

# CENTRE D'ARBITRAGE

## CHAMBRE DE COMMERCE DU GRAND-DUCHÉ DE LUXEMBOURG

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### ***Rules of Arbitration***

#### **Article 1      Arbitration Center and Arbitration Council**

1. An Arbitration Center (hereafter referred to as the Center) is hereby established within the framework of the Chamber of Commerce. Its function shall be to provide for the settlement by arbitration of business disputes in accordance with these Rules.

2. The Center shall be managed by a Council of Arbitration (hereafter referred to as the Council) consisting of at least five members who shall be appointed by the General Assembly of the Chamber of Commerce.

The following shall be ex officio members of the Council: the President of the Luxembourg National Committee of the International Chamber of Commerce who shall act as Chairman, the Luxembourg member of the Court of Arbitration of the ICC, the “Bâtonnier de l'Ordre des avocats” of Luxembourg, the President of the “Conseil de l'Institut des Réviseurs d'Entreprises”, and the General Director of the Chamber of Commerce.

3. The Council shall meet upon invitation of the Chairman when necessary. The deliberations of the Council shall be valid when at least more than half of its members are present. The Chairman of the Council or his deputy shall have power to take urgent decisions on behalf of the Council, provided that any such decision shall be reported to the Council at its next session.

4. The secretariat of the Council, including its financial management, shall be carried out by the Secretariat of the Center (hereafter referred to as the Secretariat) .

5. The Center may, within the limits of the financial resources at its disposal, initiate all activities relating to the promotion of arbitration, in particular by the establishment of a collection of relevant documentary material and by the organization of training courses.

#### **Article 2      Arbitrators: appointment, challenge, replacement** **General provisions**

1. The Council of Arbitration does not itself settle disputes. Insofar as the parties shall not have provided otherwise, it appoints or confirms the arbitrators in accordance with the provisions of this article.

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2. The disputes may be settled by a sole arbitrator or by three arbitrators. In the following articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be.

3. Where the parties have agreed that the disputes shall be settled by a sole arbitrator, they may, by agreement, nominate him for confirmation by the Council. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been communicated to the other party, the sole arbitrator shall be appointed by the Council.

4. Where the dispute is to be referred to three arbitrators, each party shall nominate in the Request for Arbitration and the Answer thereto respectively one independent arbitrator for confirmation by the Council. If a party fails to nominate an arbitrator, the appointment shall be made by the Council. The third arbitrator, who will act as chairman of the arbitral tribunal, shall be appointed by the Council, unless the parties have provided that the arbitrators nominated by them shall agree on the third arbitrator within a fixed time limit. In such a case the Council shall confirm the appointment of such third arbitrator. Should the two arbitrators fail, within the time limit fixed by the parties or the Council, to reach agreement on the third arbitrator, he shall be appointed by the Council.

5. Where the parties have not agreed upon the number of arbitrators, the Council shall appoint a sole arbitrator, save where it appears to the Council that the dispute is such as to warrant the appointment of three arbitrators. In such a case the parties shall each have a period of 15 days within which to nominate an arbitrator.

6. Where the Council is to appoint arbitrators, it shall choose them having regard to the nature of the dispute, the applicable law and the language of the procedure. The members of the Council may not be appointed as arbitrators in a case subject to these Rules, except when the parties agree to do so or in special circumstances, to be determined by the Council, in the absence of the member concerned.

7. A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

For a challenge to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

The Secretariat afford an opportunity for the arbitrator concerned, the other party or parties and any other arbitrators to comment the challenge in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

An arbitrator shall be replaced upon death, upon acceptance by the Council of the arbitrator's resignation, upon acceptance by the Council of a challenge, or upon acceptance by the Council of a request of all the parties.

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An arbitrator shall also be replaced on the Council's own initiative when it decides that the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

When on the basis of information that has come to its attention, the Council considers applying the provisions of the precedent paragraph, it shall decide the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

When an arbitrator is to be replaced, the Council has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.

Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Council pursuant to subparagraph 4 and 5 of this paragraph, the Council may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Council shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

8. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.

9. Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.

10. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in the precedent paragraph concerning the arbitrator's impartiality or independence which may arise during the arbitration.

11. The decisions of the Council as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final, and the reasons for such decisions shall not be communicated.

12. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.

### **Article 3     Request for arbitration**

1. A party wishing to have recourse to arbitration by the Chamber of Commerce shall submit its Request for arbitration to the Secretariat.

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The date when the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of commencement of the arbitral proceedings.

2. The Request for arbitration shall inter alia contain the following information:

a) names in full, description, and addresses of the parties, b) a statement of the claimant's case, c) the relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve clearly to establish the circumstances of the case, d) all relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of article 2 above.

3. The Secretariat shall send a copy of the Request and the documents annexed thereto to the defendant for his Answer.

#### **4      Answer to the request**

1. The defendant shall within 30 days from the receipt of the documents referred to in paragraph 3 of article 3 comment on the proposals made concerning the number of arbitrators and their choice and, where appropriate, nominate an arbitrator. He shall at the same time set out his defence and supply relevant documents.

In exceptional circumstances the defendant may apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the defendant's comments on the proposals made with regard to the number of arbitrators and their choice and also, where appropriate, the nomination of an arbitrator. If the defendant fails so to do, the Secretariat shall report to the Council which shall proceed with the arbitration in accordance with these Rules.

The answer shall be submitted to the Secretariat in the number of copies specified by article 6 of the Rules.

2. A copy of the Answer and of the documents annexed thereto, if any, shall be communicated to the claimant for his information.

#### **Article 5      Counter-claim**

1. If the defendant wishes to make a counter-claim, he shall file the same with the Secretariat, at the same time as his Answer as provided for in article 4.

2. It shall be open to the claimant to file a Reply with the Secretariat within 30 days from the date when the counter-claim was communicated to him. Prior to the transmission of the file to the arbitrators, the Secretariat may grant the claimant an extension of time for submitting the reply.

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### **Article 6      Pleadings and written statements, notifications or communications**

All pleadings and written statements submitted by the parties, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat. A copy of any notification or communication from the arbitrator to the parties shall be sent to the Secretariat.

All notifications or communications from the Secretariat and the arbitrator shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof.

A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with the dispositions above.

Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with article 6 of the Rules.

### **Article 7      Absence of agreement to arbitrate**

Where there is *prima facie* no agreement between the parties to arbitrate or where there is an agreement but it does not specify the Chamber of Commerce, and if the defendant does not file an Answer within the period of 30 days provided by paragraph 1 of article 4 or refuses arbitration by the Chamber of Commerce, the claimant shall be informed that the arbitration cannot proceed.

### **Article 8      Effect of the agreement to arbitrate – conservatory and interim measures**

1. Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted *ipso facto* to the Rules in effect on the date of commencement of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement. If the parties have agreed to submit to arbitration by the Chamber of Commerce, they shall be deemed thereby to have submitted to the present Rules.

2. If a party against which a claim has been made does not submit an answer, or raises one or more pleas concerning the existence, validity or the scope of the agreement to arbitrate, and should the Council be satisfied of the *prima facie* existence of such an agreement, the Council may, without prejudice to the admissibility or merits of the plea or pleas, decide that the arbitration shall proceed. In such a case any decision as to the arbitrator's jurisdiction shall be taken by the arbitrator himself.

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

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4. Unless otherwise provided, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void or allegation that it is inexistent provided that he upholds the validity of the agreement to arbitrate. He shall continue to have jurisdiction, even though the contract itself may be inexistent or null and void, to determine the respective rights of the parties and to adjudicate upon their claims and pleas.

5. Before the file is transmitted to the arbitrator, and in exceptional circumstances even thereafter, the parties shall be at liberty to apply to any competent judicial authority for interim or conservatory measures, and they shall not by so doing be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrator. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitrator thereof.

### **Article 9      Deposit to cover costs of arbitration**

1. The Council shall fix the amount of the deposit in a sum like to cover the costs of arbitration of the claims which have been referred to it.

Where, apart from the principal claim, one or more counter-claims are submitted, the Council may fix separate deposits for the principal claim and the counter-claim or counter-claims.

2. As a general rule, the deposits shall be paid in equal shares by the claimant or claimants and the defendant or defendants. However, any one party shall be free to pay the whole deposit in respect of the claim or the counter-claim should the other party fail to pay a share.

3. The Secretariat may make the transmission of the file to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the deposit.

4. When the Terms of Reference are communicated to the Council, in accordance with the provisions of article 13, the Council shall verify whether the requests for deposit have been complied with.

The Terms of Reference shall only become operative and the arbitrator shall only proceed in respect of those claims for which the deposit has been duly paid to the Center

5. The amount of any deposit fixed by the Counsel pursuant to this article may be subject to readjustment at any time during the arbitration.

5. All financial transactions relating to an arbitral procedure shall be carried out exclusively through the Secretariat.

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### **Article 10     Transmission of the file to the arbitrator**

Subject to the provisions of article 9, the Secretariat shall transmit the file to the arbitrator as soon as it has received the defendant's Answer to the Request for Arbitration, at the latest upon the expiry of the time limits fixed in articles 4 and 5 above for the filing of these documents.

### **Article 11     Applicable Rules of law - Rules governing the proceedings**

1. The parties shall be free to agree upon the rules of law to be applied by the arbitrator to the merits of the dispute. In the absence of any such agreement, the arbitrator shall apply the rules of law which it determines to be appropriate.

Arbitrator shall assume the powers of an *amiable compositeur* or decide *ex aequo et bono* only if the parties have agreed to give it such powers.

Arbitrator shall in any case take account of the provisions of the contract, if any, between the parties and of any relevant trade usages.

2. The rules governing the proceedings before the arbitrator shall be those resulting from the Rules and, where the Rules are silent, any rules which the parties - or, failing them, the arbitrator - may settle, and whether or not reference is thereby made to a national procedural law to be applied to the arbitration.

### **Article 12     Place of Arbitration**

The place of arbitration shall be fixed at the Chamber of Commerce.

The arbitrator may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.

The arbitrator may deliberate at any location he considers appropriate.

### **Article 13     Terms of Reference**

1. Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the documents, or in the presence of the parties, and in the light of their most recent submissions, a document defining his Terms of Reference. This document shall include the following particulars:

a) the full names and description of the parties, b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made, c) a summary of the parties' respective claims, d) definition of the issues to be determined, e) the name in full, address and other contact details of each of the arbitrators, f) the place of arbitration, g) particulars of the applicable procedural rules and, if such is the case, reference to the power

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conferred upon the arbitrator to act as *amiable compositeur*, h) such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the Council or the arbitrator.

2. The document mentioned in paragraph 1 of this article shall be signed by the parties and the arbitrator. Within two months of the date when the file has been transmitted to him, the arbitrator shall transmit to the Council the said document signed by himself and by the parties.. The Council may extend this time limit pursuant to a reasoned request from the arbitrator or on its own initiative if it decides it is necessary to do so.

3. If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Council for approval. When the Terms of Reference have been signed in accordance with article 13 paragraph 2 above or approved by the Council, the arbitration shall proceed.

After the Terms of Reference have been signed or approved by the Council, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitrator, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

### **Article 14     Case management conference and procedural timetable**

1. When drawing up the Terms of Reference or as soon as possible thereafter, the arbitrator shall convene a case management conference to consult the parties on procedural measures that may be adopted.

2. During or following such conference, the arbitrator shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Council and the parties.

3. To ensure continued effective case management, the arbitrator, after consulting the parties, by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.

4. Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitrator shall determine the means by which the conference will be conducted.

The arbitrator may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

### **Article 15     Arbitral proceedings**

1. The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties together in person if one of them so requests; and



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failing such a request he may of his own motion decide to hear them. In addition, the arbitrator may decide to hear any other person in the presence of the parties or in their absence provided they have been duly summoned.

2. The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and/or hear them in person.

3. The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.

### **Article 16     Hearings**

1. At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat.

2. If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.

3. The arbitrator shall determine the language or languages of the arbitration, due regard being paid to all the relevant circumstances and in particular to the language of the contract.

4. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitrator and of the parties, persons not involved in the proceedings shall not be admitted.

5. The parties may appear in person or through duly accredited agents. In addition, they may be assisted by advisers.

### **Article 17     Closing of the proceedings and Date for submission of draft awards**

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitrator shall:

- a) declare the proceedings closed with respect to the matters to be decided in the award; and
- b) inform the Secretariat and the parties of the date by which he expects to submit its draft award to the Council for approval pursuant to article 22 of the Rules.

After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitrator.

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### **Article 18     Award by consent**

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with article 10, the settlement shall be recorded in the form of an arbitral award made by consent of the parties, if so requested by the parties and if the arbitrator agrees to do so.

### **Article 19     Time-limit for awards**

1. The time limit within which the arbitrator must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitrator or by the parties of the Terms of Reference or, the case of application of article 13 paragraph 3 of the Rules, the date of the notification to the arbitrator by the Secretariat of the approval of the Terms of Reference by the Council. The Council may fix a different time limit based upon the procedural timetable established to article 14 paragraph 2 of the Rules.

2. The Council may extend the time limit pursuant to a reasoned request from the arbitrator or on its own initiative if it decides it is necessary to do so.

### **Article 20     Awards by three arbitrators**

When three arbitrators have been appointed, the award is given by a majority decision, if there be no majority, the award shall be made by the Chairman of the arbitral tribunal alone.

The award shall state the reasons upon which it is based.

### **Article 21     Decision as to costs of arbitration**

1. The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration 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 the arbitration shall include the arbitrator's fees and expenses, the administrative costs, the fees and expenses of any experts, and the normal legal costs incurred by the parties for arbitration.

3. The statement of costs is submitted for the approval of the Council which shall ensure that the costs are fixed within reasonable limits having regard to the nature of the dispute and the degree of difficulty the problem raised. The Council may establish scales of costs and fees.

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### **Article 22     Scrutiny of the award by the Council**

Before signing an award, whether partial or definitive, the arbitrator shall submit it in draft form to the Council.

The Council may lay down modifications as to the form of the award and, without affecting the arbitrator's liberty of decision, may also draw his attention to points of substance.

No award shall be signed until it has been approved by the Council as to its form.

### **Article 23     Making of the award**

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date when it is signed by the arbitrator.

### **Article 24     Notification of the award to parties**

1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitrator provided always that the costs of the arbitration have been fully paid by the parties or by one of them.

2. Additional copies certified true by the Secretariat shall be made available at any time but only to the requesting party.

3. By virtue of the notification made in accordance with paragraph 1 of this article, the parties waive any other form of notification or deposit on the part of the arbitrator.

### **Article 25     Finality and enforceability of the award**

1. The arbitral award shall be final.

2. By submitting the dispute to arbitration by the Center, 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 recourse insofar as such waiver can validly be made.

### **Article 26     Deposit of award**

An original of each award made in accordance with the present Rules shall be deposited with the Secretariat.

The arbitrator and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.

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**Article 27     Limitation of liability**

The arbitrator, any person appointed by the arbitrator, the Center and its members, the Chamber of Commerce and its employees, shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

**Article 28     General rule**

In all matters not expressly provided for in these Rules, the Council and the arbitrator shall act in the spirit of these Rules and in accordance with the practice of the International Chamber of Commerce. They shall make every effort to make sure that the award is enforceable at law.