

The Venice Court of National and International Arbitration

Venice Court of National and International Arbitration

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The Venice Court of National and International Arbitration

1

Standard VENCA Arbitration Clause

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Any dispute arising out or connected with this Contract regarding in particular, but without prejudice to the generality of the foregoing, its conclusion, execution, validity, breach, termination and determination of damages, shall be finally settled under the Rules of the Venice Court of National and International Arbitration by one or more Arbitrators appointed in accordance with said Rules.

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The Rules of The Venice Court of National and International Arbitration

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Section One - Rules of General Application

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Definitions

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In these Rules:

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“Arbitration Agreement” means an agreement, either separate or incorporated into a contract or contained in an exchange of letters or telegrams or other means of communication by which the Parties submit to arbitration any dispute which has arisen or which may arise between them;

8

“Arbitrator/s” means the arbitrator or arbitrators appointed by the Parties or the Court;

9

“Claimant” means the Party initiating an arbitration;

10

“Respondent” means the Party against which the arbitration is promoted, as named in the Request for Arbitration;

11

“Rules” means these rules to be also called “Venice Rules”;

12

“Tribunal” includes a sole arbitrator or all the arbitrators where more than one is appointed;

13

“Court” means the Venice Court of national and International Arbitration, to be also called “VENCA”.

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1. - Arbitration Agreement

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1.1 The arbitral procedure set forth in these Rules applies when the Parties have executed an Arbitration agreement referring to the Court or the Rules.

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1.2 These Rules apply as they are in force in the moment in which the Arbitration Agreement is executed unless agreed otherwise by the Parties.

17

2. - The powers of the Court 18

2.1 The Court does not itself settle disputes. 19

2.2 The Court administers any arbitration submitted by the Parties in compliance with these Rules. 20

2.3 The Court may also act as appointing authority and/or administer arbitrations under the UNCITRAL rules if the Parties have so agreed in the Arbitration Agreement. 21

3. - Request for Arbitration 22

3.1 The Claimant transmits the request for Arbitration to the Respondent and to the Court. The dispute is deemed to be referred to arbitration at the date the Court receives the Request for Arbitration. 23

3.2 The Court registers the Request for Arbitration as soon as it receives it and promptly informs the Claimant and the Respondent of the date of its registration and the file references of the case. 24

3.3 The Request for Arbitration contains: 25

(i) any particulars regarding the Parties namely the names, addresses and telephone, telex, telefax or other communication references; 26

(ii) a copy of the Arbitration Agreement; 27

(iii) a description of the nature and object of the dispute and of the relevant circumstances; 28

(iv) a summary statement of claim indicating, to the extent possible, the relief sought and the amount claimed; 29

(v) the appointment/s required by the Arbitration Agreement; 30

(vi) the name of the Claimant's representative/s and his/her address for the purposes of the arbitration proceedings. 31

4. - Answer to the Request 32

4.1 The respondent addresses to the Claimant and to the Court the Answer to the Request within 30 (thirty) days from the date on which the Respondent has received the request for Arbitration from the Claimant, unless a different term is provided for in the Arbitration Agreement. 33

4.2 The Answer to the Request contains: 34

(i) the Respondent's defences against the Request for Arbitration; 35

(ii) the counter-claim, if any; 36

(iii) the appointment/s required by the Arbitration Agreement; 37

(iv) the name of the respondent's representative/s and his/her address for the purposes of the arbitration proceedings. 38

4.3 Under exceptional circumstances and upon justified request of the Respondent, the Court may authorise the Respondent to limit its Answer to item (iii) of art. 4.2 above and in such a case it fixes an extended term for the submission of the complete Answer. 39

5. - Communications prior to the Preliminary Conference 40

5.1 Prior to the Preliminary Conference (art. 18.2), all communications required by or allowed under these Rules may be effected in any of the forms set forth in art. 20.2, Section Two of these Rules. If exchanged between the Parties communications are copied to the Court. 41

If exchanged between the Court and either Party, communications are copied to the other Party. 42

5.2 After the notification by the Court of the establishment of the Tribunal, any written statements, notices or other communications are submitted by a Party directly to the Tribunal and a copy thereof is at the same time supplied by that Party to the other Party. 43

5.3 The Tribunal sends to the Court a copy of each order or other decision that it makes. 44

6. - The Secretariat of the Court 45

6.1 The Secretariat is instituted at the Court and is managed by the Secretary General. The Secretariat: 46

(i) assists the Court in the performance of its tasks and duties; 47

(ii) registers the Request for Arbitration and the Answer to the Request; 48

(iii) ensures proper and timely communications between the Court and the Parties; 49

(iv) entertains any necessary contact with the Arbitrator/s for the organisation of the arbitral proceedings; 50

(v) transmits the file of the case to the Arbitrator/s as soon as appointed; 51

(vi) ensures that payment of fees and deposits provided for by the Rules be timely effected; 52

(vii) performs any other administrative functions. 53

7. - Seat of the arbitration

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7.1 In the absence of an agreement reached by the Parties within the date of submission of the Answer to the Request at the latest, the seat of the arbitration is the seat of the Court in Venice or a different seat fixed by the Court.

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7.2 The Tribunal may, after consulting the Parties, decide that certain hearings be held in a place other than the arbitration's seat when convenient for the efficient conduct of the proceedings.

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8. - Language of the arbitration

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8.1 The language of the arbitration is agreed upon by the Parties within the date of submission of the Answer to the Request at the latest.

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8.2 In the absence of the Parties' agreement the Tribunal determines the language or the languages that is/are the sole language/s of the arbitration, taking into account the language of the contract and of the correspondence between the Parties. This determination does not affect the validity of any document previously submitted in a different language, provided that such language is reasonably linked to the contract.

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9. - Law applicable to the merits

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9.1 The Parties are free to agree upon the rules of law applicable to the merits of the dispute. In the absence of any such agreement, the Tribunal applies the law with which the contract has the closest connection.

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9.2 The Tribunal decides *ex aequo et bono* only upon written agreement between the Parties.

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10. - Appointment by the Court of an Arbitrator

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In the event the Parties have not appointed the Arbitrator/s and not designated a different appointing authority within the applicable terms, the arbitrator/s is/are appointed by the Court within 30 (thirty) days from when the Court is noticed by the most diligent Party. The same applies when the Arbitrators appointed by the Parties fail to appoint the presiding Arbitrator.

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11. - Nationality of the Presiding arbitrator/s

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Where the Parties are residents or have their legal seat in different countries, the presiding Arbitrator is appointed by the Court among the nationals of a third country, unless otherwise agreed by the Parties.

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12. - Number of arbitrators

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In the event the Arbitration Agreement does not specify the number of arbitrators, the dispute is decided by 3 (three) arbitrators, unless the Court directs that a sole Arbitrator is appointed in consideration of the importance of the dispute within 30 (thirty) days after receipt of the Answer to the Request.

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13. - Independence and impartiality of Arbitrators

69

13.1 As soon as informed of his/her appointment, the Arbitrator promptly declares to the Court whether he/she is ready to accept. In case of acceptance the Arbitrator provides the Court with a written statement whereby he/she declares either the lack of any link to them or the existence of any possible circumstances that could reasonably impair the Parties' trust in the Arbitrator's independence and impartiality. The Arbitrator's statement is forwarded to the Parties without delay.

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13.2 The statement of acceptance implies the Arbitrator's commitment to remain independent and to comply with the Rules.

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14. - Challenge procedure

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14.1 A Party may challenge the Arbitrator appointed by the other Party or the Court within 30 (thirty) days from when it has received copy of the statement of acceptance or has become aware of the circumstances on which the Party intends to base its request for challenge.

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14.2 The request for challenge has to be motivated. The Court decides after having heard the Arbitrator and given to the other Arbitrators and the other Party the opportunity to comment.

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14.3 The Court decides upon the challenge within 15 (fifteen) days from the completion of the procedure set forth in art. 14.2 above. Immediate notice of the acceptance or dismissal of the request for challenge is given to the challenged Arbitrator, to the Parties and to the other Arbitrators.

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15. - Replacement

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Whenever it is necessary to replace an appointed arbitrator, because of the non acceptance or resignation or challenge or death, the provisions set forth in art. 10 above ruling appointment apply.

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16. - Jurisdiction

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16.1 When an objection is raised as to the lack of jurisdiction of the tribunal, including any objection as to the existence, effectiveness or validity of the Arbitration Agreement, the Tribunal rules on such objection either by interim award or in the final award.

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Section Two - Rules Applying to Ordinary Procedure

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17. - Ordinary Procedure

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The Ordinary Procedure applies to an arbitration where the disputed amount exceed Euro 100.000 (one hundred thousand).

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The rules contained in this Section apply to Ordinary Procedure.

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18. - Preliminary Conference

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18.1 As soon as the Tribunal has received the file of the case from the Secretariat, the Tribunal convenes the Parties to the Preliminary Conference for the purpose of recording the items listed in art. 18.2 herebelow and organising and scheduling the subsequent proceeding.

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18.2 At the Preliminary Conference the Tribunal draws up a document containing the following terms:

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a) the full names and address of the Parties, their representatives and attorneys;

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b) the addresses of the Parties to which notifications or communications arising in the course of the arbitration may validly be made;

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c) the appointment, if deemed useful by the Tribunal, of a secretary of the Tribunal and the determination of the relevant tasks and fees;

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d) the name and address of the Arbitrator/s;

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e) the description of the facts relating to the dispute;

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f) the description of the Parties' requests as to claims, counter-claims and relieves;

92

g) the arbitration seat and language/s;

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h) particulars of the procedural rules and substantive rules of law to be applied;

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i) any other useful particulars relevant to the case, including recording of the items indicated at arts. 18.3 and 18.4.

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18.3 At the Preliminary Conference the Parties are represented by duly empowered attorneys whose powers are delivered to and verified by the Tribunal. Where the powers are deemed by the Tribunal not satisfactory for the requirements of the proceedings, the Tribunal instructs the concerned Party to issue new powers satisfying such requirements.

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18.4 At the Preliminary Conference the Arbitrators and the Parties agree on the schedule of the proceedings, including in particular the terms for filing the detailed statement of claim accompanied by the supporting documents and the detailed answer with relevant supporting documents.

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18.5 The document recording the Preliminary Conference is signed by the Arbitrator/s and the Parties or their representatives.

98

19. - Hearings	99
19.1 The Tribunal fixes number, dates, time and place of arbitral hearings.	100
19.2 The Tribunal gives written notice to the Parties that the hearing is called, at least fifteen days in advance, unless otherwise agreed by the Parties.	101
19.3 The hearings are attended by the Parties' representatives and by the Arbitrators, with the exclusion of third parties, except when interpreters or typists have been admitted by the Tribunal upon the justified request of a Party.	102
19.4 The cost of interpretation, transcription or tape/video recording is at the charge of the Party requesting such services, and procurement of these services is made by the Secretariat.	103
20. - Communications after the Preliminary Conference	104
20.1 Any written communication or brief or application or submission relating to the proceedings is:	105
(i) if exchanged between the Parties, copied to the Tribunal and to the Secretariat;	106
(ii) if exchanged between the Tribunal and either Party, copied to the other Party and to the Secretariat.	107
20.2 Any written form of communication is admitted, be it by mail or facsimile or electronic means or by other similar mean if authorised by the Tribunal.	108
21. - Periods of time	109
21.1 The periods of time fixed by the Tribunal for the communication of written statements should not exceed 45 (forty-five) days. However, the Tribunal may extend the time-limits if it concludes that an extension is justified.	110
21.2 Briefs or submissions are exchanged or deposited within the time-limits fixed by the Tribunal.	111
22. - Evidence	112
22.1 If witnesses are to be heard, at least 15 (fifteen) days before the hearing each Party communicates to the Tribunal and to the other Party the names and addresses of the witnesses he intends to present, the subject upon and the language in which such witnesses will give their testimony.	113
22.2 Witnesses for each Party e submitted to questions or other examination by the Tribunal, or directly by the Parties upon previous authorisation by the Tribunal. The Tribunal is entitled to modify such procedure, but shall grant both Parties equal opportunities to present any kind of documentation and evidence lawfully acquired. In	114

any case full respect is insured to the right of the Party to duly present his/her case in compliance with the terms fixed by the Parties for the issuing of the arbitral award.

23. - Default

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23.1 If, within the period of time fixed by the Tribunal:

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(i) the Claimant has failed to communicate his/her claim without showing sufficient cause for such failure, the Tribunal issues an order for the termination of the arbitral proceedings, or

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(ii) the Respondent has failed to communicate his/her statement of defence without showing sufficient cause for such failure, the Tribunal orders that the proceedings continue.

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23.2 If one of the Parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Tribunal has the authority to proceed with the arbitration.

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23.3 If one of the Parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Tribunal may make the award on the evidence before it

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24. - Closing of the hearing

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24.1 The Tribunal may inquire the Parties whether they have any further proofs to offer or witnesses to be heard or submission to make and, if there are none, the Tribunal declares closed the hearing and a minute thereof is recorded.

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24.2 The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a Party, to reopen the hearing at any time before the award is made.

123

25. - Time for rendering the Award

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Unless otherwise agreed by the Parties or specified by law, the award is issued no later than 90 (ninety) days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the transmittal of the final statements and proofs to the Tribunal.

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Section Three - The Award

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26. - Decisions

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26.1 When there are three Arbitrators, any award or other decision of the Tribunal is

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made by a majority of the Arbitrators. If there is no majority, the award is made by the presiding Arbitrator of the Tribunal alone.

26.2 In the case of questions of procedure, when there is no majority or when the Tribunal so authorises, the presiding Arbitrator may decide on his/her own, subject to revision, if any, by the Tribunal. 129

27. - Form and effect of the award 130

27.1 In addition to making final award, the Tribunal is entitled to make interim, interlocutory, or partial awards. 131

27.2 The award is made in writing and is final and binding on the Parties. The Tribunal states the reasons upon which the award is based. The final or partial award is signed by the Arbitrators and it contains the date on which and the place where the award is made. Where there are three Arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature. 132

27.3 The award may be made public only with the consent of both Parties. 133

27.4 Originals of the award signed by the Arbitrators are communicated to the Secretariat by the Tribunal in a number equal to the number of the Parties and then immediately sent to the Parties the Secretariat. The Secretariat keeps a copy of the award. 134

28. - Custody of the records 135

28.1 When the arbitration is closed, the Tribunal delivers the relevant file of the proceedings to the Secretary General. 136

28.2 The Secretary General, upon request of the Parties, will deliver, at Party's expense, certified copies of any papers in the Court's possession that may be required in judicial proceedings relating to the arbitration. 137

29. - Interpretation of the award 138

29.1 Within 45 (forty-five) days after the receipt of the award, either Party, with notice to the other Party, may request that the Tribunal gives an interpretation of the award. 139

29.2 The interpretation is given in writing within 60 (sixty) days after the receipt of the request. The interpretation forms part of the award and the provisions of arts. 27.2, 27.3 and 27.4 of the present Section Three apply. 140

30. - Correction of the award 141

30.1 Within 30 (thirty) days after receipt of the award, a Party may, by notice to the Tribunal and copy to the Court and the other Party, request the Tribunal to correct in 142

the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 (thirty) days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with art. 27.2 of this Section Three, shall become part of the award.

30.2 After having heard the parties, the Tribunal may correct any error of the type referred to in art. 30.1 on its own initiative within 30 (thirty) days after the date of the award. 143

31. - Administrative fee 144

31.1 Registration by the Secretariat of the Request for arbitration is subjected to the payment to the Court of a registration fee. The amount of the registration fee is fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Court. 145

The registration fee is not refundable. 146

No action is taken by the Court on a Request for Arbitration until the registration fee has been paid. 147

31.2 The Court shall notify the Claimant of the amount of the administration fee as soon as possible after receipt of the Request for Arbitration. The administration fee is paid by the Claimant to the Court within 15 (fifteen) days after the request from the Secretariat. In the case of a counter-claim, an administration fee is paid by the Respondent to the Court within 15 (fifteen) days after request of the Secretariat made soon after the date on which the counter-claim is made. 148

31.3 The amount of the administration fee is calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration. Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable, and the increased amount is due by the Claimant or the Respondent, as the case may be. 149

31.4 If a Party fails, within 15 (fifteen) days after a second reminder in writing from the Secretariat, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be. In a timely manner, the Tribunal informs the Court of the amount of the claim and any counter-claim, as well as of any increase thereof. 150

31.5 The Court may, in the event of proved extreme hardship of any Party, defer or reduce the administrative fees. 151

32. - Fees of the Arbitrators 152

32.1 The amount and currency of the fees of the Arbitrators and the modalities and 153

timing of their payment are fixed by the Court, after consultation with the Arbitrators and the Parties.

32.2 Unless the Parties and the Arbitrators agree otherwise, the amount of the fees of the Arbitrators are provisionally determined within 15 (fifteen) days after the Preliminary Conference or at any later time as decided by the Tribunal within the range of minimum and maximum fees set out in the Schedule of Fees applicable on the date of the commencement of the arbitration, taking into consideration the estimated time needed by the Arbitrators for conducting the arbitration, the amount in dispute, the complexity of the subject matter of the dispute, the urgency of the case and any other relevant circumstances of the case. 154

32.3 Prior to notification of the final award, the Court fixes and the Secretariat communicates to the parties any due adjustment of the provisional determination, and delivery of the final award is made to the parties after the adjustment has been settled by the parties in accordance with art. 33.5 of this Section Three. 155

33. - Deposits

33.1 Upon receipt of notification from the Court of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration. In the course of the arbitration, the Court may require that the Parties make supplementary deposits. 156 157

33.2 If the required deposits are not paid in full within 15 (fifteen) days after receipt of the corresponding notification, the Court informs the Parties in order that either of them may make the required payment. 158

33.3 Where the amount of the counter-claim greatly exceed the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Court in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim is paid by the Claimant and the totality of the deposit on account of counter claim is paid by the Respondent. 159

33.4 If a Party fails, within 15 (fifteen) days after a second reminder in writing from the Court, to pay the required deposit, it is deemed to have withdrawn the relevant claim or counter-claim. 160

33.5 After the award has been made, the Court shall, in accordance with the award, render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties or require the payment of any amount due by the Parties. 161

34. - Award of costs incurred by a Party

In its award, the Tribunal may, subject to any contrary agreement by the Parties and in the light of all circumstances and the outcome of the arbitration, order a Party to pay 162 163

the whole or part of reasonable expenses incurred by the other Party in presenting its case, including those incurred for legal representatives and witnesses and including those paid to the Court as administrative fees and/or fees for the Arbitrators.

35. - Interpretation and application of the Rules

164

The Tribunal interprets and applies these Rules insofar as they relate to the Arbitrator's powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of these Rules, it is decided by a majority vote. If that is unobtainable, either an Arbitrator or a Party may refer the question to the Court for final decision. All other rules are interpreted and applied by the Court.

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36. - Confidentiality of the existence of the arbitration

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36.1 Except to the extent necessary in connection with a court challenge to the arbitration or an action for the enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a Party to a third party unless it is required to do so by law or by a competent regulatory body, and then only:

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(i) by disclosing no more than legally required, and

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(ii) by furnishing to the Tribunal and to the other Party, if the disclosure takes place during the arbitration, or to the other Party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

169

36.2 Notwithstanding what provided for in paragraph 36.1, a Party may disclose to a third party the names of the Parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candour owed to that third party.

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37. - Confidentiality of disclosures made during the arbitration

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37.1 Any documentary or other evidence given by a Party or a witness in the arbitration are treated as confidential. To the extent that it describes information that is not in the public domain, such evidence shall not be used or disclosed to any third party for any purpose whatsoever by a Party whose access to that information arises exclusively as a result of its participation in the arbitration and such use or disclosure is permitted only by consent of the Parties or the order of a court having jurisdiction.

172

37.2 For the purposes of this Article, a witness called by a Party is not considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the possible witness's testimony in case of admittance by the Tribunal of the cross-examination, the Party calling such witness

173

is responsible for the maintenance by the witness of the same degree of confidentiality as that required by the Party.

38. - Maintenance of confidentiality by the Court and Arbitrators 174

38.1 Unless the Parties agree otherwise, the Court, the Tribunal and each Arbitrator maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law. 175

38.2 Notwithstanding the above, the Court may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the Parties or the particular circumstances of the dispute to be identified. 176

Section Four - Expedited Procedure 177

39. - Expedited Procedure 178

Expedited procedure applies to an arbitration where the disputed amounts does not exceed Euro 100.000 (one hundred thousand). The rules contained in this Section apply to Expedited Procedure unless otherwise agreed by the Parties. 40. Notice by telephone The Parties shall accept all notices from the Court by telephone. Such notices by the Court shall subsequently be confirmed in writing to the Parties also by fax or telegram. Should there be a failure to confirm in writing any notice hereunder, the proceedings shall nonetheless be valid if notice has, in fact, been given by telephone. 179

41. - Appointment of Arbitrator 180

41.1 When the value of the Request for Arbitration, or counterclaims, is not higher than Euro 100.000 (one hundred thousand), excluded the interests and the costs of arbitration, the Court appoints a sole Arbitrator unless otherwise agreed by the Parties. 181

41.2 The appointment of the Arbitrator is communicated by telephone and confirmed in writing to the Parties. The Arbitrator so appointed may be challenged for the reasons and pursuant to the terms established in art. 14, Section One of these Rules. Within 20 (twenty) days of the above notice the Parties communicate by telephone to the Court any objections against the appointed Arbitrator. Any objections against the Arbitrator are confirmed by the Party in writing and the copy of such communication is sent to the other Party or Parties who have the right to comment. 182

42. - The hearing 183

Generally the hearing is completed within a day, should the case not be resolved by 184

250.001	500.000	6.000	17.500	15.000	40.000
500.001	2.500.000	10.000	35.000	25.000	85.000
2.500.001	5.000.000	12.500	60.000	32.500	115.000
over	5.000.000	20.000	60.000 +0.5% on the amount exceeding Euro 5.000.000	45.000	115.000 +1% on the amount exceeding Euro 5.000.000

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Metadata

SiSU Metadata, document information

Document Manifest @:

`<http://www.jus.uio.no/lm/venice.court.arbitration.national.and.international.rules/sisu_manifest.html>`

Title: The Venice Court of National and International Arbitration

Creator: Venice Court of National and International Arbitration

Rights: Copyright (C)[Venice Court of National and International Arbitration]

Publisher: SiSU `<http://www.jus.uio.no/sisu>` (this copy)

Topics Registered: arbitration:rules

Version Information

Sourcefile: venice.court.arbitration.national.and.international.rules.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(venice.court.arbitration.national.and.international.rules.sst)=70397b2daa9df8549736a130-e5b12cdcc8dbcd98a6053c8c99bdd3873435b9c7

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 18:16:08 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]