

1991 VIAC Rules of Arbitration and Conciliation

Recommended Arbitration Clause

“All disputes arising out of this contract or related to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these rules.”

Appropriate supplementary provisions:

- (a) the number of arbitrators shall be (one or three);
- (b) the substantive law of shall be applicable;¹
- (c) the language to be used in the arbitral proceedings shall be

Parties having concluded the arbitration agreement as businessmen may waive their right to have recourse against an award in Austria on those grounds on which recourse may be had against a court judgment by way of an application for reopening the case. If this is desired, it is recommended that the following be added:

“Pursuant to para. 598(2) of the Austrian Code of Civil Procedure (ZPO), the parties expressly waive the application of para. 595(1) figure 7 of the said Code.”²

Rules of Arbitration³

General Provisions

Jurisdiction

Article 1

1. The International Arbitral Centre of the Federal Economic Chamber in Vienna (“the Centre”) has jurisdiction to settle disputes of a commercial nature if a valid arbitration agreement exists and if at least one party has its place of business outside the territory of the Republic of Austria.

¹ In this context, consideration should be given to the possible application of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

² Paras. 598(2) and 595(1) figure 7 of the Austrian Code of Civil Procedure read:

“*Paragraph 598*

(....)

2. If both parties have concluded the arbitration agreement as businessmen (Paragraph 1(1) figure 1 of the Consumer Protection Act), they may waive the application of Paragraph 595(1) figure 7.

“*Paragraph 595*

1. The award shall be set aside,

(1) (....)

7. the conditions are present in which a request can be made under Paragraph 530(1) figures 1 to 7 for a Court judgment to be set aside and the case re-opened.”

³ Translation from the authentic German text

2. If parties all of which have their place of business in Austria agree to the jurisdiction of the Centre, the Permanent Arbitral Tribunal of the Vienna Chamber of Commerce or, if another venue in Austria has been agreed, the Permanent Arbitral Tribunal of the Chamber of Commerce within whose territorial jurisdiction the agreed arbitration venue is situated, shall have jurisdiction. The latter tribunal shall conduct the proceedings in accordance with the rules of arbitration for the Permanent Arbitral Tribunals of the Chambers of Commerce.

3. Arbitration proceedings shall be conducted at the seat of the Centre in Vienna. Nevertheless, the parties can agree that the proceedings be conducted at a different place.⁴

Organization

Article 2

1. The organs of the Centre are the Board, consisting of the Chairman and at least four other members, and the Secretary.

2. The arbitrators to whom arbitration proceedings are entrusted are also members of the Centre for the duration of their mandate.

Article 3

1. The Chairman and the other members of the Board of the Centre are appointed for a period of office of five years by the Board of the Federal Economic Chamber; they can be reappointed.

2. The meetings of the Board are presided over by the Chairman, or in his absence by the most senior member present. The Board can validly take decisions if an absolute majority of its members is present. The Board shall take decisions by a simple majority. In the event of a tie in voting, the Chairman shall have a casting vote.

3. Members of the Board who are parties to particular arbitration proceedings in any capacity whatsoever shall be excluded from decisions pertaining to those proceedings.

4. The members of the Board must perform their duties to the best of their ability and are not subject to any directives in that respect. They are bound to secrecy on all matters coming to their notice in the course of their duties.

Article 4

1. The Secretary shall be appointed by the Board of the Federal Economic Chamber for a period of office of five years; he can be reappointed.

⁴ If an arbitration venue outside Austria is agreed upon, it should be noted that the award will as a rule not be an Austrian award and consequently that any challenge thereto may be governed by foreign law.

2. The Secretary shall direct the activities of the Secretariat; the latter shall perform the administrative tasks of the Centre.
3. The Secretary must perform his duties to the best of his ability and is not subject to any directives in that respect. He is bound to secrecy on all matters coming to his notice in the course of his duties.
4. The Secretary shall attend the meetings of the Board in an advisory capacity.

Arbitrators

Article 5

1. Arbitrators should have specific knowledge and experience in legal, commercial or other pertinent matters. They need not be Austrian citizens.
2. The names of persons qualified to act as arbitrators can be placed upon a list of arbitrators to be kept by the Secretary. The Board shall decide upon any addition to or deletion from that list and shall prepare a new list of arbitrators every three years.
3. Inclusion in the list of arbitrators is not a prerequisite for acting as an arbitrator. Insofar as the present rules authorize them to nominate or appoint arbitrators, the parties, the arbitrators nominated by the parties and the Board can nominate or appoint any qualified person as arbitrator.
4. A member of the Board may act only as Chairman of an arbitral tribunal or sole arbitrator.
5. The arbitrators must perform their duties in complete independence and impartiality, to the best of their ability, and are not subject to any directives in that respect. They are bound to observe secrecy in respect of all matters that come to their notice in the course of their duties.

Arbitral Proceedings

Commencement of the Proceedings

Article 6

1. The arbitral proceedings are commenced when a statement of claims drawn up in German or in one of the languages of the arbitration agreement is filed with the Secretariat. The proceedings become pending on receipt of the statement of claims by the Secretariat.
2. One copy of the statement of claims together with enclosures must be submitted for each Defendant, each arbitrator and the Secretariat.
3. The statement of claims must include:
 - the designation of the parties and their addresses;
 - the document or documents giving evidence of the jurisdiction of the Centre;
 - a specific statement of claims and the particulars and supporting documents on which the claims are based;

- the amount in dispute at the time of submission of the statement of claims, unless the claims are not related exclusively to a specific sum of money;

- particulars regarding the number of arbitrators in accordance with Article 9; if a decision by three arbitrators is requested, the nomination of an arbitrator and the address of that person.

4. If the statement of claims is defective or incomplete or if copies of documents or enclosures are missing, the Secretary shall call upon the Claimant to remedy the defect or to submit the necessary copies of documents or enclosures, setting a time-limit; the provisions of the second sentence of paragraph 1 of the present Article shall not be affected thereby.

Article 7

The Secretary shall make service to the Defendant of the statement of claims and one copy each of the rules of arbitration and the list of arbitrators and shall invite the Defendant to submit a memorandum in reply within a period of thirty days, including where appropriate a counter-claim accompanied by the number of copies required in accordance with Article 6 paragraph 2, and to state his wishes with regard to the number of arbitrators in accordance with Article 9. If a decision by three arbitrators is requested, an arbitrator shall also be nominated in the memorandum in reply and the address of that person shall be stated.

Time-limits, Service and Communications

Article 8

1. Time-limits provided for in the rules of arbitration or set by the Secretary can be prolonged by the latter on request or on his own initiative - possibly also after their expiry - if he considers that the reasons that are presented or that come to his notice in other ways are worthy of consideration.

2. Communications shall be considered as having been validly served if they are forwarded by registered letter, telex or telefax to the addresses indicated by the parties or if the document to be served has been demonstrably delivered.

Nomination and Appointment of Arbitrators

Article 9

1. The parties can agree that their dispute is to be decided either by a sole arbitrator or by a tribunal composed of three arbitrators.

2. When no such agreement has been made and the parties do not agree on the number of arbitrators, the Board shall determine whether the dispute is to be decided by one or three arbitrators.

3. The parties shall be notified of the decision of the Board pursuant to paragraph 2 of the present Article; in the event that proceedings before a sole arbitrator are decided upon, the parties shall be requested to agree on a sole arbitrator and to indicate that person's name and address within thirty days after service of the request. If no such indication is made within that period, the sole arbitrator shall be appointed by the Board.

4. If the dispute is to be decided by three arbitrators, the party that has not yet nominated an arbitrator shall be requested to indicate the name and address of an arbitrator within thirty days after service of the request. If no such indication is made within that period, the arbitrator for the defaulting party shall be appointed by the Board.

5. If the dispute is to be decided by three arbitrators, the arbitrators nominated by the parties or appointed by the Board shall be requested to agree on a Chairman and to indicate his name and address within thirty days after service of the request. If no such indication is made within that period, the Chairman shall be appointed by the Board.

Article 10

1. Two or more Claimants or two or more Defendants shall mutually agree whether they wish the dispute to be decided by a sole arbitrator or by three arbitrators and, if a decision by three arbitrators is wished, they shall jointly nominate an arbitrator.

2. If there is no agreement among the Claimants or among the Defendants concerning the number of arbitrators, the said Claimants or Defendants shall be requested by the Secretary to agree on the number of arbitrators within thirty days after delivery of the statement of claims.

3. If no agreement as to the number of arbitrators is reached within the period indicated in paragraph 2 of the present Article, the Board shall determine whether the dispute is to be decided by one or by three arbitrators.

4. If the Claimants or the Defendants have agreed that the dispute is to be decided by three arbitrators, without having nominated an arbitrator, they shall be requested by the Secretary to indicate the name and address of an arbitrator within thirty days after delivery of the request.

5. If no arbitrator is nominated within the period indicated in paragraph 4 of the present Article, and if the dispute is to be decided by three arbitrators, the arbitrator for the defaulting Claimants or Defendants shall be appointed by the Board.

Challenge of Arbitrators

Article 11

1. An arbitrator may be challenged if there are sufficient grounds for doubting his independence or impartiality.

2. If a party challenges an arbitrator, it must inform the Secretary thereof stating the grounds for challenge after the latter have come to its notice.

3. A challenge is inadmissible if the party making the challenge has taken part in the proceedings notwithstanding the knowledge which it already had or ought to have had of the grounds of challenge relied upon. A challenge is also inadmissible if the grounds of challenge relied upon come to the knowledge of the party making the challenge in the course of the proceedings but that party made them known with undue delay.

4. The Board shall decide upon the challenge.

Termination of the Mandate of Arbitrators

Article 12

1. Any party may request the termination of the mandate of an arbitrator who does not perform his duties or unduly delays the proceedings. The request must be submitted to the Secretariat. The Board shall decide upon the request.
2. If the inability of an arbitrator to perform the duties of his mandate is not merely temporary, the Board shall terminate his mandate at the request of a party. If an arbitrator is obviously unable to perform his duties, the Board may terminate his mandate even without a request from a party.

Article 13

1. If the challenge of an arbitrator is allowed, if his mandate is terminated, if he has resigned his mandate or has died, then,
 - (a) if that arbitrator is a sole arbitrator, the parties shall be requested to agree within thirty days on the nomination of a replacement and to indicate his name and address;
 - (b) if that arbitrator is the Chairman of an arbitral tribunal, the remaining arbitrators shall be requested to agree within thirty days on the nomination of a replacement and to indicate his name and address; and
 - (c) if that arbitrator has been nominated by a party or has been appointed for a party, the party that nominated him or for which he was appointed shall be requested to nominate a replacement within thirty days and to indicate his name and address.

If no such nomination is received within that period, the new arbitrator shall be appointed by the Board.

2. The new arbitrator shall take over the arbitration proceedings at the point which they had reached on the termination of the previous arbitrator's mandate. If necessary, the arbitral tribunal can order the repetition of individual steps of the proceedings.

Conduct of the Proceedings

Article 14

1. The proceedings may be oral or only in writing. Hearings shall take place at the request of one party or if the sole arbitrator or arbitral tribunal to which the case has been referred considers it necessary.
2. The date of hearings shall be fixed by the sole arbitrator or the Chairman of the arbitral tribunal. Hearings shall not be public. A record of the results of the hearings shall be made.
3. If the arbitrators consider it necessary, they may on their own initiative collect evidence, and in particular may question parties or witnesses, may request the parties to submit documents and may call in experts.

Article 15

The parties shall have the right to be represented by authorized agents of their choice in the proceedings before the arbitrators.

Article 16

1. The arbitrators shall apply the substantive law designated by the parties. Failing such a designation by the parties, the arbitrators shall apply the law that is designated in the choice of law rules that they consider to be authoritative. In any case, the arbitrators shall observe the contract and the usages of trade applicable to the transaction.

2. The arbitrators may not base their decisions on equity unless they have been expressly empowered by the parties.

Article 17

The parties must pursue the proceedings with due expedition. Interruptions of the proceedings for indefinite or unduly long periods shall not be permitted, even at the joint request of the parties. The Board may strike off the list of cases proceedings that are not pursued by the parties with due expedition, there being no adequate grounds; the pendency of the proceedings and the mandate of the arbitrators shall thereby be terminated.

The Award

Article 18

1. Awards shall be drawn up in writing and all the necessary copies shall be signed by the arbitrators. The signatures of the majority of the arbitrators shall suffice if the award contains a statement that an arbitrator refuses to sign or that his signature cannot be obtained because of an obstacle which cannot be overcome within a reasonable period of time. If an arbitral tribunal makes an award by a majority decision, mention thereof shall be made in the award at the request of the arbitrator who is in a minority.

2. Awards are confirmed on all the necessary copies by the signature of the Secretary and the stamp of the Centre and served on to the parties.

3. The Chairman or if he is prevented another arbitrator shall confirm on a copy at the request of a party the finality and enforceability of the award.

4. By their agreement to the Vienna Rules, the parties undertake to implement the award.

5. A copy of the award shall be deposited with the Secretariat of the Centre.

Article 19

The costs of the arbitration fixed by the Secretary in accordance with Article 23 paragraph 1 shall be stated in the award that terminates the proceedings. The arbitrators shall decide on the

proportions in which these costs as well as the costs duly incurred by the parties in respect of legal representation and any further expenses for due prosecution of legal claims shall be borne by the parties.

Article 20

The parties can require that an award be issued concerning the content of any settlement reached between them.

Article 21

If an award or a settlement is to be enforced, the Secretary may provide the prosecuting party with the information that is known to him regarding the law on enforcement and the enforcement practice of the State in which the award or the settlement are to be enforced free of charge, but without guaranteeing the correctness or completeness of such information.

Costs of the Proceedings

Costs and Deposits

Article 22

1. The Claimant (Counter-claimant) shall pay the registration fee; that fee is intended to cover the costs up to the submission of the files to the arbitrators. If higher outlay is incurred, an additional sum may be prescribed.
2. If there are more than two parties to the proceedings, the registration fee shall be increased by 10% for each additional party.
3. The registration fee shall not be repayable. The registration fee, as well as any additional amount required in accordance with paragraph 1 of the present Article shall be deducted from the Claimant's (Counter-claimant's) share of the deposit against costs of arbitration.
4. Service of the statement of claims (counter-claims) will not be made unless the prescribed registration fee has been paid.

Article 23

1. The costs of arbitration (administrative costs, arbitrators' fees, cash outlay on such as experts' fees, travelling and subsistence expenses of arbitrators and experts, rental amounts, costs of minuting, interpretation and translation) shall be fixed by the Secretary.
2. As soon as it is known whether the dispute is to be decided by a sole arbitrator or by an arbitral tribunal, the Secretary shall fix the amount of the deposit against the expected costs of arbitration. That deposit shall be paid in equal shares by the parties before transmission of the files to the arbitrators and within thirty days after service of the payment request.

3. If the Claimant (Counter-claimant) fails to pay its share within the period fixed, the Secretary may delete the claim or counter-claim from the list of cases of the Centre. He shall inform the parties thereof. The claim (counter-claim) can be resubmitted in accordance with Article 6.
4. If the share of the Defendant (Counter-defendant) is not received within a period fixed, the Secretary shall inform the Claimant (Counter-claimant) thereof and shall request the Claimant or Counter-claimant to pay the failing share of the deposit within thirty days after service of the request. If this amount is not received within the period fixed, the Secretary can delete the claim (counter-claim) from the list of cases of the Centre. He shall inform the parties thereof. The claim (counter-claim) can be resubmitted in accordance with Article 6.
5. If it should be necessary to increase the deposit against costs in the course of the proceedings because of an increase in the amount in dispute, a procedure analogous to that provided for in paragraphs 2 to 4 of the present Article shall be adopted. Until payment of the additional deposit, the increase of the amount in dispute shall not be taken into account in the arbitral proceedings.
6. If it should be necessary to increase the deposit against costs in the course of the proceedings because the amount fixed for cash outlay is not sufficient, a procedure analogous to that provided for in paragraphs 2 to 4 of the present Article shall be adopted.
7. Reductions in the amount in dispute shall be taken into account in the calculation of arbitrators' fees and administrative costs only if they occurred before transmission of the files to the arbitrators.
8. If the proceedings should be terminated otherwise than by an award or a settlement, the Secretary shall fix the arbitrators' fees and administrative costs at an appropriate level and shall determine the cash outlay.
9. If the arbitrators consider it to be necessary to appoint experts, they shall inform the Secretary thereof, indicating the expected costs. The Secretary will proceed by analogy with the provisions of paragraphs 2 to 4 of the present Article. The arbitrators may appoint an expert only after the deposit against the expected fees and expenses of the expert has been paid to the Secretariat or the payment of the fees and expenses has been ensured by means of a service contract between the experts and the parties. The preceding provisions shall also apply to the appointment of interpreters and translators.

Article 24

1. The administrative costs of the Centre and the arbitrators' fees shall be fixed on the basis of the amount in dispute according to the schedules of costs attached to these Rules. Cash outlays (such as experts' fees, travelling and subsistence expenses of arbitrators and experts, rental amounts, costs of minuting, interpretation and translation) shall be determined according to the actual expenditure.
2. For the purpose of calculating the administrative costs and the arbitrators' fees, the amounts in dispute in respect of the claim and counter-claim shall be added if the parties each pay half of the deposit against costs fixed by the Secretary. If that is not the case, the deposits against costs in respect of the claim and counter-claim shall be calculated separately.

3. A separate calculation shall also be made if the claims presented in the counter-claim bear no relation to the claims presented in the statement of claims.

4. If there are more than two parties to proceedings, the rates for the administrative costs of the Centre and the arbitrators' fees contained in the schedules attached to these Rules shall be increased by 10% for each additional party.

5. In the case of proceedings conducted concerning a number of individual claims or counterclaims, the Secretary may make a separate calculation of the arbitrators' fees according to the amounts in dispute in respect of the individual claims.

6. The rates quoted in the schedule for arbitrators' fees are the fees for sole arbitrators. In any case they shall be raised to two-and-a-half times the amounts quoted if an arbitral tribunal is appointed and up to three times those amounts in the event of the particular difficulty of a case.

Arbitration Costs

Registration Fee AS 10,000⁵

Administrative Charges⁶

Amount in Dispute in Schillings

up to 1,000,000	10,000
1,000,001 to 2,000,000	10,000 + 1.5 % of excess over 1,000,000
2,000,001 to 5,000,000	25,000 + 1 % of excess over 2,000,000
5,000,001 to 10,000,000	55,000 + 0.5 % of excess over 5,000,000
10,000,001 to 20,000,000	80,000 + 0.2 % of excess over 10,000,000
20,000,001 to 50,000,000	100,000 + 0.1 % of excess over 20,000,000
50,000,001 to 100,000,000	130,000 + 0.05% of excess over 50,000,000
over 100,000,000	155,000 + 0.01% of excess over 100,000,000

Fees for Sole Arbitrators⁷

up to 1,000,000	6% - minimum fee 10,000
1,000,001 to 2,000,000	60,000 + 3 % of excess over 1,000,000

⁵ See Art. 22.

⁶ See Art. 24.

⁷ See Art. 24(6).

2,000,001 to 5,000,000	90,000 + 2.5 % of excess over 2,000,000
5,000,001 to 10,000,000	165,000 + 2 % of excess over 5,000,000
10,000,001 to 20,000,000	265,000 + 1 % of excess over 10,000,000
20,000,001 to 50,000,000	365,000 + 0.6 % of excess over 20,000,000
50,000,001 to 100,000,000	545,000 + 0.4 % of excess over 50,000,000
100,000,000 to 200,000,000	745,000 + 0.2 % of excess over 100,000,000
200,000,000 to 1,000,000,000	945,000 + 0.1 % of excess over 200,000,000
over 1,000,000,000	1,745,000 + 0.01% of excess over 1 billion

Conciliation Rules3

Article 1

At the request of a party, conciliation proceedings can be conducted where the Centre may have jurisdiction as to the subject matter. They are not subject to the existence of a valid arbitration agreement.

Article 2

The request for the opening of conciliation proceedings shall be filed with the Secretariat of the Centre. The latter shall invite the opposing party or parties to reply within thirty days after service of the request. If a party refuses to participate in the conciliation proceedings or does not reply within that period, the attempted conciliation shall be considered as having failed.

Article 3

When the opposing party or parties accepts/accept recourse to conciliation, the Board shall nominate one of its members or another qualified person to act as conciliator. The latter shall study the documents submitted by the parties, shall convene them to a hearing and shall then submit proposals for the amicable settlement of the dispute.

Article 4

If agreement is reached, that shall be the subject of a record signed by the parties and the conciliator. If a valid arbitration agreement exists, the Board shall appoint the conciliator as sole arbitrator, provided that all parties so request. The sole arbitrator must authenticate the agreement in the form of a settlement or, if the parties so wish, make an award on the basis of the agreement.

Article 5

If no agreement is reached, the conciliation shall be considered as having failed. Declarations made by the parties in the course of conciliation proceedings shall not bind them in later arbitration proceedings. Except under the conditions set forth in Article 4 of these Rules, the conciliator may not be appointed as an arbitrator in subsequent arbitration proceedings.

Article 6

The costs of the conciliation proceedings and those of any activity of the conciliator under the conditions set forth in Article 4 shall be fixed by the Secretary at an appropriate share of the costs applicable for arbitration proceedings on the basis of the corresponding amount in dispute (Article 24 paragraph 1 of the Rules of Arbitration). The same shall apply to the deposits against costs to be fixed by the Secretary