



# ARBITRATION RULES

2018



EUROPEAN-LATINAMERICAN  
ARBITRATION ASSOCIATION



# ELArb Arbitration Rules 2018

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## Model Arbitration Clause

All contractual and extra-contractual disputes arising out of or in connection with this contract, its alterations, supplements and/or other agreements of the parties to which this contract applies, including its/their validity, invalidity, violation or cancellation, shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the ELArb Arbitration Rules in force on the date when the Notice of Arbitration is received.

The place of the arbitration shall be .....<sup>1</sup>. The language used in the arbitral proceedings shall be .....<sup>1</sup>. The applicable law for resolving the legal dispute shall be .....<sup>1</sup>.

O<sup>2</sup> Deviating from the ELArb Arbitration Rules – which provide that the tribunal shall consist of three arbitrators - it is hereby agreed that the tribunal shall consist of one arbitrator only.

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<sup>1</sup> Please fill out

<sup>2</sup> Mark if applicable

## PREAMBLE

1. Since gaining independence, the majority of Latin American countries have been maintaining close trade relations with European countries, which have deepened and expanded over the years on the basis of mutual trust. A substantial part of the resulting trade is handled via the port of the Free and Hanseatic City of Hamburg.
2. As early as 1916, merchants from Hamburg and other parts of Germany and from Latin America joined forces to form the Latin American Association (Lateinamerika Verein, LAV) in order to share their experiences, discuss different opinions, and better articulate common interests. The LAV ([www.lateinamerikaverrein.de](http://www.lateinamerikaverrein.de)) is a nonprofit organization with headquarters in Hamburg. It supports companies cross-sectorally in developing and expanding their business in Latin America and the Caribbean.
3. Where there are business relationships, disagreements are inevitable. To provide a platform for the efficient resolution of conflicts, the LAV, jointly with other institutions and individuals, founded the European Latin American Arbitration Association (ELArb). Membership in the ELArb European Latin American Arbitration Association is open to individuals, organizations and companies from around the world.
4. The purpose of the nonprofit ELArb European Latin American Arbitration Association is the promotion of international commercial arbitration. Since arbitration is, as opposed to state jurisdiction, not tied into a system of national procedural rules, it offers the possibility to resolve cross-border disputes in a swift and cost-effective manner. Arbitral tribunals thereby play an important role in strengthening the rights of participants in international trade.
5. The ELArb European Latin American Arbitration Association has developed these Arbitration Rules in cooperation with lawyers from Europe and Latin America. It is the sole shareholder of the ELArb European Latin American Arbitration Center GmbH which operates the ELArb Arbitration Center. At the administrative level, the ELArb Arbitration Center collaborates with the Hamburg Chamber of Commerce, whose founding dates back to 1665, as well as with other chambers of commerce and organizations, particularly from Latin American countries.
6. The ELArb Arbitration Center and these Arbitration Rules are available to parties from all over the world. A Europe-Latin America connection is not necessary. The parties are free to choose the place of arbitration.

7. The ELArb Arbitration Rules are based on the UNCITRAL Arbitration Rules (as revised in 2010) and the UNCITRAL Model Law that forms the basis for national legislation in most Latin American countries or has considerably influenced such legislation. The ELArb Arbitration Rules therefore provide an instrument of dispute resolution that takes the facts and realities of the European-Latin American legal area into particular account.
8. The ELArb European Latinamerican Arbitration Association may, in collaboration with the ELArb Arbitration Center, publish, in anonymized form partly or in their entirety, the arbitral awards rendered in accordance with these Arbitration Rules, provided that none of the parties objects (opt-out).

## **I. SCOPE OF APPLICATION**

### **ARTICLE 1 SCOPE OF APPLICATION**

- (1) These Arbitration Rules apply to disputes, whether contractual or not, where the parties concluded an arbitration agreement specifying that current or future disputes shall be decided by an arbitral tribunal in accordance with the ELArb Arbitration Rules.
- (2) Where the parties have concluded an arbitration agreement that makes reference to the "ELArb Arbitration Rules", the "ELArb Rules" oder "ELArb", or where it is possible to infer from the arbitration agreement that the parties intended to choose the ELArb Arbitration Rules, this shall be considered equivalent to an agreement expressly referring to these Arbitration Rules.
- (3) Notwithstanding Article 19 (2), the ELArb arbitral tribunal decides the dispute instead of state courts.
- (4) The ELArb Arbitration Rules in effect on the date of commencement of the arbitral proceedings apply to the dispute unless the parties have expressly agreed on another version of the Rules.

## **II. COMMENCING ARBITRAL PROCEEDINGS**

### **ARTICLE 2 NOTICE OF ARBITRATION**

- (1) The party initiating recourse to arbitration (hereinafter called the "Claimant") shall file to the ELArb Arbitration Center a signed notice of arbitration in a number of copies sufficient to provide one copy for each arbitrator, for each party and for the ELArb Arbitration Center. Unless the parties have agreed in writing on the language to be used in the arbitral proceedings, the notice of arbitration may be in German, English, Portuguese or Spanish.
- (2) The notice of arbitration shall include the following:
  - a) The request that the dispute be referred to arbitration in accordance with these Arbitration Rules;
  - b) The names in full, the legal forms and the addresses of the parties to which deliveries can be effected;
  - c) Identification of the arbitration agreement that is invoked for the arbitral proceedings;
  - d) Identification of the contract, the legal document or the relevant legal relationship out

- of or in relation to which the claim arises;
- e) A brief description of the claim and an indication of the amount involved; in case of an unliquidated claim an estimation of the amount involved.
  - f) Identification of the relief sought;
  - g) Nomination of an arbitrator or, if the parties have previously agreed in writing on a decision by a sole arbitrator, a proposal for the nomination of a sole arbitrator.
  - h) a proposal as to the language of the arbitration.
- (3) The notice of arbitration may also include:
- a) The telephone numbers and e-mail addresses of the parties;
  - b) The name in full, the address to which deliveries can be effected and other communication details of the representative of the Claimant;
- (4) Upon receipt of the notice of arbitration, the ELArb Arbitration Center will determine the preliminary amount involved and inform the Claimant accordingly. Within 30 calendar days after receipt of such information from the ELArb Arbitration Center, the Claimant shall pay the administration fee as well as a provisional security on the arbitrators' costs in accordance with the Schedule of Costs (Appendix I). The date of receipt of payment at the ELArb Arbitration Center is decisive. If payment is not effected within the time limit, the notice of arbitration shall be deemed to have been withdrawn.
- (5) After the payment pursuant to paragraph (4) has been credited, the ELArb Arbitration Center transmits a copy of the notice of arbitration including any attachments to the counterparty (hereinafter called the "Respondent").
- (6) Arbitral proceedings shall be deemed to have commenced on the date on which the ELArb Arbitration Center received the complete notice of arbitration with all details pursuant to paragraph (2), provided that the payment has been effected in time pursuant to paragraph (4).
- (7) The arbitral tribunal shall decide after its constitution about any controversy between the parties with respect to the notice of arbitration and/or the payment pursuant to paragraph (4).

### **ARTICLE 3**

#### **RESPONSE TO THE NOTICE OF ARBITRATION**

- (1) Within 30 calendar days after receipt of the notice of

arbitration, the Respondent shall file to the ELArb Arbitration Center a signed response to the notice of arbitration in a number of copies sufficient to provide one copy for each arbitrator, for each party and for the ELArb Arbitration Center. Unless the parties have agreed in writing on the language to be used in the arbitral proceedings, the response to the notice of arbitration may be in German, English, Portuguese or Spanish.

- (2) The response to the notice of arbitration shall include the following:
  - a) The name in full, the legal form and the Respondent's address to which deliveries can be effected;
  - b) Confirmation of consent of the Respondent to submit the dispute designated by the Claimant in the notice of arbitration to arbitration in accordance with the ELArb Arbitration Rules, or a reasoned objection contesting arbitration under the ELArb Arbitration Rules;
  - c) A response to the relief sought;
  - d) Nomination of an arbitrator or, if the parties have agreed in writing on a decision by a sole arbitrator, a response to the proposal of the Claimant for the nomination of a sole arbitrator.
- (3) The response to the notice of arbitration may also include:
  - a) The telephone numbers and e-mail addresses of the Respondent;
  - b) The name in full, the address to which deliveries can be effected and other communication details of the representative of the Respondent;
- (4) Regardless of its further submissions, the Respondent preserves its objection that arbitration in accordance with the ELArb Arbitration Rules lacks jurisdiction for the dispute designated in the notice of arbitration if the Respondent has raised this objection in its response to the notice of arbitration.
- (5) The ELArb Arbitration Center transmits a copy of the response to the notice of arbitration including any attachments to the Claimant.
- (6) The provisions of Article 2, paragraph (2) c) to f), as well as Article 2, paragraphs (3) and (4), shall apply analogously for filing any counterclaim by the Respondent. The arbitral proceedings with respect to the counterclaim shall be deemed to have commenced

on the date when the ELArb Arbitration Center received the complete response to the notice of arbitration with all details pursuant to Article 2 paragraph (2), provided that the payment required for filing a counterclaim has been effected in time pursuant to Article 2, paragraph (4).

- (7) The arbitral proceedings shall continue even if the Respondent does not file a response to the notice of arbitration, if the Respondent does not file it in time and/or if the response is incomplete.
- (8) The arbitral tribunal shall decide after its constitution about any controversy between the parties with respect to the response to the notice of arbitration and/or the payment pursuant to Article 2, paragraph (4), required for filing a counterclaim.

### **III. CONSTITUTION OF THE ARBITRAL TRIBUNAL**

#### **ARTICLE 4 APPOINTMENT OF ARBITRATORS**

- (1) The arbitral tribunal consists of three arbitrators unless the parties have agreed on a decision by sole arbitrator.
- (2) If the arbitral tribunal consists of three arbitrators and the Respondent has not nominated an arbitrator within the time limit provided in Article 3, paragraph (1), the Claimant may request the ELArb Arbitration Center to appoint the arbitrator.
- (3) The arbitrators, as nominated in the notice of arbitration and in the response to the notice of arbitration or according to Article 4, paragraph (2), shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal. If within 30 calendar days – extendable only upon the arbitrators' concurrent request – after receipt of a corresponding request from the ELArb Arbitration Center, the arbitrators have not reached agreement on the presiding arbitrator and notified their choice to the ELArb Arbitration Center, the ELArb Arbitration Center shall, at the request of a party, appoint the presiding arbitrator. Notwithstanding the above, any choice of the presiding arbitrator is valid if the notification has reached the ELArb Arbitration Center before a request for appointment of any party.
- (4) If the parties have agreed on a decision by sole arbitrator but not reached agreement on the nomination of a sole arbitrator and notified their choice to the ELArb Arbitration Center within 30 calendar days after receipt of a corresponding request by the ELArb Arbitration Center, the ELArb Arbitration Center shall, at the request of a party, appoint the sole arbitrator. The above-mentioned time limit can only be extended upon

concurring request of the parties.

## **ARTICLE 5 MULTIPLE PARTIES**

- (1) If the arbitral tribunal consists of three arbitrators and multiple Claimants are involved in the arbitration proceedings, they shall jointly nominate one arbitrator in their notice of arbitration.
- (2) If the arbitral tribunal consists of three arbitrators and multiple Respondents are involved in the arbitration proceedings, they shall jointly nominate one arbitrator within the time required pursuant to Article 3, paragraph (1).
- (3) If multiple Respondents have not jointly and timely nominated one arbitrator, the ELArb Arbitration Center shall appoint one arbitrator for each side after hearing the parties. A nomination made by the Claimant(s) is set aside. The two arbitrators appointed by the ELArb Arbitration Center nominate the presiding arbitrator. Article 4, paragraph (3), shall apply accordingly.
- (4) In proceedings involving multiple parties, any time limits for arbitral proceedings according to the ELArb Arbitration Rules shall be calculated by reference to the time of receipt by the party who received the relevant document last.

## **ARTICLE 6 APTITUDE OF ARBITRATORS**

- (1) Each arbitrator must be independent from the other arbitrators and the parties, their legal representatives and management as well as from third parties who are financing the arbitral proceedings. Each arbitrator must have no personal interest in the outcome of the proceedings and must fulfill the criteria, if any, agreed upon by the parties in the arbitration agreement.
- (2) Each arbitrator shall exercise the functions of an arbitrator impartially, conscientiously and free of any instructions.

## **ARTICLE 7 DECLARATION OF APTITUDE, CONFIRMATION**

- (1) The ELArb Arbitration Center shall obtain a declaration from each arbitrator stating that the arbitrator is ready and capable to carry out the functions and fulfils the qualification criteria pursuant to Article **Fehler! Verweisquelle konnte nicht gefunden werden.**
- (2) Each arbitrator shall notify the ELArb Arbitration Center in the context of the declaration, but also without undue delay and in writing at any later stage of the arbitral proceedings, of all circumstances which are likely to

give rise to doubts as to impartiality or independence of the arbitrator or which are likely to give rise to the assumption of having a personal interest in the outcome of the proceedings.

- (3) If the arbitrator has handed in the declaration of aptitude and the ELArb Arbitration Center is not aware of circumstances that preclude a confirmation, then the ELArb Arbitration Center confirms the appointment of the arbitrator which thereby takes effect.
- (4) The ELArb Arbitration Center notifies the parties and the other arbitrators if an arbitrator fails to fulfill the qualification criteria, and invites the party or parties who nominated the arbitrator, or the arbitrators who nominated the presiding arbitrator, to nominate a new arbitrator or presiding arbitrator within 30 calendar days. Where the invitation is not complied with in time, the ELArb Arbitration Center, at the request of a party, appoints the substitute arbitrator. Article 4, paragraph (3) and (4), apply accordingly to the extension of the deadline.
- (5) The arbitral tribunal is constituted as soon as the ELArb Arbitration Center has confirmed the nomination of all arbitrators. The ELArb Arbitration Center notifies the parties and the arbitrators accordingly.
- (6) If, within six months from the date of commencement of the arbitral proceedings, the parties or one of them have/has not nominated an arbitrator who fulfils the qualification criteria the ELArb Arbitration Center may, after hearing the parties, exercise its discretion in appointing the arbitrators.
- (7) Following the constitution of the arbitral tribunal, the ELArb Arbitration Center transmits the files to the presiding arbitrator or the sole arbitrator.

## **ARTICLE 8 CHALLENGE OF ARBITRATORS**

- (1) An arbitrator may be challenged by each party at any point of the arbitral proceedings if circumstances become apparent which are likely to give rise to doubts regarding the arbitrator's aptitude. The challenge must be reasoned and notified in writing to the arbitral tribunal or the ELArb Arbitration Center within 15 calendar days of the time at which the circumstances giving rise to the challenge became known to the party.
- (2) If the other party consents to the challenge, the challenged arbitrator is dismissed.
- (3) If the other party does not consent to the challenge and the challenged arbitrator does not voluntarily withdraw

from office, the ELArb Arbitration Center shall rule on the challenge.

## **ARTICLE 9 REPLACEMENT OF ARBITRATORS**

- (1) If an arbitrator fails to discharge the functions of an arbitrator or is unable to perform them, the ELArb Arbitration Center may, after hearing the parties and the arbitrators, terminate the mandate.
- (2) Where an arbitrator is to be substituted, Article 4 et seq. shall apply accordingly to the appointment of the substitute arbitrator.
- (3) Unless the newly appointed arbitral tribunal decides otherwise, the proceedings shall resume at the stage of procedure at which the replaced arbitrator ceased to perform the functions of an arbitrator.

## **IV. ARBITRAL PROCEEDINGS**

### **ARTICLE 10 GENERAL PROVISIONS**

- (1) The arbitral tribunal shall conduct the arbitral proceedings at its own discretion in line with the mandatory provisions on arbitral proceedings in force at the place of arbitration and these Arbitration Rules. It shall treat the parties with equality and give each party reasonable opportunity to present its case. In exercising its discretion, the arbitral tribunal shall take into account any agreement between the parties and conduct the proceedings so as to avoid unnecessary delay and expense. The arbitral tribunal is not bound by the law of civil procedure applicable to state court proceedings in force at the place of arbitration.
- (2) In the event that the arbitral tribunal consists of three arbitrators, any decision of the arbitral tribunal shall be made by majority vote. The presiding arbitrator is in charge of the proceedings. The presiding arbitrator may decide alone on individual questions of procedure if so authorized by the other arbitrators or if a majority cannot be reached.
- (3) The arbitral tribunal shall request the parties to pay equal security on the expected costs of the arbitral tribunal and shall make the continuation of the arbitral proceedings subject to the payment of the security. Provisional securities which have already been paid to the ELArb Arbitration Center shall be taken into account.
- (4) The arbitral tribunal shall, after consultation with the parties, establish a provisional timetable for the conduct of the arbitral proceedings.

- (5) The arbitral tribunal may establish terms of reference, which shall be signed by the parties.
- (6) The parties shall always transmit their declarations, written submissions and attached documents simultaneously to all of the participants of the arbitral proceedings.

## **ARTICLE 11 STATEMENT OF CLAIM**

- (1) The Claimant shall file its statement of claim in writing to the arbitral tribunal within a period of time to be determined by the arbitral tribunal. The Claimant may opt to treat his notice of arbitration as a statement of claim, provided that the notice of arbitration complies with all requirements for a statement of claim.
- (2) The statement of claim shall include the following:
  - a) A statement of the facts supporting the claim;
  - b) Identification of the evidence on which the Claimant bases its claim, and
  - c) Identification of the relief sought.
- (3) The statement of claim shall include the legal grounds or arguments supporting the claim. It shall be accompanied by all documents relied upon in the statement of claim.
- (4) The arbitral tribunal may order the termination of the proceedings if the Claimant fails to file the statement of claim in time.

## **ARTICLE 12 STATEMENT OF DEFENCE**

- (1) The Respondent shall file its statement of defence to the arbitral tribunal within a period of time to be determined by the arbitral tribunal. The Respondent may opt to treat its Response to the notice of arbitration as its statement of defence, provided that the response to the notice of arbitration complies with all requirements for a statement of defence.
- (2) The statement of defence shall include the following:
  - a) A statement of the facts on which the Respondent relies for its defence;
  - b) Identification of the evidence on which the Respondent bases its defence and
  - c) A response to the relief sought.
- (3) The statement of defence should include the legal grounds or arguments supporting the defence. It should be accompanied by all documents relied upon

in the statement of defence.

- (4) In its statement of defence, the Respondent may make a counterclaim or rely on a claim for the purpose of a set-off, provided that the arbitral tribunal has jurisdiction over the relevant claims. Article 11, paragraphs (2) and (3) applies accordingly.
- (5) If the Respondent fails to file its statement of defence in time, the arbitral proceedings continue regardless of the default. The default shall not in itself be treated as an admission of the Claimant's allegations.

### **ARTICLE 13 AMENDMENTS TO THE CLAIM OR DEFENCE**

- (1) During the course of the arbitral proceedings, a party may amend or supplement its pleadings, claims or the response to the relief sought, rely on a claim for the purpose of a set-off and/or file a counterclaim provided that the arbitral tribunal has jurisdiction.
- (2) The arbitral tribunal may reject amendments, supplements, set-offs and counterclaims if it is of the opinion that otherwise the proceedings would be unreasonably delayed or if it deems the rejection necessary for any other reason.

### **ARTICLE 14 JURISDICTION OF ARBITRAL TRIBUNAL**

- (1) The arbitral tribunal has the power to rule on its own jurisdiction, including any objections concerning the existence or validity of the arbitration agreement. For this purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- (2) Objections concerning the jurisdiction of the arbitral tribunal shall be raised no later than in the statement of defence and, with respect to a counterclaim, in the reply to the counterclaim. With respect to a claim for the purpose of a set-off, objections concerning the jurisdiction of the arbitral tribunal shall be raised no later than in the statement of response to the set-off. A party that has appointed, or participated in the appointment of, an arbitrator, is not precluded from raising objections concerning the jurisdiction of the arbitral tribunal. A plea that the arbitral tribunal is exceeding the scope of its jurisdiction shall be raised without undue delay after the event giving rise to the plea. The arbitral tribunal may admit a later plea if it considers the delay justified.
- (3) The arbitral tribunal may continue the arbitral proceedings and render an award notwithstanding any pending challenge to its jurisdiction before a state

court.

## **ARTICLE 15 PLACE OF ARBITRATION**

- (1) If the parties have not agreed on the place of the arbitration, the arbitral tribunal shall determine the place of arbitration. In doing so, the arbitral tribunal shall have regard to the circumstances of the case.
- (2) The arbitral tribunal may meet for deliberations at any location it considers appropriate. Unless otherwise agreed by the parties, the arbitral tribunal may also meet for other purposes, in particular oral hearings, at any location it considers appropriate.

## **ARTICLE 16 LANGUAGE**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal shall determine the language or the languages to be used in the proceedings. Absent any further instructions by the arbitral tribunal, this determination shall apply to the statement of claim, the statement of defence, any further written statements, oral hearings, arbitral awards as well as other decisions and communications of the arbitral tribunal.
- (2) The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## **ARTICLE 17 APPLICABLE LAW**

- (1) The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law of the State with which the subject matter of the proceedings is most closely connected.
- (3) The arbitral tribunal shall apply ex officio the rules set forth in paragraph (1) and (2).
- (4) The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

## **ARTICLE 18**

### **RULES OF PROCEDURE**

- (1) On its own motion or upon substantiated request by any party, the arbitral tribunal may extend the time limits it has fixed.
- (2) If a party fails to meet a time limit fixed by the arbitral tribunal or to appear at a hearing to which it has been duly summoned, the arbitral tribunal may proceed with the arbitration unless the arbitral tribunal is satisfied that sufficient cause has been shown for the failure without undue delay.
- (3) The arbitral tribunal shall investigate the facts of the dispute. Regardless of any request by the parties, the arbitral tribunal may require the parties to produce further written statements and/or documents and/or to present evidence.
- (4) Regardless of any respective request by the parties, the arbitral tribunal may appoint experts to report to it on specific issues. Article 6 applies to experts accordingly.
- (5) The arbitral tribunal shall discuss the subject matter of the dispute with the parties in an oral hearing. A decision without an oral hearing is only possible if the parties have expressly empowered the arbitral tribunal accordingly, or if the Respondent has not participated in the proceedings and the arbitral tribunal does not consider the taking of evidence necessary for the decision, or if one of the parties has ceased to cooperate since a significant time or actively tries to delay the proceedings.
- (6) Witnesses and/or experts shall be heard at oral hearings.
- (7) The arbitral tribunal may appoint a secretary for the arbitration. Article 6 applies to the secretary accordingly.
- (8) If the parties so wish and if they explicitly authorise the arbitral tribunal to do so, the arbitral tribunal may at any stage of the proceedings seek to encourage an amicable settlement of the dispute and, for this purpose, submit settlement proposals.
- (9) The arbitral tribunal shall declare the proceedings closed when the parties have had reasonable opportunity to present their cases. As long as the final award is not issued, the arbitral tribunal may reopen the proceedings if it deems this expedient.
- (10) The parties shall raise any objections against the proceedings in writing without undue delay. Belated objections shall be considered only if the arbitral tribunal is satisfied that sufficient cause has been

shown for the delay.

## **ARTICLE 19 INTERIM MEASURES**

- (1) The arbitral tribunal may, upon request of a party, order any interim measure the arbitral tribunal considers necessary in respect of the subject matter of the dispute, provided that appropriate security for the other party is ensured.
- (2) Irrespective of paragraph (1), a party may file a request for interim measures before a state court in respect of the subject matter in dispute. Such request for interim measures shall not be deemed a waiver of the arbitration agreement.

## **ARTICLE 20 STAY IN CASE OF MEDIATION ATTEMPT**

- (1) Once the arbitral tribunal has been constituted, the parties may at any time, by filing concurrent written declarations, request a stay of the arbitral proceedings for the purpose of a mediation attempt. The requests must include a joint nomination of a mediator, a mediation institution and/or mediation rules. Members of the arbitral tribunal cannot be mediators in the same proceeding.
- (2) The concurrent declarations have the effect of extending the existing arbitration agreement between the parties to the mediation. The mediation is, in particular with respect to costs, its own procedure separate from the arbitral proceedings.
- (3) Upon receipt of the concurrent declarations, the arbitral tribunal shall stay the arbitral proceedings. The same applies if the mediation attempt relates to parts of the dispute only. The decision has the effect of staying all current time limits of the arbitration proceedings for the period of the stay. The arbitral tribunal shall inform the mediator or the mediation institution about the stay decision and shall enclose, at the request of the parties, the case file with a request to acknowledge receipt of the information. For the purposes of the arbitration proceedings, the date of receipt shall be deemed to be the date of commencement of the mediation.
- (4) The decision to stay shall take effect for a period of 8 weeks at maximum, beginning on the date of commencement of the mediation. During this period, the mediation must be finalized. After these 8 weeks, or sooner if the parties, or one of them, report in writing the success or the failure of the mediation to the arbitral tribunal, the arbitral tribunal requests the mediator or mediation institution to return the case files, if

applicable.

- (5) The arbitral proceedings shall be continued as a whole or with respect to that part of the dispute for which no agreement could be reached in the event that the mediation has failed fully or partially.
- (6) If, as a result of the mediation, the parties have reached an agreement regarding the subject matter of the dispute as a whole or regarding a part thereof, the arbitral tribunal shall, upon a concurrent request of the parties, issue an award on agreed terms. Article 22 paragraph (1) applies accordingly.

## **V. TERMINATION OF PROCEEDINGS**

### **ARTICLE 21 ARBITRAL AWARD**

- (1) Once the arbitral tribunal has closed the proceedings, it shall render an award within a reasonable period of time, which it shall determine taking into account the applicable mandatory provisions at the place of arbitration. In rendering the award, the arbitral tribunal is bound by the requests for relief made by the parties.
- (2) The award shall state the reasons upon which it is based unless the parties have agreed otherwise.
- (3) In arbitral proceedings with more than one arbitrator, the award shall be made by a majority of the arbitrators. All arbitrators shall sign the award. If one arbitrator refuses to sign the award or is prevented from signing it, then this fact shall be mentioned in the award. In such a case, the award shall be valid with the signatures of the other arbitrators.
- (4) The award shall state the date on which it was rendered and the place of arbitration.
- (5) The award shall be final and binding on the parties.

### **ARTICLE 22 SETTLEMENT, DECISION ON TERMINATION OF PROCEEDINGS**

- (1) If the parties settle the dispute during the arbitral proceedings, the arbitral tribunal may, upon request by any party, record the settlement in the form of an arbitral award on agreed terms. If not otherwise agreed by the parties, an award on agreed terms shall not require the statement of reasons. An award on agreed terms shall have the same effects as an award pursuant to Article 21.
- (2) If the parties do not request an award on agreed terms, or if the arbitral tribunal refuses to record an award on agreed terms, the arbitral tribunal shall order the arbitral

proceedings terminated. The order does not need to state reasons.

- (3) The arbitral tribunal may, after hearing the parties, render an order for the termination of the arbitral proceedings if:
  - a) the parties concurrently request so;
  - b) the Claimant withdraws its statement of claim, unless the Respondent objects with legitimate reasons;
  - c) the parties fail to pursue the arbitral proceedings; or
  - d) continuation of the arbitral proceedings has become impossible.

### **ARTICLE 23 DELIVERY OF DECISIONS**

- (1) The arbitral tribunal shall supply the ELArb Arbitration Center with a sufficient number of signed originals of the arbitral award or of the order of termination.
- (2) The ELArb Arbitration Center delivers one original of the award or the order of termination to each party of the arbitral proceedings if and when the payment of all securities for costs required by the arbitral tribunal has been effected.

### **ARTICLE 24 INTERPRETATION AND CORRECTION OF ARBITRAL AWARD**

- (1) Any party may request the arbitral tribunal to correct any errors in computation, any clerical or typographical errors or any errors of a similar nature in the award or in the order of termination.
- (2) Any party may also request the arbitral tribunal to give an interpretation of the award and/or to make an additional award as to claims presented in the arbitral proceedings but omitted in the award.
- (3) The requests under paragraph (1) and paragraph (2) shall be made to the arbitral tribunal within 30 days after receipt of the award. The arbitral tribunal may also decide on its own motion upon a correction of any error referred to in paragraph (1).
- (4) After receipt of a request, the arbitral tribunal shall give the other party or the other parties the opportunity to comment.
- (5) The arbitral tribunal shall render its decision as a supplement to the award or to the order of termination. It shall issue this supplement within 30 days of receipt

of the comments in accordance with paragraph (4). The supplement shall form part of the award or the order of termination.

## VI. COSTS OF ARBITRAL PROCEEDINGS

### ARTICLE 25 DECISION ON COSTS

- (1) Unless the parties have agreed otherwise, the arbitral tribunal rules on the costs of the proceedings.
- (2) The costs of the arbitral proceedings include:
  - a) the ELArb Arbitration Center administrative fee;
  - b) the expenses of the arbitral tribunal, including the fees of the arbitrator(s) plus value added tax if applicable, travel expenses and other expenses;
  - c) the costs and expenses reasonably incurred by the parties
  - d) the expenses for appointed experts, interpreters, court reporters as well as any other expenses relating to the arbitral proceedings.
- (3) The administration fee and the fees of the arbitrators shall be calculated in accordance with the Schedule of Costs (Appendix I). The fees shall be fixed with reference to the amount in dispute, which is to be assessed by the arbitral tribunal.
- (4) In the event of a decision without oral hearing according to Article 18 paragraph **Fehler! Verweisquelle konnte nicht gefunden werden.**, the fees of the Schedule of Costs shall be reasonably reduced. In exceptionally complex or difficult cases the fees of the Schedule of the Costs may be increased appropriately. Decisions regarding a reduction or increase of the fees will be rendered by the ELArb Arbitration Center.
- (5) The arbitral tribunal shall, at its discretion, rule on the allocation of costs between the parties. It may take all relevant circumstances into account, in particular the extent to which each party has prevailed or lost and the manner in which the parties have conducted the proceedings.
- (6) Paragraphs (1) – (4) apply accordingly when the arbitral proceedings are terminated pursuant to Article 22.

### ARTICLE 26 SECURITIES FOR COSTS

- (1) In addition to the payment of the securities for costs pursuant to Article 10 paragraph (3), the arbitral tribunal

may request additional securities for costs at any time during the arbitration proceedings and make the continuation of the arbitration proceedings subject to the payment of the additional advances.

- (2) The parties are jointly and severally liable to the arbitral tribunal for the costs of the arbitration proceedings and for the payment of the securities for costs.
- (3) Where one party does not, within the fixed time limit, pay its full equal share of the securities for costs as requested from the parties by the arbitral tribunal pursuant to Article 10 paragraph (3), that party loses its right to reimbursement of expenses incurred for its legal representation within the meaning of Article 25, paragraph (2) c). The arbitral tribunal shall take this into account when rendering its decision on costs pursuant to Article 25 paragraph (5).

In such a case, the other party may pay the unpaid share of any security for costs within 30 days upon notification from the arbitral tribunal.

- (4) Upon termination of the arbitration, the arbitral tribunal accounts for the costs of the arbitration proceedings. The arbitral tribunal uses the paid securities for costs for the payment of the costs of the arbitration proceedings. It reimburses any amounts not spent to the parties.

## **VII. GENERAL PROVISIONS**

### **ARTICLE 27 CONFIDENTIALITY**

- (1) Oral hearings will be held in private. Upon concurrent request of the parties or if required by mandatory provisions concerning one of the parties, the arbitral tribunal may permit the presence of third parties in the oral hearing.
- (2) The parties, the arbitrators and the persons at the ELArb Arbitration Center involved in the administration of the arbitration proceedings, as well as other persons involved in the arbitration proceedings, shall treat the arbitration, in particular the commencement of arbitration proceedings, their content, orders and awards, as well as the parties involved, the witnesses, the experts and other evidentiary materials as strictly confidential. This does not include disclosures required of a party by law or disclosures necessary to enforce or to challenge the award, or to enforce other claims resulting from the arbitration.
- (3) In court proceedings after termination of the arbitration proceedings, neither the Claimant nor the Respondent shall name any arbitrator, or persons involved by the arbitral tribunal, as a witness for circumstances which

are confidential under these Rules or are subject to the duty of confidentiality.

- (4) The ELArb European Latinamerican Arbitration Association may publish, in anonymized form, the arbitral awards rendered in accordance with the ELArb Arbitration Rules, provided that none of the parties objects within a time-limit of 4 (four) weeks after receipt of the award (opt-out).

## **ARTICLE 28 TIME LIMITS AND DELIVERY**

- (1) Time limits commence on the day following the day of delivery.
- (2) Public holidays, Saturdays or Sundays within the duration of time limits will be counted when calculating the respective time limit. If the last day of a time limit, in a country or region thereof where one of the parties or their representatives within the meaning of Article 29 paragraph (1) are resident, falls on a public holiday, Saturday or Sunday, the time limit shall be extended to the next working day.
- (3) Deliveries shall be made to the address last notified in writing by the respective addressee. Changes to the address or other contact details are binding on the parties to the arbitration after they have been communicated to the arbitral tribunal in writing.

## **ARTICLE 29 REPRESENTATION**

- (1) Each party may be represented or assisted in the arbitral proceedings by any person chosen by it. The full name, address to which deliveries can be effected and other communication data of a person, who has been engaged by a party for this purpose, must be communicated in writing to the arbitral tribunal. Such a notification must specify whether the appointment of this person is being made for purposes of representation or merely for purposes of assistance.
- (2) Provided that a person is to act as a representative of a party, the arbitral tribunal may at any time require proof of authority granted to the representative in such form as the arbitral tribunal may determine.

## **ARTICLE 30 LIMITATION OF LIABILITY**

- (1) The ELArb Arbitration Center, including any person acting for the ELArb Arbitration Center, shall be liable for any act or omission in connection with arbitral proceedings subject to the ELArb Arbitration Rules only for breach of a duty intentionally or by gross

negligence, under exclusion of any joint and several liability.

- (2) Any arbitrator shall be liable in connection with a decision only where that arbitrator breached a duty intentionally, under exclusion of any joint and several liability.
- (3) Any arbitrator and any tribunal-appointed expert or secretary to the arbitral tribunal shall be liable for acts or omissions in connection with arbitral proceedings subject to the ELArb Arbitration Rules only where they breached a duty intentionally or by gross negligence, under exclusion of any joint and several liability.

### **ARTICLE 31 TERMINOLOGY**

- (1) The term "arbitral tribunal" used in these rules applies to a sole arbitrator as well as to an arbitral tribunal consisting of more than one arbitrator.
- (2) The terms "arbitrator", "Claimant", "Respondent", "presiding arbitrator", "expert", "secretary", etc. shall be interpreted to mean both male and female persons.



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