

**VIAC** || Vienna International  
Arbitral Centre

VIAC VIAC VIAC VIAC **RULES OF  
ARBITRATION  
AND MEDIATION** VIAC VIAC

**VIENNA RULES AND VIENNA MEDIATION RULES 2018**

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VIAC – Vienna International Arbitral Centre

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## **RULES OF ARBITRATION**

VIENNA RULES | in force as from 1 January 2018



## **RULES OF MEDIATION**

VIENNA MEDIATION RULES | in force as from 1 January 2018



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## PART I

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## **RULES OF ARBITRATION**

VIENNA RULES | in force as from 1 January 2018

# GENERAL PROVISIONS

## COMPETENCE OF THE VIAC AND APPLICABLE VERSION OF THE VIENNA RULES

### Article 1

(1) The Vienna International Arbitral Centre (hereinafter “VIAC”) is the Permanent International Arbitration Institution of the Austrian Federal Economic Chamber<sup>1</sup>. VIAC administers national and international arbitrations as well as proceedings pursuant to other alternative dispute resolution methods, if the parties have agreed upon

1.1 the VIAC Rules of Arbitration (hereinafter “Vienna Rules”) or

1.2 the VIAC Rules of Mediation (hereinafter “Vienna Mediation Rules”) or

1.3 otherwise upon the competence of the VIAC.

(2) The Vienna Rules shall apply in the version in effect at the time of the commencement of the arbitration (Article 7 paragraph 1), if the parties, before or after the dispute has arisen, have agreed to submit their dispute to the Vienna Rules.

(3) The Board may refuse to administer the proceedings if the arbitration agreement deviates fundamentally from and is incompatible with the Vienna Rules.

<sup>1</sup> According to Section 139 paragraph 2 of the Federal Statute on the Economic Chambers 1998 (“Wirtschaftskammergesetz 1998”), Federal Law Gazette I No. 103/1998 as amended by Federal Law Gazette I No. 73/2017

## BOARD

### Article 2

(1) The Board of the VIAC shall consist of a minimum of five members. The members of the Board shall be appointed for a term of up to five years by the Extended Presiding Committee of the Austrian Federal Economic Chamber upon recommendation by the President of the VIAC. Members may be appointed for consecutive terms.

(2) The members of the Board shall elect from among their number a President and up to two Vice Presidents. In the event the President is prevented from performing his duties, such duties shall be assumed by a Vice President in accordance with the Internal Rules of the Board (Annex 2).

(3) Members of the Board, who are or were involved in an arbitration administered by the VIAC in any capacity whatsoever, may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings. This shall not impair the existence of a quorum of the Board.

(4) The members of the Board shall perform their duties to the best of their knowledge and ability and in performing their duties they shall be independent and not be bound by any instructions. They have the duty to keep confidential all information acquired in the course of their duties.

(5) The Board may establish and amend its own Internal Rules (Annex 2).

## INTERNATIONAL ADVISORY BOARD

### Article 3

The International Advisory Board consists of international arbitration experts who may be invited by the Board. The International Advisory Board assists the Board in an advisory capacity.

## SECRETARY GENERAL, DEPUTY SECRETARY GENERAL AND SECRETARIAT

### Article 4

(1) Upon recommendation of the Board of the VIAC, the Secretary General and the Deputy Secretary General of the VIAC shall be appointed by the Extended Presiding Committee of the Austrian Federal Economic Chamber for a term of up to five years. The Secretary General and Deputy Secretary General may be appointed for consecutive terms. Upon expiration of the term, if no renewal of the appointment has been made, the Secretary General and the Deputy Secretary General shall remain in office until a new appointment has been made.

(2) The Secretariat manages the administrative matters of the VIAC under the direction of the Secretary General and the Deputy Secretary General except for matters which are reserved to the Board. If a Deputy Secretary General has been appointed, the Deputy Secretary General may render decisions that fall within the competence of the Secretary General if the Secretary General is unable to perform his duties, or with authorization by the Secretary General.

(3) Members of the Secretariat, who are or were involved in an arbitration administered by the VIAC in any capacity whatsoever, may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings.

(4) The Secretary General and the Deputy Secretary General shall perform their duties to the best of their knowledge and ability and shall not be bound by any instructions. They have the duty to keep confidential all information acquired in the course of their duties.

(5) If the Secretary General and the Deputy Secretary General become unable to exercise their duties, the Board members shall appoint from their number a member to perform the relevant duties. For as long as the appointee serves as Secretary General, the membership of the appointee in the Board shall be suspended.

## LANGUAGES OF CORRESPONDENCE

### Article 5

The correspondence of the parties with the Board and Secretariat shall be in German or English.

## DEFINITIONS

### Article 6

(1) In the Vienna Rules

**1.1 party or parties** refer to one or more claimants, respondents or one or more third parties joined to the arbitration in a Statement of Claim;

**1.2 claimant** refers to one or more claimants;

**1.3 respondent** refers to one or more respondents;

**1.4 third party** refers to one or more third parties, who are neither a claimant nor respondent in the pending arbitration and whose joinder to this arbitration has been requested;

**1.5 arbitral tribunal** refers to a sole arbitrator or a panel of three arbitrators;

**1.6 arbitrator** refers to one or more arbitrators;

**1.7 co-arbitrator** refers to any member of a panel of arbitrators except its chairperson;

**1.8 award** refers to any final, partial or interim award;

**1.9 Secretary General** also refers to the Deputy Secretary General to the extent the Deputy Secretary General renders decisions in the event the Secretary General is unable to perform his duties, or with authorization by the Secretary General.

(2) To the extent the terms used in the Vienna Rules refer to natural persons, the form chosen shall apply to all genders. In practice, the terms in these rules shall be used in a gender-specific manner.

(3) References to “Articles” without further specification relate to the relevant articles of the Vienna Rules.

# COMMENCING THE ARBITRATION

## STATEMENT OF CLAIM

### Article 7

(1) The arbitral proceedings shall be initiated by submitting a Statement of Claim. The proceedings shall commence on the date of receipt of the Statement of Claim by the Secretariat of the VIAC or by an Austrian Regional Economic Chamber in hardcopy form or in electronic form (Article 12 paragraph 1); hereby, the proceedings become pending. The Secretariat informs the parties of the receipt of the Statement of Claim.

(2) The Statement of Claim shall contain the following information:

- 2.1 the full names, addresses, and other contact details of the parties;
- 2.2 a statement of the facts and a specific request for relief;
- 2.3 the monetary value of each individual claim at the time of submission of the Statement of Claim, if the relief requested is not exclusively for a specific sum of money;
- 2.4 particulars regarding the number of arbitrators in accordance with Article 17;
- 2.5 the nomination of an arbitrator if a panel of three arbitrators was agreed or requested, or a request that the arbitrator be appointed by the Board;
- 2.6 particulars regarding the arbitration agreement and its content.

(3) If the Statement of Claim does not comply with paragraph 2 of this Article, the Secretary General may request that the claimant remedy the defect within a time-period to be set by the Secretary General. If a copy of the Statement of Claim or of the exhibits is missing (Article 12 paragraph 1), the Secretary General may request that the claimant supplement the missing copies within a time-period to be set by the Secretary General. If the claimant complies with the order to remedy the defect within the set deadline, the Statement of Claim shall be deemed to have been submitted on the date on which it was first received. If the claimant does not comply with the order to remedy the defect within the set deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not

prevent the claimant from raising the same claims at a later time in another proceeding.

(4) The Secretary General shall serve the Statement of Claim on the respondent if no order to remedy pursuant to paragraph 3 of this Article was issued or if the claimant complied with such an order. The Secretary General may defer service of the Statement of Claim on the respondent until the claimant has complied with an order to supplement copies pursuant to paragraph 3 of this Article.

## ANSWER TO THE STATEMENT OF CLAIM

### Article 8

(1) With the service of the Statement of Claim, the Secretary General shall request the respondent to submit to the Secretariat an Answer to the Statement of Claim within a period of 30 days.

(2) The Answer to the Statement of Claim shall contain the following information:

2.1 the full name, address and other contact details of the respondent;

2.2 comments on the request for relief and the facts upon which the Statement of Claim is based, as well as the respondent's specific request for relief;

2.3 particulars regarding the number of arbitrators in accordance with Article 17;

2.4 the nomination of an arbitrator if a panel of three arbitrators was agreed or requested, or a request that the arbitrator be appointed by the Board.

## COUNTERCLAIM

### Article 9

(1) Claims by the respondent against the claimant may be raised as Counterclaims in the same proceedings.

(2) Articles 7 and 10 apply to Counterclaims. The Secretariat shall forward Counterclaims to the arbitral tribunal after payment of the advance on costs.

(3) The arbitral tribunal may return the Counterclaim to the Secretariat to be addressed in separate proceedings if

3.1 the parties are not identical; or

3.2 a Counterclaim submitted after the Answer to the Statement of Claim would result in a substantial delay in the main proceedings.

(4) The arbitral tribunal shall give the claimant the opportunity to submit an Answer to an admitted Counterclaim. Article 8 applies to an Answer to the Counterclaim.

## REGISTRATION FEE

### Article 10

(1) The claimant shall pay the registration fee net of any charges in the amount stipulated in Annex 3. Similarly, in the case of joinder of a third party (Article 14), the requesting party shall pay a registration fee.

(2) If there are more than two parties to the arbitration, the registration fee shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

(3) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.

(4) The Statement of Claim and any Request for Joinder of a third party shall be served on the other parties only after full payment of the registration fee. The Secretary General may grant a reasonable extension of the time period for payment of the registration fee. If payment is not effected by the deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

(5) If Proceedings under the Vienna Mediation Rules are commenced before, during or after arbitral proceedings under the Vienna Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings.



## TRANSMISSION OF FILE

### Article 11

The Secretary General shall transmit the file to the arbitral tribunal only after:

- the Secretariat has received the Statement of Claim (Counterclaim) in accordance with the requirements of Article 7; and
- all members of the arbitral tribunal have been appointed; and
- the advance on costs pursuant to Article 42 has been paid in full.

## SERVICE, TIME LIMITS AND DISPOSAL OF FILE

### Article 12

(1) A Statement of Claim shall be submitted in electronic form and, including exhibits, in hardcopy form in the number of copies necessary so that each arbitrator, each party and the Secretariat receive a copy.

(2) After transmission of the file to the arbitral tribunal, all written communications including exhibits shall be sent to each party and each arbitrator in the manner stipulated by the arbitral tribunal. The Secretariat shall receive all written communications between the arbitral tribunal and the parties in electronic form.

(3) Service shall be deemed as validly effected if dispatched in hardcopy form by registered mail, letter with confirmation of receipt, courier service, or if in electronic form, or if by any other means of communication that ensures confirmation of transmission.

(4) Service shall be addressed to the address of the addressee for whom the written submission is intended, as last notified in a manner that ensures confirmation of transmission. Once a party has appointed a representative, service upon the representative's address, as last notified in a manner that ensures confirmation of transmission, shall be deemed to constitute effective service upon the represented party.

(5) Service shall be deemed to have been made

5.1 on the day the written submission to be served was actually received by the addressee; or

5.2 on the day receipt can be presumed, if dispatched in accordance with paragraph 3 of this Article.

(6) If a Statement of Claim against multiple respondents cannot be served on all respondents, upon request of the claimant the arbitration shall proceed only against those respondents that received service of the Statement of Claim. The Statement of Claim against the remaining respondents shall be addressed in a separate proceeding.

(7) Time limits shall start to run on the day following the day of service of the respective written submission triggering the commencement of the time limit. If this day is an official holiday or a non-business day at the place of service, the time limit shall start to run on the next business day. Official holidays or non-business days falling during a time period shall not interrupt the continuation or extend the time limit. If the last day of the time limit is an official holiday or a non-business day at the place of service, the time limit shall end on the next business day.

(8) A time limit relating to any written submission is satisfied if the submission is dispatched in the manner stipulated in paragraph 3 of this Article on the last day of the time limit. Time limits may be extended where sufficient grounds for such extension are considered to exist.

(9) After termination of the proceedings (Article 34), the Secretariat may dispose of the entire file of a case, with the exception of decisions (Article 35).

## REPRESENTATIVES

### Article 13

In the proceedings before the arbitral tribunal, the parties may be represented or advised by persons of their choice. The Secretary General or the arbitral tribunal may at any time request evidence that the party representative has the authority to represent the party.

# JOINDER OF THIRD PARTIES AND CONSOLIDATION

## JOINDER OF THIRD PARTIES

### Article 14

(1) The joinder of a third party in an arbitration, as well as the manner of such joinder, shall be decided by the arbitral tribunal upon the request of a party or a third party after hearing all parties and the third party to be joined as well as after considering all relevant circumstances.

(2) The Request for Joinder shall contain the following information:

2.1 the full name, address and other contact details of the third party;

2.2 the grounds upon which the Request for Joinder is based; and

2.3 the requested manner of joinder of the third party.

(3) If a Request for Joinder of a third party is made with a Statement of Claim,

3.1 it shall be submitted to the Secretariat. The provisions of Article 7 *et seqq* shall apply by analogy. The Secretary General shall transmit the Statement of Claim to the third party to be joined as well as to the other parties for their comments.

3.2 the third party may participate in the constitution of the arbitral tribunal pursuant to Article 18 if no arbitrator has yet been appointed.

3.3 the arbitral tribunal shall return the Statement of Claim with a Request for Joinder of a third party to the Secretariat to be treated in separate proceedings, if the arbitral tribunal refuses, in accordance with paragraph 1, to grant a Request for Joinder of a third party made with a Statement of Claim. In this case, the Board may revoke any confirmed nomination or appointment of arbitrators and order the renewed constitution of the arbitral tribunal or arbitral tribunals in accordance with Article 17 *et seqq*, if the third party participated in the constitution of the arbitral tribunal in accordance with paragraph 3.2.

## CONSOLIDATION

### Article 15

(1) Upon a party's request, two or more arbitral proceedings may be consolidated if

- 1.1 the parties agree to the consolidation; or
- 1.2 the same arbitrator(s) was/were nominated or appointed;

and the place of arbitration in all of the arbitration agreements on which the claims are based is the same.

(2) The Board shall decide on Requests for Consolidation after hearing the parties and the arbitrators already appointed. The Board shall consider all relevant circumstances in its decision, including the compatibility of the arbitration agreements and the respective stage of the arbitral proceedings.

## ARBITRAL TRIBUNAL

### GENERAL PROVISIONS

#### Article 16

(1) The parties shall be free to designate the persons they wish to nominate as arbitrators. Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements. The arbitrators have a contractual relationship with the parties and shall render their services to the parties.

(2) The arbitrators shall perform their mandate independently of the parties, impartially and to the best of their knowledge and ability, and they shall not be bound by any instruction. They have the duty to keep confidential all information acquired in the course of their duties.

(3) If a person intends to accept an appointment as an arbitrator, he shall sign and submit a declaration to the Secretary General before his appointment confirming his (i) impartiality and independence; (ii) availability; (iii) qualification; (iv) acceptance of office; and (v) submission to the Vienna Rules.

(4) An arbitrator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality, independence or availability or that conflict with the agreement of the parties.

The duty to immediately disclose such circumstances continues to apply throughout the arbitration.

(5) Members of the Board may be nominated as arbitrators by the parties or co-arbitrators, but shall not be appointed as arbitrators by the Board.

(6) The conduct of any or all arbitrators (Article 28 paragraph 1) may be taken into consideration by the General Secretary in determining the arbitrators' fees (Article 44 paragraphs 2, 7 and 10).

## CONSTITUTION OF THE ARBITRAL TRIBUNAL

### Article 17

(1) The parties may agree whether the arbitral proceedings will be conducted by a sole arbitrator or a panel of three arbitrators. The parties may also agree on the manner of appointment of the arbitrators. In the absence of an agreement, paragraphs 2 to 6 of this Article shall apply.

(2) Absent agreement on the number of arbitrators, the Board shall determine whether the dispute will be decided by a sole arbitrator or by a panel of three arbitrators. In so doing, the Board shall take into consideration the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision.

(3) If the dispute is to be resolved by a sole arbitrator, the parties shall jointly nominate a sole arbitrator and indicate the arbitrator's name, address and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the sole arbitrator shall be appointed by the Board.

(4) If the dispute is to be resolved by a panel of arbitrators, each party shall nominate an arbitrator (the claimant in the Statement of Claim and the respondent in the Answer to the Statement of Claim). If a party fails to do so, the Secretary General shall request that party to submit the name, address and other contact details of its nominee within 30 days after receiving the request. If such nomination is not made within this time period, that arbitrator shall be appointed by the Board.

(5) If the dispute is to be resolved by a panel of arbitrators, the co-arbitrators shall jointly nominate a chairperson and indicate his name, address and other contact details within 30 days after

receiving the Secretary General's request. If such nomination is not made within this time period, the chairperson shall be appointed by the Board.

(6) The parties are bound by their nomination of arbitrator once the nominated arbitrator has been confirmed by the Secretary General or the Board (Article 19).

## CONSTITUTION OF THE ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

### Article 18

(1) The constitution of the arbitral tribunal in multi-party proceedings shall be conducted in accordance with Article 17, with the following additional provisions:

(2) If the dispute is to be resolved by a panel of arbitrators, the side of claimant and the side of respondent shall each jointly nominate an arbitrator.

(3) Participation of a party in the joint nomination of an arbitrator shall not constitute consent to multi-party arbitration. If the admissibility of a multi-party arbitration is disputed, the arbitral tribunal shall decide thereon upon request after hearing all parties as well as after considering all relevant circumstances.

(4) If pursuant to paragraph 2 of this Article a joint arbitrator is not nominated within the set time period, the Board shall appoint the arbitrator for the defaulting party/parties. In exceptional cases, after granting the parties the opportunity to comment, the Board may revoke appointments already made and appoint new co-arbitrators or all arbitrators.

## CONFIRMATION OF THE NOMINATION

### Article 19

(1) After an arbitrator has been nominated, the Secretary General shall obtain the arbitrator's declarations pursuant to Article 16 paragraph 3. The Secretary General shall forward a copy of these statements to the parties. The Secretary General shall confirm the nominated arbitrator if no doubts exist as to the impartiality and independence of the arbitrator and his ability to carry out his mandate. The Secretary General shall inform the Board of such confirmation at the subsequent meeting of the Board.

- (2) If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated arbitrator.
- (3) Upon confirmation, the nominated arbitrator shall be deemed appointed.
- (4) If the Secretary General or the Board refuses to confirm a nominated arbitrator, the Secretary General shall request the party/parties entitled to nominate the arbitrator, or the co-arbitrators to nominate a different arbitrator or chairperson within 30 days. Articles 16 to 18 shall apply by analogy. If the Secretary General or the Board refuses to confirm the newly nominated arbitrator, the right to nominate shall lapse and the Board shall appoint the arbitrator.

## CHALLENGE OF ARBITRATORS

### Article 20

- (1) After his appointment, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not fulfil the qualifications agreed by the parties. A party may challenge the arbitrator whom it nominated, or in whose nomination it has participated, only for reasons of which the party became aware after the nomination or its participation in the nomination.
- (2) A party's challenge of an appointed arbitrator shall be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the grounds for the challenge. The challenge shall specify the grounds for the challenge and include corroborating materials to substantiate the challenge.
- (3) If the challenged arbitrator does not resign, the Board shall rule on the challenge. Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the other party/parties. The Board may also request comments from other persons. All comments shall be communicated to the parties and the arbitrators.
- (4) The arbitral tribunal, including the challenged arbitrator, may continue the arbitration while the challenge is pending. The arbitral tribunal may not issue an award until after the Board has ruled on the challenge.

## PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

### Article 21

(1) The mandate of an arbitrator terminates prematurely if

- 1.1 the parties so agree; or
- 1.2 the arbitrator resigns; or
- 1.3 the arbitrator dies; or
- 1.4 the arbitrator was successfully challenged; or
- 1.5 the arbitrator is removed from office by the Board.

(2) Either party may request that an arbitrator be removed from office if the arbitrator is prevented from performing his duties more than temporarily or otherwise fails to perform his duties, including also the duty to proceed without any undue delay. The party shall submit the request to the Secretariat. If it is apparent to the Board that any incapacity is not merely temporary, or that the arbitrator is not performing his duties, the Board may remove an arbitrator from office even without a party's request. The Board shall decide on the removal after granting the parties and the affected arbitrator the opportunity to comment.

## EFFECTS OF THE PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

### Article 22

(1) If an arbitrator's mandate terminates prematurely (Article 21), the arbitrator shall be replaced. The appointment of a substitute arbitrator shall be made in accordance with the appointment procedure agreed by the parties. Absent any such agreement, the Secretary General shall request that

- 1.1 the parties, in the case of a sole arbitrator; or,
- 1.2 the remaining co-arbitrators, in the case of the chairperson of a tribunal; or,
- 1.3 the nominating party or the party on whose behalf the arbitrator was appointed, when the arbitrator was nominated by a party or was appointed on behalf of a party;



nominate a substitute arbitrator within 30 days – in the cases addressed by paragraphs 1.1 and 1.2 of this Article jointly – and indicate the nominee’s name, address and other contact details. Articles 16 to 18 apply by analogy. If such nomination is not made within this time period, the Board shall appoint the substitute arbitrator. If a substitute arbitrator is successfully challenged (Article 21 paragraph 1.4), the right to nominate a substitute arbitrator shall lapse and the Board shall appoint the substitute arbitrator.

(2) If an arbitrator’s mandate terminates prematurely pursuant to Article 21, the new arbitral tribunal shall determine, after requesting comments from the parties, whether and to what extent previous stages of the arbitration shall be repeated.

(3) The cost implications of the premature termination of the arbitrator’s mandate and of the appointment of a substitute arbitrator shall be based on Article 42 paragraph 5 and Article 44 paragraph 10.

## CHALLENGE OF EXPERTS

### CHALLENGE OF EXPERTS

#### Article 23

Article 20 paragraphs 1 and 2 shall apply by analogy to the challenge of experts appointed by the arbitral tribunal. The arbitral tribunal shall decide the challenge.

## JURISDICTION OF THE ARBITRAL TRIBUNAL

### JURISDICTION OF THE ARBITRAL TRIBUNAL

#### Article 24

(1) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the merits. A party is not precluded from raising such an objection by the fact that it has nominated an arbitrator pursuant to Article 17 or has participated in the nomination of an arbitrator pursuant to Article 18. An objection that the arbitral tribunal is exceeding the scope of its

authority shall be raised as soon as the matter alleged to exceed the scope of its authority is raised during the arbitration. A later objection shall be barred in both cases; provided that, if the arbitral tribunal considers the delay to be sufficiently excused, it may admit a later objection.

(2) The arbitral tribunal shall decide on its own jurisdiction. The decision on jurisdiction may be made together with the decision on the merits or in a separate award. Where the arbitral tribunal declines jurisdiction, it shall, upon the request of one of the parties, decide on the parties' costs obligations.

## PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

### PLACE OF ARBITRATION

#### Article 25

(1) The parties are free to agree on the place of arbitration. Absent party agreement, the place of arbitration shall be Vienna.

(2) The arbitral tribunal may deliberate or take procedural actions at any location it deems appropriate, without thereby resulting in a change of the place of arbitration.

### LANGUAGE OF THE PROCEEDINGS

#### Article 26

Absent party agreement on the language or languages of the arbitration, immediately after transmission of the file the arbitral tribunal shall determine the language or languages, having due regard to all circumstances, including the language of the contract.

### APPLICABLE LAW, AMIABLE COMPOSITEUR

#### Article 27

(1) The arbitral tribunal shall decide the dispute in accordance with the statutory provisions or rules of law agreed upon by the parties. Unless the parties have expressly agreed otherwise, any agreement as to a given national law or national legal system shall be construed as a direct reference to that national substantive law and not to the national conflict-of-laws rules.

(2) If the parties have not determined the applicable statutory provisions or rules of law, the arbitral tribunal shall apply the applicable statutory provisions or rules of law which it considers appropriate.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only in cases where the parties have expressly authorised it to do so.

## CONDUCT OF THE ARBITRATION

### Article 28

(1) The arbitral tribunal shall conduct the arbitration in accordance with the Vienna Rules and the agreement of the parties in an efficient and cost-effective manner, but otherwise according to its own discretion. The arbitral tribunal shall treat the parties fairly. The parties shall be granted the right to be heard at every stage of the proceedings.

(2) Subject to advance notice, the arbitral tribunal may *inter alia* consider pleadings, the submission of evidence, and requests for the taking of evidence to be admissible only up to a certain point in time of the proceedings.

## ESTABLISHING THE FACTS OF THE CASE

### Article 29

(1) If the arbitral tribunal considers it necessary, it may on its own initiative collect evidence, question parties or witnesses, request the parties to submit evidence, and call experts. Article 43 shall apply if costs are incurred as a result of the taking of evidence and, in particular, the appointment of experts.

(2) The arbitration shall proceed notwithstanding the failure of any party to participate.

## ORAL HEARING

### Article 30

(1) Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings should be conducted orally or in writing. If the parties have not excluded an oral hearing,

upon any party's request the arbitral tribunal shall hold such a hearing at an appropriate stage of the proceedings. The parties shall in any case have the opportunity to acknowledge and comment on the requests and pleadings of the other parties and on the result of the evidentiary proceedings.

(2) The date of the oral hearing shall be fixed by the sole arbitrator or the chairperson. Hearings shall not be open to the public. The sole arbitrator or the chairperson shall prepare and sign minutes of the hearing, which shall contain at a minimum a summary of the hearing and its results.

## DUTY TO OBJECT

### Article 31

If a party has knowledge of a violation by the arbitral tribunal of a provision of the Vienna Rules or other provisions applicable to the proceedings, it shall immediately file an objection with the arbitral tribunal, failing which the party shall be deemed to have waived its right to object.

## CLOSURE OF THE PROCEEDINGS

### Article 32

As soon as the arbitral tribunal forms the conviction that the parties have had an adequate opportunity to make submissions and to offer evidence, the arbitral tribunal shall declare the proceedings closed as to the matters to be decided in the award, and shall inform the Secretary General and the parties of the anticipated date by which the final award will be rendered. The arbitral tribunal may reopen the proceedings at any time.

## INTERIM AND CONSERVATORY MEASURES / SECURITY FOR COSTS

### Article 33

(1) Unless the parties have agreed otherwise, as soon as the file has been transmitted to the arbitral tribunal (Article 11), the arbitral tribunal may, at the request of a party, grant interim or conservatory measures against another party as well as amend, suspend or revoke any such measures. The other parties shall be

heard before the arbitral tribunal renders any decision on interim or conservatory measures. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure. The parties shall comply with such orders, irrespective of whether they are enforceable before national courts.

(2) Any orders for interim or conservatory measures pursuant to this Article shall be in writing. In an arbitration with more than one arbitrator, the signature of the chairperson shall suffice. If the chairperson is hindered from acting, the signature of another arbitrator shall suffice, provided the arbitrator signing the order records the reasons for the absence of the chairperson's signature.

(3) Unless the parties have agreed otherwise, orders for interim or conservatory measures shall state the reasons upon which they are based. The order shall identify the date on which it was issued and the place of arbitration.

(4) Orders for interim and conservatory measures shall be retained in the same manner as awards (Article 36 paragraph 5).

(5) The provisions of paragraphs 1 to 4 of this Article do not prevent the parties from applying to any competent national authority for interim or conservatory measures. A request to a national authority to order such measures or to enforce such measures already ordered by the arbitral tribunal shall not constitute an infringement or waiver of the arbitration agreement and shall not affect the powers of the arbitral tribunal. The parties shall immediately inform the Secretariat and the arbitral tribunal of any such request as well as of all measures ordered by the national authority.

(6) The arbitral tribunal may, at the request of the respondent, order the claimant to provide security for costs, if the respondent shows cause that the recoverability of a potential claim for costs is, with a sufficient degree of probability, at risk. When deciding on a request for security for costs, the arbitral tribunal shall give all parties the opportunity to present their views.

(7) If a party fails to comply with an order by the arbitral tribunal for security for costs, the arbitral tribunal may, upon request, suspend in whole or in part, or terminate, the proceedings (Article 34 paragraph 2.4).

## MEANS OF TERMINATION OF THE PROCEEDINGS

### Article 34

The arbitral proceedings are terminated

(1) by the rendering of an award (Articles 36 and 37 paragraph 1); or

(2) by an order of the arbitral tribunal, if

2.1 the claimant withdraws its Statement of Claim, unless the respondent objects and a legitimate interest of the respondent in obtaining a final resolution of the dispute exists;

2.2 the parties agree to the termination of the arbitration and communicate this agreement to the arbitral tribunal and to the Secretary General;

2.3 the continuation of the proceedings has become impossible, in particular because the parties to the arbitration do not pursue the arbitration further despite a written order from the arbitral tribunal, which refers to the possibility of terminating the arbitration;

2.4 a party fails to comply with an order by the arbitral tribunal for security for costs (Article 33 paragraph 7); or

(3) by a declaration of the Secretary General

3.1 for failure to comply with an order to remedy (Article 7 paragraph 3) or a payment order (Article 10 paragraph 4 and Article 42 paragraphs 3 and 5);

3.2 in case of paragraphs 2.1 – 2.3, if the file has not yet been transmitted to the arbitral tribunal.

## DECISIONS OF THE ARBITRAL TRIBUNAL

### Article 35

(1) Every award and every other decision of the arbitral tribunal requires a majority ruling of its panel members. If the arbitrators cannot form a majority, the chairperson shall decide.

(2) The chairperson may decide questions of procedure alone if so authorized by the co-arbitrators.

## ARBITRAL AWARD

### Article 36

- (1) Awards shall be in writing. Awards shall state the reasons on which they are based unless all parties have agreed in writing or in the oral hearing that the award may exclude the reasons.
- (2) The award shall identify the date on which it was issued and the place of arbitration (Article 25).
- (3) All original copies of an award shall be signed by all arbitrators. The signature of the majority of the arbitrators shall suffice if the award states that one of the arbitrators refused to sign or was prevented from signing by an impediment that could not be overcome within a reasonable period of time. If the award is a majority award and not a unanimous award, this shall be stated upon request of the dissenting arbitrator.
- (4) All original copies of the award shall be signed by the Secretary General and bear the VIAC stamp, which shall confirm that it is an award of the VIAC, rendered and signed by one or more arbitrators appointed under the Vienna Rules.
- (5) The Secretary General shall serve the award on the parties in hardcopy form (Article 12 paragraph 3); Article 12 paragraphs 4 and 5 apply to the effectiveness and date of service. Upon request of a party, the wording of the award may additionally be sent to the parties in electronic form. The Secretariat shall retain one original copy of the award, and shall also retain the documentation of proof of service. *(applicable to all proceedings that were commenced before 1 April 2020)*
- (5 – new) The Secretary General shall serve the award on the parties in paper form. If it is not possible or feasible to serve the award in paper form within a reasonable time, the Secretariat may additionally send a copy of the award in electronic form. Article 12 paragraphs 3, 4 and 5 apply to the effectiveness and date of service. The Secretariat shall retain one original copy of the award, and shall also retain the documentation of proof of service. A copy of the award in paper form may be served at a later stage. *(applicable to all proceedings that commence after 31 March 2020)*
- (6) Upon request of a party, the sole arbitrator or chairperson (or in case he is prevented from acting, another arbitrator) or, in case they are prevented from doing so, the Secretary General shall confirm that the award is final and binding on all original copies.
- (7) By agreeing to the Vienna Rules, the parties undertake to comply with the terms of the award.

## AWARD ON AGREED TERMS AND RECORDED SETTLEMENT

### Article 37

(1) Upon request of the parties, the arbitral tribunal may render an award (Article 36) on agreed terms reflecting the content of a settlement which they have reached.

(2) The parties may request that the content of a settlement which they have reached be recorded by the arbitral tribunal. In this case, the proceedings are terminated in accordance with Article 34 paragraph 2.2.

## DECISION ON COSTS

### Article 38

(1) When the proceedings are terminated, upon request of a party, the arbitral tribunal shall set forth, in the final award or by separate award, the costs of the arbitration as determined by the Secretary General pursuant to Article 44 paragraph 1.1 and determine the amount of the appropriate costs of the parties pursuant to Article 44 paragraph 1.2, as well as other additional expenses pursuant to Article 44 paragraph 1.3.

(2) The arbitral tribunal shall also establish who will bear the costs of the proceedings or the apportionment of these costs. Unless the parties have agreed otherwise, the arbitral tribunal shall decide on the allocation of costs according to its own discretion. The conduct of any or all parties as well as their representatives (Article 13), and in particular their contribution to the conduct of efficient and cost-effective proceedings, may be taken into consideration by the arbitral tribunal in its decision on costs according to this Article.

## CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE ARBITRAL AWARD

### Article 39

(1) Within 30 days of receipt of the award, any party may file the following applications with the Secretariat for the arbitral tribunal:

**1.1** to correct any computational, typographical, printing or similar errors in the award;



1.2 to clarify specific parts of the award;

1.3 to render an additional award on claims made in the arbitration but not resolved in the award.

(2) The arbitral tribunal shall decide on such an application. The other parties shall be heard before the arbitral tribunal makes its decision. The arbitral tribunal shall set a time limit for comments, which should not exceed 30 days. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 5). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

(3) Upon its own initiative, the arbitral tribunal may issue corrections pursuant to paragraph 1.1 or supplementations pursuant to paragraph 1.3 of this Article within 30 days of the date of the award.

(4) Article 36 applies to the supplementation of the award. Corrections and clarifications shall be issued in the form of an addendum and shall constitute an integral part of the arbitral award.

## REMISSION TO THE ARBITRAL TRIBUNAL

### Article 40

When a national court remits proceedings to the arbitral tribunal, the provisions of the Vienna Rules on the arbitral proceedings shall apply by analogy. The Secretary General and the Board may take any measures necessary to enable the arbitral tribunal to comply with the requirements of the remission. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 5). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

## PUBLICATION OF AWARDS

### Article 41

The Board and the Secretary General may publish anonymized summaries or extracts of awards in legal journals or the VIAC's own publications, unless a party has objected to publication within 30 days of service of the award.

# COSTS

## ADVANCE ON COSTS

### Article 42

(1) The Secretary General shall determine the VIAC's prospective administrative fees, the arbitrators' fees and the expenses. The advance on costs shall be paid in equal shares by the parties prior to the transmission of the file to the arbitral tribunal within 30 days of service of the request for payment. In multi-party proceedings, one half of the advance shall be paid jointly by the claimants and one half jointly by the respondents. Any further reference in this Article to a party shall be understood to refer to all parties either on the side of claimant or of respondent.

(2) By agreeing to the Vienna Rules, the parties mutually undertake to bear the advance on costs in equal shares pursuant to paragraph 1 of this Article.

(3) If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the opposing party and request it to pay the outstanding amount within 30 days of service of the request. The obligation of the non-paying party to bear its share of the advance on costs pursuant to paragraph 2 of this Article shall not thereby be affected. If this share is not paid within the time limit specified, the Secretary General may declare the proceedings terminated (pursuant to Article 34 paragraph 3). This shall not prevent the parties from raising the same claims at a later time in another proceeding.

(4) If a party fails to fulfil its share of the payment obligations pursuant to paragraphs 1 and 2 of this Article, and if the other party pays the respective share pursuant to paragraph 3 of this Article, upon the paying party's request and to the extent it finds that it has jurisdiction over the dispute the arbitral tribunal may order the non-paying party, by an award or other appropriate form, to reimburse the paying party. This shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to Article 38.

(5) If an additional advance on costs is necessary and determined accordingly by the Secretary General, the procedure as outlined in paragraphs 1 to 4 of this Article shall apply. Until payment of the additional advance on costs, in principle, the arbitral tribunal shall not address the claims that led to the increase or additional

advance on costs. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (Article 34 paragraph 3).

## ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS

### Article 43

(1) If the arbitral tribunal considers necessary certain procedural steps that would have cost implications, such as the appointment of experts, interpreters, or translators, a verbatim transcript of the proceedings, a site visit, or relocation of the hearing, then the arbitral tribunal shall notify the Secretary General and arrange for these prospective costs to be covered.

(2) The arbitral tribunal may undertake the procedural steps provided for in paragraph 1 of this Article only once the prospective costs are sufficiently covered.

(3) The arbitral tribunal shall decide which consequences for the proceedings shall arise, if any, from a failure to pay a required advance on costs pursuant to this Article.

(4) All orders related to the procedural steps mentioned in paragraph 1 of this Article shall be undertaken by the arbitral tribunal for and on the account of the parties.

## COMPOSITION AND CALCULATION OF THE PROCEDURAL COSTS

### Article 44

(1) The following shall comprise the procedural costs:

- 1.1 the administrative fees of the VIAC, the arbitrators' fees including any applicable value-added tax, and the reasonable expenses (such as arbitrators' or tribunal secretary's travel and subsistence costs, costs for service of communications, rent, court reporter fees); as well as
- 1.2 the parties' costs, i.e. the reasonable expenses of the parties for their legal representation; and
- 1.3 other expenses related to the arbitration, in particular those listed in Article 43 paragraph 1.

(2) The Secretary General shall calculate the administrative fees and the arbitrators' fees on the basis of the schedule of fees (Annex 3) according to the amount in dispute and determine these fees together with the expenses at the end of the proceedings (paragraph 1.1 of this Article). Prior to termination of the arbitral proceedings, the Secretary General may make payments on account to the arbitrators in consideration of the stage of the proceedings. The arbitral tribunal shall determine and fix the costs and other expenses outlined in paragraphs 1.2 and 1.3 of this Article in the award (Article 38).

(3) In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties have made only a partial claim or if a party has clearly undervalued its claim or assigned no value to it.

(4) If more than two parties are involved in an arbitration, the amount of administrative fees and arbitrators' fees listed in Annex 3 shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

(5) Administrative and arbitrators' fees for Counterclaims and Requests for Joinder of third parties with a Statement of Claim shall be calculated by the Secretary General and paid separately by the parties.

(6) For claims raised by way of set-off against the principal claims, the administrative and arbitrators' fees shall be calculated and paid separately to the extent the determination of these claims is expected to lead to substantial additional work.

(7) The arbitrators' fees listed in Annex 3 apply to sole arbitrators. The total fee for a panel of arbitrators is two-and-a-half times the rate of a sole arbitrator. The Secretary General may increase the arbitrators' fees according to his own discretion by a maximum total of 40 percent *vis-à-vis* the schedule of fees (Annex 3), in particular for especially complex cases or for especially efficient conduct of proceedings; conversely, the Secretary General may decrease the arbitrators' fees by a maximum total of 40 percent, in particular for inefficient conduct of proceedings.

(8) The fees listed in Annex 3 comprise all partial and interim decisions such as awards on jurisdiction, partial awards, decisions on the challenge of experts, orders for conservatory or interim measures, other decisions including additional procedural steps in setting aside proceedings, and procedural orders.

(9) A reduction in the amount in dispute shall be taken into consideration in the calculation of the administrative and arbitrators' fees only if the reduction was made before transmission of the file to the arbitral tribunal.

(10) If the proceedings or the arbitrator's mandate are prematurely terminated, the Secretary General may reduce the arbitrators' fees according to his own discretion in consideration of the stage of the proceedings at the time of termination. If arbitral proceedings under the Vienna Rules are commenced before, during or after proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the Secretary General may apply this paragraph by analogy for the calculation of the arbitrators' fees.

(11) If proceedings under the Vienna Mediation Rules are commenced before, during, or after arbitral proceedings under the Vienna Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings shall be deducted from the administrative fees in the subsequently commenced proceedings.

(12) The fees listed in Annex 3 do not include value added tax, which may apply to the arbitrator's fees. Upon accepting their mandate, those arbitrators whose fees are subject to value added tax shall inform the Secretary General of the prospective amount of value added tax.

# MISCELLANEOUS PROVISIONS

## EXPEDITED PROCEEDINGS

### Article 45

(1) The supplementary rules on expedited proceedings apply if the parties have included them in their arbitration agreement or if the parties subsequently agree on their application. Such party agreement on the conduct of expedited proceedings shall occur no later than the submission of the Answer to the Statement of Claim.

(2) Unless the rules on expedited proceedings provide otherwise, the general provisions of the Vienna Rules shall apply with the following deviations:

(3) The time limit for payment of the advance on costs pursuant to Article 42 shall be reduced to 15 days.

(4) Counterclaims or set-off-claims are admissible only until the expiry of the time limit for submission of the Answer to the Statement of Claim.

(5) Expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators.

(6) If the dispute is to be decided by a sole arbitrator, the parties shall jointly nominate a sole arbitrator within 15 days of receiving such a request from the Secretary General. If the parties fail to nominate the sole arbitrator within this time limit, the Board shall appoint the sole arbitrator.

(7) Where the dispute is to be decided by a panel of arbitrators, the claimant shall nominate an arbitrator in its Statement of Claim. The respondent shall nominate an arbitrator within 15 days of receipt of a request from the Secretary General. The arbitrators nominated by the parties shall nominate a chairperson within 15 days of receipt of a request from the Secretary General. If an arbitrator is not nominated within this time period, the Board shall appoint the arbitrator.

(8) The arbitral tribunal shall render a final award within six months of transmission of the file, unless the proceedings are prematurely terminated. If he deems it necessary, the Secretary General may extend the time limit pursuant to a reasoned request

from the arbitral tribunal or on its own. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.

(9) The arbitration shall be administered in such a manner that the arbitral tribunal can render a final award within six months after the transmission of the file. Unless the arbitral tribunal determines otherwise, the following provisions shall apply:

9.1 After the submission of the Statement of Claim and the Answer to the Statement of Claim, the parties will exchange only one further written submission.

9.2 The parties shall make all factual arguments in their written submissions and all written evidence shall be attached to the written submissions.

9.3 To the extent requested by a party or deemed necessary by the arbitral tribunal, the arbitral tribunal shall hold a single oral hearing, in which all evidence will be taken and all legal issues addressed.

9.4 No written submissions shall be filed after the oral hearing.

## DISCLAIMER

### Article 46

The liability of arbitrators, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the arbitration is excluded to the extent legally permissible.

## TRANSITIONAL PROVISION

### Article 47

(1) This version of the Vienna Rules, which enters into force on January 2018, shall apply to all proceedings that commence after 31 December 2017.

(2) The amendments to Article 36 para 5 enter into force on 1 April 2020.





## PART II

VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC

### **RULES OF MEDIATION**

VIENNA MEDIATION RULES | in force as from 1 January 2018

## COMPETENCE OF THE VIAC AND APPLICABLE VERSION OF THE VIENNA MEDIATION RULES

### Article 1

(1) The Vienna International Arbitral Centre (hereinafter “VIAC”) is the Permanent International Arbitration Institution of the Austrian Federal Economic Chamber<sup>1</sup>. VIAC administers national and international arbitrations as well as proceedings pursuant to other alternative dispute resolution methods, if the parties have agreed upon

1.1 the VIAC Rules of Arbitration (hereinafter “Vienna Rules”) or

1.2 the VIAC Rules of Mediation (hereinafter “Vienna Mediation Rules”) or

1.3 otherwise upon the competence of the VIAC.

(2) The Vienna Mediation Rules shall apply in the version in effect at the time of the commencement of the Proceedings if the parties, before or after the dispute has arisen, have agreed to submit their dispute to the Vienna Mediation Rules.

(3) The Vienna Mediation Rules may be amended by a written agreement of all parties. Following the appointment of the mediator, any amendment is also subject to the mediator’s consent.

(4) The Board may refuse to administer Proceedings under the Vienna Mediation Rules if any agreed amendments are incompatible with the Vienna Mediation Rules.

(5) To the extent the Vienna Mediation Rules do not contain any rules on a specific issue and to the extent compatible with the Vienna Mediation Rules, the Vienna Rules shall apply by analogy, in particular their Articles 2, 3, 4, 5, 12 and 13.

## DEFINITIONS

### Article 2

(1) In the Vienna Mediation Rules

1.1 **Proceedings** refer to a mediation, any other alternative dispute resolution method chosen by the parties, or a

<sup>1</sup> According to Section 139 paragraph 2 of the Federal Statute on the Economic Chambers 1998 (“Wirtschaftskammergesetz 1998”), Federal Law Gazette I No. 103/1998 as amended by Federal Law Gazette I No. 73/2017

combination of dispute resolution methods that are supported by a third-party neutral and conducted under the Vienna Mediation Rules;

**1.2 third-party neutral** refers to a mediator, a conciliator, another neutral or several such neutrals who support the parties in the resolution of their dispute; hereinafter, the term “mediator” is used as a substitute for all third-party neutrals;

**1.3 party** refers to one or more parties who agree or have agreed to submit their dispute to the Vienna Mediation Rules;

**1.4 Secretary General** also refers to the Deputy Secretary General to the extent the Deputy Secretary General renders decisions in the event the Secretary General is unable to perform his duties, or with authorization by the Secretary General.

(2) To the extent the terms used in the Vienna Mediation Rules refer to natural persons, the form chosen shall apply to all genders. In practice, the terms in these rules shall be used in a gender-specific manner.

(3) References to “Articles” without further specification relate to the relevant Articles of the Vienna Mediation Rules.

## COMMENCING THE PROCEEDINGS

### Article 3

(1) The Proceedings shall be initiated by submitting a request. The Proceedings shall commence on the date of receipt of the request by the Secretariat of the VIAC or by an Austrian Regional Economic Chamber in hardcopy form or in electronic form (Article 12 paragraph 1 Vienna Rules), in the event of an agreement of the parties to submit their dispute to the Vienna Mediation Rules. Absent such an agreement, the Proceedings shall commence on the date on which such agreement was subsequently concluded by the parties.

(2) The request should include the following:

**2.1** the full names, addresses and other contact details of the parties;

**2.2** a short description of the facts and the dispute;

**2.3** the amount in dispute;

2.4 the full name, address and other contact details of the mediator nominated, or attributes that a mediator to be appointed should have;

2.5 particulars or proposals regarding an agreement of the parties to submit their dispute for resolution under the Vienna Mediation Rules, in particular as regards

- i. the number of mediators;
- ii. the language(s) to be used in the Proceedings.

(3) The Secretary General informs the parties of the receipt of the request and serves the request on the other party and invites comments within a set time limit to the extent that the request was not submitted jointly by all parties.

## REGISTRATION FEE

### Article 4

(1) If an agreement between the parties to submit their dispute to the Vienna Mediation Rules already exists, the registration fee shall be paid net of any charges in the amount stipulated in Annex 3. Absent such agreement, the registration fee shall be paid only upon subsequent conclusion of such agreement.

(2) If there are more than two parties to the Proceedings, the registration fee shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

(3) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.

(4) If arbitral proceedings under the Vienna Rules are commenced before, during, or after Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings.

(5) The Secretary General may extend the time limit for the payment of the registration fee as appropriate. If payment is not effected within the time limit set, the Secretary General may declare the Proceedings terminated.

## PLACE OF THE SESSIONS

### Article 5

Irrespective of any preceding or parallel arbitral proceedings, the mediator shall, in consultation with the parties and after giving due consideration to all the circumstances, determine the place of the mediation session(s). The mediator may determine a different place for each session if he deems that to be appropriate.

## LANGUAGE OF THE PROCEEDINGS

### Article 6

Immediately after transmission of the file (Article 9 paragraph 1), the mediator, after consultation with the parties and giving due consideration to all the circumstances, shall determine the language(s) of the Proceedings.

## APPOINTMENT OF THE MEDIATOR

### Article 7

(1) Absent an agreement of the parties regarding the identity of the mediator or the manner of appointment, the Secretary General shall set a time limit and invite the parties to jointly nominate a mediator and indicate his name, address and contact details.

(2) The Secretariat may assist the parties in the joint nomination of the mediator in particular by proposing one or more persons from which the parties may jointly nominate one or more mediators. If the parties fail to jointly nominate a mediator, the Board shall appoint the mediator. In so doing, the Board shall give due consideration to the parties' preferences regarding the attributes of the mediator.

(3) Prior to the appointment of the mediator by the Board or the confirmation of the nominated mediator, the mediator shall sign and submit to the Secretary General a declaration confirming his (i) impartiality and independence, (ii) availability, (iii) qualification, (iv) acceptance of office, and (v) submission to the Vienna Mediation Rules. The mediator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality or independence or that conflict with the agreement of the parties. This duty of the mediator continues to apply throughout the Proceedings. The Secretary General shall forward a copy of these statements to the parties for comment.

(4) If there are no doubts as to the impartiality and independence of the mediator and his ability to duly carry out his mandate, the Board shall appoint the mediator or the Secretary General shall confirm the nominated mediator. If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated mediator. Upon confirmation, the nominated mediator shall be deemed appointed.

(5) If the confirmation of a mediator is rejected or if the replacement of a mediator becomes necessary, paragraphs 1 to 4 shall apply *mutatis mutandis*.

## ADVANCE ON COSTS AND COSTS

### Article 8

(1) The Secretary General shall determine a preliminary advance on costs for the prospective administrative fees of VIAC, the down payment on the mediator's fees (plus any value-added tax) and the anticipated expenses (such as travel and subsistence costs of the mediator, delivery charges, rent, etc). This first part shall be paid by the parties prior to the transmission of the file to the mediator and within a time limit set by the Secretary General.

(2) Unless the parties have agreed otherwise in writing, the advance on costs shall be borne by the parties in equal shares. If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the other party. The other party is at liberty to bear the outstanding share of the advance on costs. If this share is not paid within the time limit specified, the mediator may suspend the Proceedings in whole or in part, or the Secretary General may declare the Proceedings terminated (Article 11 paragraph 1.5).

(3) If an additional advance on costs is necessary and determined accordingly by the Secretary General, in particular to cover the mediator's fees and anticipated expenses, paragraph 2 of this Article shall apply.

(4) Upon termination of the Proceedings, the Secretary General shall calculate the administrative fees and the mediator's fees and fix these fees together with the expenses.

(5) The administrative fees shall be calculated on the basis of the schedule of fees (Annex 3) according to the amount in dispute. In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties clearly undervalued it or assigned no value to it. If more than two parties are involved in the Proceedings, the amount of administrative fees listed in Annex 3 shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

(6) The amount of the mediator's fees shall be calculated according to the actual time spent on the basis of hourly or daily fee rates. The fee rates shall be fixed by the Secretary General at the time of the mediator's appointment or confirmation following consultation with the mediator and the parties. The Secretary General shall consider the proportionality of the fees and take into account the complexity of the dispute. There shall be no separate fee arrangements between the parties and the mediator.

(7) Unless otherwise agreed in writing, the parties shall bear their own costs, including the costs of legal representation.

(8) If arbitral proceedings under the Vienna Rules are commenced before, during, or after Proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings shall be deducted from the administrative fees in the subsequently commenced proceedings.

## CONDUCT OF THE PROCEEDINGS

### Article 9

(1) The Secretary General shall transmit the file to the mediator if

- a request in accordance with Article 3 has been submitted;
- the mediator has been appointed; and
- the preliminary advance on costs in accordance with Article 8 paragraph 1 has been paid in full.

(2) The mediator shall promptly discuss with the parties the manner in which the Proceedings shall be conducted. He shall assist the parties in finding an acceptable and satisfactory solution for their dispute. In conducting the Proceedings, the mediator shall be in control of the Proceedings while letting himself be guided by the wishes of the parties insofar as they are in agreement and in line with the purpose of the Proceedings.

(3) The Proceedings may be conducted in person or by virtual means. The parties are free to select their mediation team. The mediator may offer guidance in this respect. Each party shall personally participate in a session with the mediator, or be represented by a duly appointed and authorized person having the authority to settle the dispute.

(4) Throughout the Proceedings, the parties shall act in good faith, fairly and respectfully. Each party assumes the obligation to participate in at least one session with the mediator, unless the Proceedings are terminated prematurely in accordance with Article 11 paragraph 1.5.

(5) Sessions with the mediator are not public. Only the following individuals shall be permitted to attend:

- the mediator;
- the parties; and
- persons whose attendance was announced to the mediator and the other party in a timely manner before the respective session and who have signed a written confidentiality agreement in accordance with Article 12.

(6) If he considers it appropriate, the mediator may meet with a party in the absence of the other party (*caucus*). The mediator shall keep confidential the information given by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality *vis-à-vis* the other party and the mediator agrees to pass on such information.

## PARALLEL PROCEEDINGS

### Article 10

A party may commence or continue any legal, arbitral or other proceedings in respect of the same dispute, irrespective of whether Proceedings are being conducted under the Vienna Mediation Rules.

## TERMINATION OF THE PROCEEDINGS

### Article 11

(1) The Proceedings shall be terminated by way of a written confirmation by the Secretary General to the parties and upon occurrence of the earliest of the following circumstances:



- 1.1 an agreement of the parties to settle the entire dispute;
- 1.2 the notification in writing by any party to the mediator or the Secretary General that it does not wish to continue the Proceedings, provided that at least one session with the mediator has taken place, or that no such session has taken place within two months of the mediator's appointment, or that the time frame agreed for the Proceedings has expired;
- 1.3 the notification in writing by the mediator to the parties that the Proceedings will, in his opinion, not resolve the dispute between them;
- 1.4 the notification in writing by the mediator to the parties that the Proceedings are terminated;
- 1.5 the notification in writing by the Secretary General regarding the failure
  - i. to appoint a mediator in accordance with Article 7 paragraphs 1 to 4;
  - ii. to comply with a payment order (Articles 4 and 8) in a timely manner.

(2) The Proceedings may also be terminated in part if one of the grounds for termination listed under paragraph 1 applies to only a part of the dispute.

(3) In the cases listed under paragraphs 1.1 to 1.4 and paragraph 2, the mediator shall immediately inform the Secretary General of the circumstance of the termination.

## CONFIDENTIALITY, ADMISSIBILITY OF EVIDENCE AND SUBSEQUENT REPRESENTATION

### Article 12

(1) The individuals listed under Article 9 paragraph 5 shall treat as confidential any information that has come to their attention in connection with the Proceedings and that would not have come to their attention had the Proceedings not taken place.

(2) Any written documents that were obtained during the Proceedings and that would otherwise not have been obtained shall not be used in subsequent legal, arbitral or other proceedings. Any statements, views, proposals and admissions made during the Proceedings as well as any party's willingness to settle the dispute

amicably shall also remain confidential. Regarding any or all of the foregoing, the mediator shall not be called as a witness.

(3) The obligations under paragraphs 1 and 2 shall not apply if the law governing these Proceedings contains mandatory provisions to the contrary or if it is required for the implementation or the enforcement of an agreement for the termination of these Proceedings.

(4) The fact that the Proceedings are taking place, have taken place or will take place shall not be confidential.

(5) The mediator shall not act as attorney or represent the parties in any other capacity or otherwise advise the parties in legal, arbitral or other proceedings regarding the dispute that constitutes or constituted the subject matter of the Proceedings.

## DISCLAIMER

### Article 13

The liability of the mediator, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the Proceedings under the Vienna Mediation Rules is excluded to the extent legally permissible.

## TRANSITIONAL PROVISION

### Article 14

This version of the Vienna Mediation Rules, which enters into force on 1 January 2018, shall apply to all Proceedings that commence after 31 December 2017.





## PART III



### **ANNEXES**

TO THE RULES OF ARBITRATION AND THE RULES OF MEDIATION<sup>1</sup>

<sup>1</sup> The Annexes 1-4 are integral part of the Rules of Arbitration and the Rules of Mediation.

# ANNEX 1

## MODEL CLAUSES

### ARBITRATION CLAUSE

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules.

Optional supplementary agreements on:

- (1) the number of arbitrators (one or three) (Article 17 Vienna Rules);
- (2) the language(s) to be used in the arbitral proceedings (Article 26 Vienna Rules);
- (3) the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement (both Article 27 Vienna Rules), and the rules applicable to the proceedings (Article 28 Vienna Rules);
- (4) the applicability of the provisions on expedited proceedings (Article 45 Vienna Rules);
- (5) the scope of the arbitrators' confidentiality (Article 16 paragraph 2) and its extension regarding parties, representatives and experts.

### MEDIATION CLAUSES

#### Model Clause 1: Optional Mediation

Regarding all disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, the parties agree to jointly consider Proceedings in accordance with the Mediation Rules (Vienna Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber.

## **Model Clause 2: Obligation to Refer Disputes to Mediation followed by Arbitration**

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall first be submitted to Proceedings in accordance with the Mediation Rules (Vienna Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber.

In the event that within a period of [60]<sup>1</sup> days from commencing Proceedings under the Vienna Mediation Rules the dispute or claims are not resolved, they shall be finally settled under the Rules of Arbitration (Vienna Rules) of VIAC by one or three arbitrators appointed in accordance with the said Rules.<sup>2</sup>

## **Model Clause 3: Obligation to Refer a Present Dispute to Mediation**

The parties agree that the present dispute shall be submitted to Proceedings in accordance with the Mediation Rules (Vienna Mediation Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber. The Proceedings shall be initiated by submitting a joint request. The registration fee shall be borne by the parties in equal shares.

### **Optional supplementary agreements on:**

- (1)** the number of mediators or other third party neutrals (e.g. one or two);
- (2)** the language(s) to be used in the Proceedings (Article 6 Vienna Mediation Rules);
- (3)** the substantive law applicable to the contractual relationship, the substantive law applicable to the mediation agreement, and the rules applicable to the Proceedings (Article 1 paragraph 3 Vienna Mediation Rules);
- (4)** the admissibility of parallel proceedings (Article 10 Vienna Mediation Rules);
- (5)** the interruption of the statute of limitations or waiver to invoke the statute of limitations for a specific period of time.

<sup>1</sup> or a different period of time agreed upon in writing by the parties

<sup>2</sup> see the optional supplementary agreements for arbitration clauses

## **ANNEX 2**

# **INTERNAL RULES OF THE BOARD**

- (1) The meetings of the Board are convened by the President and presided over by him or by a Vice President.
- (2) The Board shall have a quorum if more than one third of its members are in attendance. Attendance may also be effectuated by participation via telephone or video conferencing as well as via internet.
- (3) The Board shall decide by simple majority of the members present who are eligible to vote. If there is a tie vote, the presiding member shall have a prevailing vote.
- (4) If the Vice Presidents are prevented from exercising their duties, the President's duties shall be assumed by the most senior member based on duration of service as Board member. Otherwise, the Vice President with the longest duration of service as Board member shall perform the duties.
- (5) Members of the Board who are or were involved in any capacity whatsoever in an arbitration administered by the VIAC shall not be allowed to be present or to participate in any way in discussions or decisions pertaining to those same proceedings. This shall not impair the existence of a quorum of the Board.
- (6) Decisions by resolution by correspondence are permissible. In the latter case, the President shall submit a written proposal to the members and set a time limit for the casting of written votes. Articles 2 and 3 of this Annex shall apply by analogy. Each member has the right to request a meeting regarding the written proposal.
- (7) The Board is not obliged to state the reasons on which its decisions are based.



## ANNEX 3 SCHEDULE OF FEES

### Registration Fees<sup>1</sup>

Amount in dispute in EUR		Rate in EUR
from	to	
	25,000	500
25,001	75,000	1,000
	over 75,000	1,500

### Administrative Fees<sup>2</sup>

Amount in dispute in EUR		Rate in EUR
from	to	
	25,000	500
25,001	75,000	1,000
75,001	100,000	1,500
100,001	200,000	3,000 + 1.875 % of amt. over 100,000
200,001	500,000	4,875 + 1.250 % of amt. over 200,000
500,001	1,000,000	8,625 + 0.875 % of amt. over 500,000
1,000,001	2,000,000	13,000 + 0.500 % of amt. over 1,000,000
2,000,001	5,000,000	18,000 + 0.125 % of amt. over 2,000,000
	over 5,000,000	21,750 + 0.063 % of amt. over 5,000,000 in total max. 75,000 (21,750 + 53,250)

### Fees for Sole Arbitrators<sup>3</sup>

Amount in dispute in EUR		Rate in EUR
from	to	
	100,000	6 %, minimum fee 3,000
100,001	200,000	6,000 + 3.00 % of amt. over 100,000
200,001	500,000	9,000 + 2.50 % of amt. over 200,000
500,001	1,000,000	16,500 + 2.00 % of amt. over 500,000
1,000,001	2,000,000	26,500 + 1.00 % of amt. over 1,000,000
2,000,001	5,000,000	36,500 + 0.60 % of amt. over 2,000,000
5,000,001	10,000,000	54,500 + 0.40 % of amt. over 5,000,000
10,000,001	20,000,000	74,500 + 0.20 % of amt. over 10,000,000
20,000,001	100,000,000	94,500 + 0.10 % of amt. over 20,000,000
	over 100,000,000	174,500 + 0.01 % of amt. over 100,000,000

<sup>1</sup> See Article 10 Vienna Rules; Article 4 Vienna Mediation Rules

<sup>2</sup> See Article 44 paragraphs 2 and 4 Vienna Rules; Article 8 paragraph 5 Vienna Mediation Rules

<sup>3</sup> See Article 44 paragraphs 2, 4, 7 and 10 Vienna Rules in particular

## **ANNEX 4**

### **VIAC AS APPOINTING AUTHORITY**

If VIAC is requested to act as appointing authority, the applicant shall pay a non-refundable fee in the amount of EUR 2,000 for each request. A request will be processed only after full payment of this fee.





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