiff to the new arrangement for shipment. As being indicated by this new arrangement for shipment, the delivery of 8000 metric tons of Aluminum Ingots would have to be completed within a period from January to June, 1993.

儘管被訴人不按合同所規定的時間履行交貨義務已使申訴人損失慘重，但申訴人仍接受了由被訴人提供的新的裝貨安排。然而，被訴人卻違背允諾，再次拒不履行由自己提出的新的裝貨安排，致使本公司蒙受了更大的損失。

In spite of suffering significant losses caused by the Defendant's failure to fulfill its contractual obligation, the Plaintiff still accepted the New arrangement for shipment presented by the Defendant. Whereas the Defendants had neither kept its original promise nor committed itself again to the subsequent arrangement for shipment put forward by itself, thus bringing even greater losses to the Plaintiff.

儘管如此，為讓被訴人具有最後一次履行允諾以執行合同的機會，申訴人於 1994 年 11 月 16 日通過一名英國律師[ ]先生向被訴人轉交了一封信函，說明准許被訴人在收到該信函起的 45 天之內履行其提交合同所規定貨物的義務，如被訴人不履行義務，申訴人將依據上述兩合同第 16 條的規定，正式將該爭議提交對外貿易仲裁委員會仲裁，要求被訴人賠償本公司遭受的一切損失。

Nevertheless, in order to enable the Defendant to meet its contractual obligation ultimately, the Plaintiff passed a letter on the 16th of November, 1994, through a British lawyer named Mr. [ ] to the Defendant, stating that the Defendant was permitted to meet its obligation to deliver the contracted goods within 45 days from the date it received the said letter, and that if the Defendant failed to do so, the Plaintiff would, according to the provision of Clause No. 16 of the contracts, formally submit the dispute to the F. T. Arbitration Commission for arbitration, asking the Defendant to compensate for all the losses sustained by this Corporation.

被訴人收到我信函的日期為 1994 年 11 月 28 日。45 天期限截止之日為 1995 年 1 月 12 日，該期限如今已過，但被訴人根本沒有履行其合同義務，也沒有提出任何解決該爭議的建議。他們甚至還在 1995 年 2 月 7 日寫信無理指責申訴人在原信用證過期後沒有開具新證，並由此說其不再具有其承諾提交合同所規定的鋁錠的責任。

The date on which the Defendant received our letter was the 28th of November, 1994. The deadline of the 45 days period was on the 12th January, 1995, which has now passed, but the Defendant has done nothing at all to meet its contractual obligation, nor has it produced any proposal for the settlement of this dispute. It has even gone so far as to make a false charge through a letter dated the 7th of February, 1995, against the Plaintiff with failure to open a new letter of credit after its expiry, and has therefore assumed no responsibility whatsoever for its commitment to delivery for Aluminum Ingots concluded.

該爭議的真實情況是：在收到被訴人 1992 年 11 月 26 日提供的新的裝貨安排之後，申訴人曾多次用傳真和信函催促被訴人通知我方裝貨港的具體名稱及貨物已備好待運，但被訴人卻對我方的電傳和信件拒不答復，且拒絕承擔合同義務，致使我方無法履行派船手續和提供合法信用證。顯而易見，違約責任應完全由被訴方自己承擔。我方現正式向對外貿易仲裁委員會提出申請，要求對本爭議進行仲裁。

The true nature of this dispute is evident in the following fact : After the receipt of the new arrangement for shipment presented by the Defendant on the 26th of November, 1992, the Plaintiff sent many faxes and letters requesting the Defendant to inform the Plaintiff of the exact name of port of loading and the Advice of Goods ready for shipment, while the Defendant gave no answer at all to the Plaintiff' faxes and letters and refused to meet its obligations under the contracts entered into, thus making it impossible for the Plaintiff to proceed with the procedures of sending vessels and extending the validity of letters of credit. Obviously, the liability for the non-execution of the contracts rests entirely with none other than the Defendant itself. The Plaintiff is therefore applying formally to the F. T. Arbitration Commission for arbitration of this dispute.

申訴人提出總金額為 748,000 英鎊的索賠主張。

The claimed amount called for by the Plaintiff comes totally to £ 748,000.

(二)索賠理由：

6,000 公噸純度為 99.5%的鋁錠，根據 470E 號合同，其價格為每噸 152 英鎊，而當時(1993 年 6 月 29 日)的市場通價為每公噸 243 至 248 英鎊，價差為每公噸 93.50 英鎊，6,000 公噸鋁錠的總價差為 561,000 英鎊。

6,000 metric tons of Aluminum Ingots of 99.5% purity, under contract 470E, were priced at £ 152 per metric ton. The market price prevailing at that time (the 29th of June, 1993) ranged from £ 243 to £ 248 per metric ton. The Price difference per metric ton is £ 93.50, giving a total difference of £ 561,000 for 6,000 metric tons.

另有 2,000 公噸純度為 99.7%的鋁錠，按 471E 號合同的規定，價格為每噸 154 英鎊，當時(1993 年 6 月 29 日)的市場通價為每公噸 245 至 250 英鎊，價差為每公噸 93.50 英鎊，故 2,000 公噸鋁錠的總價差便為 187,000 英鎊。

Another 2000 metric tons of 99.7% purity Aluminum Ingots, under contract 471E were priced at £ 154 per metric ton. The market price on the 29th of June 1993, was between £ 245 and £ 250 per metric ton. The price difference per metric ton indicates £ 93.50, resulting in a total difference of £ 187,000 for 2000 metric tons.

上述兩個合同規定的 8,000 公噸鋁錠的總價差為 784,000 英鎊(即 561,000 英鎊加 187,000 英鎊)。

The above-mentioned two contracts aggregate a sum of £ 748,000 (=£ 561,000+ £ 187,000) for the price difference of totally 8000 metric tons of Aluminum Ingots.

申訴人在此除要求被訴人賠償因違約而造成的總額為 748,000(七十四萬八千)英鎊的損失之外，還要求負擔此次的全部仲裁費用。

The Plaintiff hereby requests that it be compensated by the Defendant not only with an amount of losses totaling £ 748,000 (in Pound Sterling of Seven hundred and Forty Eight Thousands) caused by the Defendant's failure to execute the contracts concluded, but also with all costs arising from this arbitration.

隨仲裁申請書附上 3,740(三千七百四十)英鎊，折合人民幣 15,729(一萬五千七百二十九)元，用作仲裁費，預付《對外貿易仲裁委員會規則》第 6 條所規定之費用。

Enclosed £ 3,740 for filing fees (in Pound Sterling of Three Thousand Seven Hundred and Forty), equivalent to the Chinese currency RMB15,729 (Fifteen Thousand Seven Hundred and Twenty Nine Yuan), paid in advance in compensation for the costs of arbitration in accordance with Clause 6 of the F. T. Arbitration Commission.

附件：委託指定仲裁員聲明書

Enclosure : Statement of Appointing Arbitrator

申訴人：MM 公司

M. M. Corp.

1995 年 5 月 20 日

May 20, 1995