

# Dutch Arbitration Act

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## BOOK FOUR – ARBITRATION

### TITLE ONE – ARBITRATION IN THE NETHERLANDS

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#### SECTION ONE – ARBITRATION AGREEMENT

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##### Article 1020 | Arbitration agreement

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1. The parties may agree to submit to arbitration disputes which have arisen or may arise between them out of a defined legal relationship, whether contractual or not.
2. The arbitration agreement referred to in paragraph (1). includes both the submission agreement by which the parties bind themselves to submit to arbitration an existing dispute between them and an arbitration clause under which parties bind themselves to submit to arbitration disputes which may arise between them.
3. The arbitration agreement shall not serve to determine legal consequences that may not be freely determined by the parties.
4. Parties may also agree to submit the following matters to arbitration:
  1. the sole determination of the quality or condition of goods;
  2. the sole determination only of the quantum of damages or monetary debt;
  3. the filling of gaps, or modification of, the legal relationship between the parties referred to in paragraph (1).
5. The term 'arbitration agreement' includes an arbitration clause which is contained in articles of association or rules which bind the parties.
6. Arbitration rules referred to in an arbitration agreement shall be deemed to form part of that agreement.

##### Article 1021 | Rule of evidence of arbitration agreement

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The arbitration agreement shall be proven by an instrument in writing. For this purpose, an instrument in writing which provides for arbitration or which refers to standard conditions providing for arbitration is sufficient, provided that this instrument is expressly or impliedly accepted by or on behalf of the other party. The arbitration agreement may also be proven by electronic data. Article 227(a)(1) of Book 6 of the Civil Code shall apply *mutatis mutandis*

#### SECTION ONE A – ARBITRATION AGREEMENT AND JURISDICTION OF THE COURTS

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## **Article 1022 | Arbitration agreement and substantive claim before court**

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A court seized of a dispute in respect of which an arbitration agreement has been concluded shall declare that it has no jurisdiction if a party invokes the existence of said agreement before submitting a defence, unless the agreement is invalid.

## **Article 1022a | Arbitration agreement and interim measures by a court**

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An arbitration agreement shall not preclude a party from requesting the court to grant conservatory measures, or from applying to the provisional relief judge of the district court or the cantonal judge for a decision in summary proceedings in accordance with the provisions of Article 254.

## **Article 1022b | Arbitration agreement and preliminary measures of evidence**

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An arbitration agreement shall not preclude a party from requesting the court to order a preliminary witness examination, a preliminary expert report, a preliminary on-site examination and viewing, or inspection of, a copy of or an extract from specific documents.

## **Article 1022c | Invocation of arbitration agreement**

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If, in the events mentioned in Articles 1022a and 1022b, a party invokes the existence of an arbitration agreement before submitting a defence, the court shall only declare that it has jurisdiction if the requested decision cannot be obtained in arbitration, or cannot be obtained in arbitration in a timely manner.

## **SECTION ONE B – ARBITRAL TRIBUNAL**

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### **Article 1023 | arbitrator qualifications**

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Any natural person of legal capacity may be appointed as arbitrator. Unless the parties have agreed otherwise with a view to the impartiality and the independence of the arbitral tribunal, no person shall be precluded from appointment by reason of his nationality.

### **Article 1024 | Commencement of the arbitration in case of a submission agreement**

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1. The submission agreement shall describe the matters which the parties wish to submit to arbitration.
2. The arbitration shall be deemed to have been commenced by the conclusion of the submission agreement, unless the parties have agreed another method of commencement.

### **Article 1025 | Commencement of arbitration in case of an arbitration clause**

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1. In the event of an arbitration clause, the arbitration shall be deemed to have been commenced on the day of receipt of a notice in writing in which a party informs the other party that it is commencing arbitration. Said notice shall contain a description of the matters which the party commencing the arbitration wishes to submit to arbitration.

2. The parties may agree that the arbitration shall be commenced in another method than as for in this article.

### **Article 1026 | Number of arbitrators**

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1. The arbitral tribunal shall be composed of an uneven number of arbitrators. It may also consist of a sole arbitrator.

2. If the parties have not agreed the number of arbitrators, or if an agreed method of determining that number is not carried out and the parties cannot reach agreement on the number, the number shall, at the request of the most diligent party, be determined by the provisional relief judge of the district court.

3. If the parties have agreed an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal.

4. Failing agreement between the arbitrators such arbitrator shall, unless the parties have agreed otherwise, be appointed at the request of the most diligent party by the provisional relief judge of the district court.

5. Article 1027(4). shall apply *mutatis mutandis* to the provisions in the second and fourth paragraphs.

### **Article 1027 | Method of appointment**

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1. The arbitrator or arbitrators shall be appointed by any method agreed by the parties. The parties may instruct a third person with the appointment of the arbitrator or arbitrators of any of them. If no method of appointment is agreed, the arbitrator or arbitrators shall be appointed by the parties jointly.

2. The appointment shall be made within three months after the commencement of the arbitration, unless the arbitrator or arbitrators have already been appointed. In any of the events referred to in Article 1026(2), however, the time-limit of three months shall start to run on the day on which the number of arbitrators is determined. These time-limits may be shortened or extended by agreement between the parties.

3. If the appointment of the arbitrator or arbitrators is not made within the time-limit referred to in the preceding paragraph, the lacking arbitrator or arbitrators shall, at the request of the most diligent party, be appointed by the provisional relief judge of the district court. The other party shall be given the opportunity to be heard.

4. The provisional relief judge or the third person shall appoint the arbitrator or arbitrators without regard to the question of whether or not the arbitration agreement is valid. By cooperating in the appointment of the arbitrator or arbitrators, the parties shall not forfeit the right to challenge the jurisdiction of the arbitral tribunal on the ground of non-existence of a valid arbitration agreement.

### **Article 1028 | Privileged position in the appointment**

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1. If by agreement or otherwise one party is given a privileged position with regard to the appointment of the arbitrator or arbitrators, either party may, in derogation of the agreed method of appointment, request the provisional relief judge of the district court to appoint the arbitrator or arbitrators.

2. A party must present the request referred to in the first paragraph within three months from the commencement of the proceedings, on pain of forfeiting the right to invoke the privileged position with regard to the appointment of the arbitrator or arbitrators in the arbitral proceedings or before the court. The parties may extend the time-limit by agreement.

3. The other party to the requesting party shall be given the opportunity to be heard. Article 1027(4) shall apply *mutatis mutandis*.

### **Article 1029 | Acceptance and release of mandate**

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1. An arbitrator shall accept his mandate in writing. An arbitrator may only be dismissed in the events referred to in the second to fifth paragraphs, inclusive, of this article, unless the parties have agreed otherwise.

2. An arbitrator who has accepted his mandate may, at his own request, be released from his mandate either with the consent of the parties or by a third person designated by the parties, or in the absence thereof, by the provisional relief judge of the district court.

3. An arbitrator who has accepted his mandate may be released from his mandate by the parties jointly.

4. An arbitrator who has accepted his mandate and who has become unable de jure or de facto to perform his mandate, may, at the request of any party, be released from his mandate by a third person designated by the parties, or in the absence of such third person, by the provisional relief judge of the district court.

5. An arbitral tribunal that has accepted its mandate may, at the request of any of the parties, be released from its mandate by the third person designated by the parties, or absent the same, by the provisional relief judge of the district court, if, taking account of all the circumstances, it performs its mandate in an unacceptably slow manner despite reminders.

### **Article 1030 | Replacement of an arbitrator**

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1. Unless the parties have agreed another method of replacement, an arbitrator who has been released from his mandate in accordance with the provisions of Article 1029(2), (3) or (4), or an arbitral tribunal that has been released from its mandate in accordance with the provisions of Article 1029(5), shall be replaced pursuant to the rules applicable to the original appointment. The same shall apply in the event of the death of an arbitrator.

2. If the parties designated the arbitrator or arbitrators in the arbitration agreement by name, their replacement shall also take place in the events referred to in paragraph 1. above, unless the parties have agreed that the arbitration agreement shall then end.

3. Unless the parties have agreed otherwise, in case of replacement the proceedings shall be suspended by operation of law. Unless the parties have agreed otherwise, the arbitral proceedings shall, after the suspension ceases, continue from the stage they had reached.

### **Article 1031 | Termination of the mandate**

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The parties may jointly terminate the mandate of the arbitral tribunal.

### **Article 1032**

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[Lapsed as of 01-01-2015]

### **Article 1033 | Ground for challenge**

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1. An arbitrator may be challenged if there are justifiable doubts as to his impartiality or independence.

2. A party may only challenge an arbitrator appointed by that party for reasons which that party became aware after the appointment was made.

3. A party may not challenge an arbitrator appointed by a third person or the provisional relief judge of the district court if he has acquiesced in this appointment, unless that party only became aware of the ground for the challenge afterwards.

### **Article 1034 | Disclosure**

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1. A person approached to be engaged as arbitrator who has reason to suspect that he could be challenged, shall communicate this information in writing to the person who approached him, stating the suspected reasons for challenge.

2. A person who has been appointed as arbitrator shall send the communication referred to in the previous paragraph to the parties upon having been appointed, unless they have already received said communication.

3. An arbitrator who, during the arbitral proceedings, suspects that he could be challenged, shall communicate this information in writing to the parties, mentioning the suspected reasons for challenge, and, if the arbitral tribunal consists of multiple arbitrators, to the co-arbitrators.

### **Article 1035 | Challenge procedure**

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1. The challenging party shall give written notice of the reasons for challenge to the arbitrator concerned, the other party and, if the arbitral tribunal consists of multiple arbitrators, the co-arbitrators. The notice shall be given within four weeks after the day of

receipt of the communication referred to in Article 1034 or, in the absence thereof, within four weeks after the reason for challenge becomes known to the challenging party.

2. If a challenged arbitrator does not resign within two weeks after the day of receipt of a timely notice as referred to in the first paragraph, the provisional relief judge of the district court shall, at the request of the most diligent party, decide whether the challenge is well-founded. The request shall be submitted within two weeks after the day of receipt of the written notice from the challenged arbitrator that he will not resign, or, in the absence thereof, within six weeks after the date of receipt of the notice.

3. If the challenged arbitrator resigns or the provisional relief judge of the district court finds the challenge to be well-founded, the challenged arbitrator shall be replaced in accordance with the rules that governed his original appointment, unless the parties have agreed another method of replacement. Article 1030(2) and (3) shall apply *mutatis mutandis*.

4. If a challenged arbitrator resigns, this does not imply acceptance that the reasons for the challenge are well-founded.

5. The arbitral tribunal may suspend the arbitral proceedings from the day of receipt of the timely notice, as referred to in the first paragraph, or afterwards, pending the challenge procedure, from the moment that the arbitral tribunal considers appropriate. If the challenge is found to be inadmissible or is not upheld, the proceedings, if suspended, shall resume from the stage they had reached.

6. The parties may, by agreement, shorten or extend the time-limits referred to in the first and second paragraphs of this article.

7. The parties may provide by agreement for the handling of a challenge request by an independent third person other than the provisional relief judge of the district court.

8. A party that has reasons to challenge an arbitrator shall base a challenge request in accordance with the provisions in this article on these reasons, on pain of forfeiture of the right to invoke them later in the arbitral proceedings or in court.

### **Article 1035a | Challenge of a secretary**

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If the arbitral tribunal is assisted by a secretary, Articles 1033 to 1035, inclusive, shall apply *mutatis mutandis*.

## **SECTION TWO – THE ARBITRAL PROCEEDINGS**

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### **Article 1036 | Proceedings in general**

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1. Without prejudice to the provisions of mandatory law in this title, the arbitral proceedings shall be conducted in the manner agreed by the parties. Insofar as the parties have not made provision for the arbitral proceedings, they shall, without prejudice

to the provisions in this title, be conducted in the manner determined by the arbitral tribunal.

2. The arbitral tribunal shall treat the parties equally. The arbitral tribunal shall give the parties the opportunity to set out and explain their positions and to comment on each other's positions and on all documents and other information brought to the attention of the arbitral tribunal during the proceedings. The arbitral tribunal shall not base its decision, where it is unfavourable for one party, upon documents and other information on which that party was not sufficiently able to comment.

3. The arbitral tribunal shall guard against unreasonable delay of the proceedings and, if necessary, at the request of a party or of its own motion, take measures. The parties shall mutually be obliged to prevent unreasonable delay of the proceedings.

### **Article 1037 | Place of arbitration**

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1. The place of arbitration shall be determined by agreement of the parties, or in the absence thereof, by the arbitral tribunal. The determination of the place of arbitration also determines the place where the award is made.

2. If the place of arbitration has been determined neither by the parties nor by the arbitral tribunal, the place where the award is made, as stated by the arbitral tribunal in the award, shall be deemed to be the place of arbitration.

3. The arbitral tribunal may hold hearings, deliberate, and hear witnesses and experts at any other place, within or outside the Netherlands, it considers appropriate, unless the parties have agreed otherwise. The arbitral tribunal shall have the power to appoint one of its members to hold the hearing referred to in the previous sentence, unless the parties have agreed otherwise.

### **Article 1038 | Appearance in person or representation**

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1. The parties may appear in the proceedings in person, be represented by a practising lawyer, or by a representative expressly authorised in writing for this purpose.

2. The parties may be assisted in the proceedings by any persons of their choice.

### **Article 1038a | Exchange of statements**

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1. Unless the parties have agreed otherwise, the arbitral tribunal shall give the claimant and the respondent the opportunity to present a statement of claim and a statement of defence, respectively.

2. Unless the parties have agreed otherwise, the arbitral tribunal shall be free to determine whether any further statements may be presented.

### **Article 1038b | Hearing**

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The arbitral tribunal shall, at the request of any of the parties or of its own motion, give the parties the opportunity to explain their case at an oral hearing, unless the parties have agreed otherwise.

### **Article 1038c | Counterclaim**

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1. A counterclaim shall be admissible if it is subject to the same arbitration agreement as the one on which the claim is based or if that same arbitration agreement has been expressly or tacitly declared applicable by the parties.
2. Unless the parties have agreed otherwise, a counterclaim as referred to in the first paragraph shall be presented directly with the statement of defence.

### **Article 1038d | Amendment of claims**

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A party may amend or increase its claim or counterclaim, respectively, or the grounds thereof, during the arbitral procedure, on the condition that the other party will not be unreasonably hindered in its defence or that the proceedings will not be unreasonably delayed.

### **Article 1039 | Rules of evidence**

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1. The arbitral tribunal shall be free to determine the rules of evidence, the admissibility of evidence, the division of the burden of proof and the assessment of evidence, unless the parties have agreed otherwise.
2. The arbitral tribunal shall have the power to designate one of its members to hear witnesses or experts or to conduct an on-site examination or viewing, unless the parties have agreed otherwise.

### **Article 1040 | Production of documents**

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1. Unless the parties have agreed otherwise, the statements referred to in Article 1038a shall, insofar as possible, be accompanied by the documents relied upon by the parties.
2. The arbitral tribunal may, at the request of any of the parties or of its own motion, order the inspection of, a copy of or an extract from specific documents related to the dispute from the party which has these documents at its disposal, unless the parties have agreed otherwise. The arbitral tribunal shall determine the conditions under which and the manner in which inspection of, a copy of or an extract from documents are provided.

### **Article 1041 | Fact and expert witnesses**

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1. The arbitral tribunal may, at the request of any of the parties or of its own motion, order parties to furnish evidence by hearing witnesses and experts, unless the parties have agreed otherwise.
2. The arbitral tribunal may determine the form in which the statements of the witnesses and the experts are given, unless the parties have agreed otherwise.



3. If an oral hearing of witnesses or experts takes place, the arbitral tribunal shall determine the time and place for the hearing and the manner in which the hearing will be conducted.

4. If the arbitral tribunal considers it necessary, it shall hear the witnesses after they have sworn the oath, in the manner prescribed by law, that they will tell the whole truth and nothing but the truth.

#### **Article 1041a | Refusing witnesses**

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1. If a witness does not voluntarily appear, or having appeared, refuses to make a statement, the arbitral tribunal may allow the party requesting that the witness be heard, within a time- limit of time fixed by the arbitral tribunal, to apply to the provisional relief judge of the district court with the request that an examining judge be appointed before whom the examination of the witness will take place.

2. The examination shall take place in the same manner as in ordinary cases, it being understood that the arbitrator or arbitrators, through the registry of the district court, will be given the opportunity to be present and to pose questions to the witness.

3. The registry of the district court shall send the official report of the examination to the arbitral tribunal and the parties as quickly as possible.

4. The arbitral tribunal may suspend the proceedings until the day that the arbitral tribunal has received the report of the examination.

#### **Article 1042 | Tribunal appointed experts**

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1. Unless the parties have agreed otherwise, the arbitral tribunal may appoint one or more experts to give advice. The arbitral tribunal may consult the parties regarding the terms of reference to be issued to the experts. The arbitral tribunal shall send the parties a copy of the appointment and the terms of reference of the experts as soon as possible.

2. The arbitral tribunal may require a party to provide the required information and necessary cooperation to the expert.

3. At the request of any of the parties, the experts shall be heard at a hearing of the arbitral tribunal. If a party wishes to make such a request, it shall so notify the arbitral tribunal and the other party as soon as possible.

4. Without prejudice to the provisions in paragraph 3., the arbitral tribunal shall give the parties the opportunity to be heard regarding the advice of the experts appointed by the arbitral tribunal, unless the parties have agreed otherwise.

#### **Article 1042a | Site inspection or viewing**

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The arbitral tribunal may, at the request of any of the parties or of its own motion, examine a local situation or conduct a viewing, within or outside the Netherlands, unless the parties have agreed otherwise. The arbitral tribunal shall give the parties the opportunity

to be present at the on-site examination or viewing.

### **Article 1043 | Personal appearance of the parties**

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At any stage of the proceedings, the arbitral tribunal may order the parties to appear in person for the purpose of providing information or attempting to arrive at a settlement.

### **Article 1043a | Default of a party**

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1. If the claimant, although reasonably given the opportunity to do so, fails to assert or reasonably explain its claims, without asserting well-founded reasons, the arbitral tribunal may, by award, or in another manner it considers appropriate, bring an end to the arbitral proceedings.
2. If the respondent, although reasonably given the opportunity to do so, fails to submit its defence, without asserting well-founded reasons, the arbitral tribunal may immediately make an award.
3. In the award referred to in the second paragraph, the claim shall be awarded, unless it appears to the arbitral tribunal to be unlawful or unfounded. The arbitral tribunal may, before making its award, require proof from the claimant of one or more of its assertions.

### **Article 1043b | Provisional relief**

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1. During pending arbitral proceedings on the merits, the arbitral tribunal may, at the request of any of the parties, grant provisional relief, except for conservatory measures as referred to in the Fourth Title of the Third Book. The provisional relief must be related to the claim or counterclaim in the pending arbitral proceedings.
2. By agreement, the parties may authorise an arbitral tribunal separately appointed for that purpose, irrespective of whether the arbitral proceedings on the merits are pending within the limits set by Article 254(1), to grant provisional relief at the request of any of the parties, except for conservatory measures as referred to in the Fourth Title of the Third Book.
3. The arbitral tribunal referred to in the first and second paragraphs may, in conjunction with the provisional relief, require any party to provide sufficient security.
4. Unless the arbitral tribunal determines otherwise, a decision by the arbitral tribunal on the request to grant provisional relief shall constitute an arbitral award to which the provisions of Sections Three to Five inclusive of this Title shall be applicable.
5. The arbitral tribunal may, at the unanimous request of the parties, instead of taking a decision on provisional relief, immediately take a decision on the merits, in which it shall state the request. Such a decision on the merits shall constitute an arbitral award to which the provisions of Sections Three to Five, inclusive, of this Title shall be applicable.

6. The arbitral tribunal may, at the unanimous request of the parties, convert an arbitral award as referred to in the fourth paragraph into an arbitral award as referred to in the fifth paragraph, in which it shall state the request.

#### **Article 1044 | Inquiries on foreign law**

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1. Unless the parties have agreed otherwise, the arbitral tribunal may, through the intervention of the provisional relief judge of the district court at The Hague, request information as referred to in Article 3 of the European Convention on Information on Foreign Law, done at London, 7 June 1968 Dutch Treaty Series 1968, 14(2). The provisional relief judge shall send the request, unless it appears to him to be unfounded, to the agency referred to in Article 2 of said Convention as soon as possible and notify the arbitral tribunal thereof.

2. The arbitral tribunal may suspend the proceedings until the day on which it has received the answer to its request for information.

#### **Article 1045 | Joinder and intervention**

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1. Unless the parties have agreed otherwise, at the written request of a third person who has an interest in arbitral proceedings, the arbitral tribunal may allow that person to join or intervene in the proceedings, provided that the same arbitration agreement as between the original parties applies or enters into force between the parties and the third person.

2. The arbitral tribunal shall send a copy of the request to the parties as soon as possible.

3. The arbitral tribunal shall give the parties the opportunity to make their opinions known. The arbitral tribunal may give the third person the opportunity to make its opinion known.

4. By the allowance of the joinder or intervention, the third person shall become a party to the arbitral proceedings.

5. After the allowance of a joinder or an intervention, the arbitral tribunal shall arrange the further course of the proceedings, unless the parties have made provision for this by agreement.

#### **Article 1045a | Impleader**

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1. At the written request of a party the arbitral tribunal may allow that party to implead a third person, provided that the same arbitration agreement as between the original parties applies or enters into force between the interested party and the third person.

2. A copy of the notice of impleader shall be sent to the arbitral tribunal and the other party as soon as possible.

3. The arbitral tribunal shall give the parties and the third person the opportunity to make their opinions known.

4. The arbitral tribunal shall not allow the impleader if the arbitral tribunal finds it implausible, in advance, that the third person will be required to bear the adverse consequences of a possible judgment against the interested party or is of the opinion that impleader proceedings are likely to cause unreasonable or unnecessary delay of the proceedings.

5. After allowing the impleader the arbitral tribunal shall determine the further course of proceedings, unless the parties have made provision for this by agreement.

#### **Article 1046 | Consolidation**

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1. In respect of arbitral proceedings pending in the Netherlands, a party may request that a third person designated to that end by the parties order consolidation with other arbitral proceedings pending within or outside the Netherlands, unless the parties have agreed otherwise. In the absence of a third person designated to that end by the parties, the provisional relief judge of the district court of Amsterdam may be requested to order consolidation of arbitral proceedings pending in the Netherlands with other arbitral proceedings pending in the Netherlands, unless the parties have agreed otherwise.

2. Consolidation may be ordered insofar as it does not cause unreasonable delay in the pending proceedings, also in view of the stage they have reached, and the arbitral proceedings are so closely connected that good administration of justice renders it expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

3. The third person or the provisional relief judge may grant or refuse the request, after he has given all the parties and, if appointed, the arbitrators, an opportunity to make their opinions known. His decision shall be communicated in writing to all the parties and the arbitral tribunals concerned.

4. If the third person or the provisional relief judge orders consolidation, the parties shall, in mutual consultation, appoint the arbitrator or arbitrators, in an uneven number, and determine the rules which shall apply to the consolidated proceedings. If, within a time-limit fixed by the third person or the provisional relief judge, the parties fail to reach agreement in this regard, the third person or the provisional relief judge shall, at the request of the most diligent party, appoint the arbitrator or arbitrators and, if necessary, determine the rules which shall apply to the consolidated proceedings. The third person or the provisional relief judge shall, if necessary, determine the remuneration for the work already carried out by the arbitrators whose mandate is terminated by reason of the consolidation. Article 1027(4) shall apply *mutatis mutandis*.

#### **Article 1047 | Quality arbitration**

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With the exception of the provisions of Articles 1037 and 1048, the provisions of this Section shall not apply to arbitrations concerning the matters referred to in Article 1020(4) (a). In that event the proceedings shall be conducted in the manner agreed by the parties

or, insofar as the parties have not made provision for this, as determined by the arbitral tribunal.

#### **Article 1048 | Date of the award**

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The determination of the date on which the award will be made shall be at the exclusive discretion of the arbitral tribunal.

#### **Article 1048a | Forfeiture of rights by non-objection**

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A party that has appeared in the proceedings shall make objection to the arbitral tribunal without unreasonable delay, sending a copy thereof to the other party, as soon as it knows or reasonably should know of any act contrary to, or failure to act in accordance with, any provisions in the Second Section of this Title, the arbitration agreement, or any order, decision or measure of the arbitral tribunal. If a party fails to do so, then the right to rely on this later in the arbitral proceedings or before the court shall be forfeited.

### **SECTION THREE – THE ARBITRAL AWARD**

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#### **Article 1049 | Final award**

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1. The arbitral tribunal may render a final award, a partial final award, or an interim award. A final award or a partial final award exists if the claim is wholly or partially settled in the operative part of an award.
2. If an arbitral tribunal makes an award that, as evidenced by the operative part, partially forms an interim award and partially a final award, such an award is a partial final award.

#### **Article 1050**

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[Lapsed as of 01-01-2015]

#### **Article 1051**

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[Lapsed as of 01-01-2015]

#### **Article 1052 | Jurisdiction of the tribunal**

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1. The arbitral tribunal shall have the power to rule on its own jurisdiction.
2. A party that has appeared in the arbitral proceedings must raise a plea that the arbitral tribunal does not have jurisdiction on the ground of non-existence of a valid arbitration agreement before submitting a defence, on pain of forfeiting its right to rely on this later, in the arbitral proceedings or before the court, unless this plea is made on the ground that the dispute is not capable of settlement by arbitration according to Article 1020(3).
3. A party who has cooperated in the composition of the arbitral tribunal may not, in the arbitral proceedings or before the court, raise the plea that the arbitral tribunal does not have jurisdiction on the ground that the arbitral tribunal was composed in violation of the applicable rules. A party that has appeared in the arbitral proceedings and that has not

cooperated in the composition of the arbitral tribunal shall raise the plea that the arbitral tribunal does not have jurisdiction on the ground that the arbitral tribunal was composed in violation of the applicable rules before submitting a defence, on pain of forfeiting its right to rely on this later, in the arbitral proceedings or before the court .

4. The decision in which the arbitral tribunal declares that it has jurisdiction can only be challenged simultaneously with a subsequent final or partial final award using the legal remedies mentioned in Article 1064.

5. If and insofar as the arbitral tribunal has declared that it has no jurisdiction on the ground of non-existence of a valid arbitration agreement as referred to in the second paragraph, the court shall have jurisdiction to hear the case. If and insofar as the arbitral tribunal has refused jurisdiction on another ground, the arbitration agreement shall remain valid, unless the parties have agreed otherwise.

6. The declaration of no jurisdiction referred to in the previous paragraph shall constitute an arbitral award to which the First Section B to the Fifth Section of this Title, inclusive, are applicable.

### **Article 1053 | Separability**

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An arbitration agreement shall be considered and decided upon as a separate agreement. The arbitral tribunal shall have the power to decide on the existence and the validity of the main contract of which the arbitration agreement forms part or to which it is related.

### **Article 1054 | Decision measure**

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1. The arbitral tribunal shall decide in accordance with the rules of law.

2. If a choice of law has been made by the parties, the arbitral tribunal shall decide in accordance with the rules of law designated by the parties. Failing such designation of law, the arbitral tribunal shall decide in accordance with the rules of law which it considers appropriate.

3. The arbitral tribunal shall decide as *amiable compositeur* if the parties, by agreement, have authorised it to do so.

4. In any event the arbitral tribunal shall take into account any applicable trade usages.

### **Article 1055**

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[Lapsed as of 01-01-2015]

### **Article 1056 | Penalty for non-compliance**

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In any event where the court has the power to impose a penalty for non-compliance, the arbitral tribunal shall have such power as well. Without prejudice to the applicability of Articles 611a to 611h inclusive, in the events referred to in Article 611d, the revocation,

the suspension or the reduction of the penalty must be requested from the arbitral tribunal, and if the mandate of the arbitral tribunal is not still in effect, from the provisional relief judge of the district court within whose district the place of arbitration is located.

#### **Article 1057 | Formal requirements for the award**

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1. Unless the parties have agreed otherwise, if the arbitral tribunal consists of multiple arbitrators, it shall decide by a majority of votes. If the arbitral tribunal consists of multiple arbitrators, procedural matters of minor importance may be decided by the chairman of the arbitral tribunal if he has been so authorised by the co-arbitrators, unless the parties have agreed otherwise.
2. The award shall be made in writing and signed by the arbitrator or arbitrators.
3. If a minority of the arbitrators refuses to sign, this shall be stated by the other arbitrators in the award signed by them. A similar statement shall be made if a minority is incapable of signing and it is unlikely that the impediment will cease to exist shortly.
4. In addition to the decision, the award shall in any event contain:
  1. the name and place of residence of the arbitrator or each of the arbitrators;
  2. the name and place of residence of each of the parties;
  3. the date on which the award is made;
  4. the place where the award is made;
  5. the reasons for the decision given in the award.
5. In derogation of the fourth paragraph, subsection e., the award shall contain no grounds for the decision given if:
  1. the award exclusively concerns the determination only of the quality or condition of goods as referred to in Article 1020(4)(a);
  2. the recording of a settlement as referred to in Article 1069; or
  3. in all other events, after the arbitration has been commenced, the parties agree in writing that no grounds shall be given for the decision.

#### **Article 1058 | Deposit of the award**

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1. The arbitral tribunal shall ensure that, as soon as possible:
  1. the original of the award, or a copy thereof certified by an arbitrator or a third person designated by the parties, is sent to the parties.
  2. the original of a final or partial final award is deposited with the registry of the district court within whose district the place of arbitration is located, insofar as the parties have so agreed.
2. The award shall be deemed to have been sent if four weeks have elapsed after the date of the award.

3. Without prejudice to the provisions of Article 1060, 1061 and 1065a, the mandate of the arbitral tribunal shall terminate when the last final award is sent to the parties or, in the event referred to in the first paragraph under b., upon the deposit of the last final award with the registry of the district court.

4. No copy of or extract from a deposited award shall be issued to third persons.

5. Unless the parties have agreed other time-limits as referred to in Articles 1060, 1061, and 1061c, a time-limit of three months from the date of the deposit of the award with the registry of the district court shall apply, if the parties have agreed such deposit.

### **Article 1059 | Res judicata**

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1. Decisions concerning the legal relationship in dispute and contained in an arbitral award in relation to which ordinary means of recourse are no longer available shall have res judicata effect in other proceedings between the same parties from the day on which they have been given. Article 236(2) and (3). shall apply *mutatis mutandis*.

2. The first paragraph shall not apply to decisions as referred to in Article 1043b concerning provisional relief.

3. An arbitral award in relation to which ordinary means of recourse are no longer available as referred to in the first paragraph shall have binding force between the same parties in another proceeding from the day on which it has been made.

### **Article 1060 | Correction of the award**

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1. A party may, within a time-limit as agreed by the parties or within three months after the day the award was sent, request in writing that the arbitral tribunal correct a manifest computing error, clerical error, or other manifest error that lends itself to simple rectification in the award.

2. If the particulars referred to in Article 1057(4)(a) to (d) inclusive are stated incorrectly or are partially or wholly absent from the award, a party may, within a time-limit as agreed by the parties or within three months after the day the award was sent, request in writing that the arbitral tribunal correct such particulars.

3. A copy of a request as referred to in the first or second paragraph shall be sent to the other party by the arbitral tribunal.

4. The arbitral tribunal may, within a time-limit as agreed by the parties or within three months after the day the award was sent, also of its own motion proceed to the correction referred to in the first or second paragraph.

5. Before the arbitral tribunal decides on a request referred to in the first or second paragraph, or decides of its own motion to proceed to the correction as referred to in the fourth paragraph, it shall give the parties the opportunity to comment on the matter.



6. If the arbitral tribunal proceeds to the correction, it shall be made by the arbitral tribunal on the original and the copies of the award and be signed by it, or mentioned in a separate document signed by the arbitral tribunal, which document shall be considered to be a part of the award. Articles 1057(1) to (3) inclusive and Article 1058(1). shall apply *mutatis mutandis*.

7. If the arbitral tribunal denies the request for correction, then it shall communicate this to the parties in writing.

8. The request, referred to in the first and second paragraphs, shall not suspend the possibility of enforcement, unless the provisional relief judge finds that important reasons exist to suspend this possibility until a decision has been made on the request. The provisions in Article 1070 shall apply *mutatis mutandis* to the decision of the provisional relief judge. The same shall apply if the arbitral tribunal proceeds to the correction of its own motion in accordance with the fourth paragraph.

### **Article 1061 | Additional award**

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1. Within a time-limit agreed by the parties or within three months after the day the award was sent, the most diligent party may request the arbitral tribunal to make an additional award as to any one or more claims or counterclaims presented to the arbitral tribunal but not decided by it.

2. A copy of the request shall be sent by the arbitral tribunal to the other party.

3. The arbitral tribunal shall give the parties an opportunity to comment on the request before deciding on it.

4. An additional award shall constitute an arbitral award to which the provisions of Sections Three to Five inclusive of this Title shall be applicable.

5. If the arbitral tribunal denies a request for an additional award, it shall so notify the parties in writing. A copy of this notice, signed by an arbitrator or the secretary of the arbitral tribunal, may be deposited with the registry of the district court in accordance with the provisions of Article 1058(1)(b).

## **SECTION THREE A – ARBITRAL APPEAL**

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### **Article 1061a | Applicability**

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If the parties have agreed to arbitral appeal, the provisions in this Title shall be applicable insofar as not otherwise provided in this Section or insofar as the nature of the arbitral appeal does not preclude this.

### **Article 1061b | Requirements of arbitral appeal**

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Arbitral appeal against an arbitral award is only possible if the parties have made provision for this by agreement. Said agreement must comply with the requirements of Articles 1020 and 1021 as well as the requirements of Articles 166 and 167 of Book 10 of the Civil Code.

### **Article 1061c | Time limit**

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The parties may institute arbitral appeal within a time-limit as agreed between the parties or within three months after the day the award was sent.

### **Article 1061d | Institution of arbitral appeal**

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1. Arbitral appeal may be instituted against a final award and a last partial final award.
2. Unless the parties have agreed otherwise, arbitral appeal may also be instituted against other partial final awards.
3. Arbitral appeal against an interim award, except an award based on Article 1043b(1), may only be instituted simultaneously with arbitral appeal against a final or partial final award, unless the parties have agreed otherwise.

### **Article 1061e | Availability of arbitral appeal**

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Arbitral appeal shall be available against an arbitral award made under Article 1046(4). if and insofar as all the parties to the consolidated proceedings have made provision for such arbitral appeal by agreement. Said agreement must comply with the requirements of Articles 1020 and 1021 as well as with the requirements of Articles 166 and 167 of Book 10 of the Civil Code.

### **Article 1061f | Arbitral appeal and jurisdiction**

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1. In the event that the arbitral tribunal declares that it has no jurisdiction as referred to in the second sentence of Article 1052(5), arbitral appeal shall be allowed.
2. In the event that the arbitral tribunal declares that it has jurisdiction or declares that it has no jurisdiction, the provisions in Article 1052(4). and (5) shall be applicable after a decision has been made on appeal, or the time-limit for such appeal has expired without being used, or earlier, if either party has waived the possibility of appeal in writing, or later, at the moment of premature termination of the appeal.

### **Article 1061g | Non-compliance**

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1. The penalty for non-compliance as referred to in Article 1056 may also be claimed for the first time on arbitral appeal.
2. In derogation of the provisions in Article 1056, in the events referred to in Article 611d the lifting, suspension, or reduction of the penalty for non-compliance must be requested from the arbitral tribunal on appeal, if and as long as the mandate of that arbitral tribunal is still in effect.

## **Article 1061h | Supplementation**

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The arbitral award made at the first instance may only be supplemented in accordance with Article 1061. The request to that end must be made within the time-limit applicable for arbitral appeal. The parties may deviate from the provisions of this article by agreement.

## **Article 1061i | Enforceability notwithstanding arbitral appeal**

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1. Unless the law or the nature of the case requires otherwise, the arbitral tribunal at first instance may, if this is claimed, declare that its award shall be immediately enforceable notwithstanding arbitral appeal. The declaration of immediate enforceability may relate to the entire award or any part thereof. The arbitral tribunal may attach as a condition to the declaration of immediate enforceability that an amount of security as determined by the arbitral tribunal be provided.

2. If the award is not declared immediately enforceable by the arbitral tribunal at the first instance and arbitral appeal is instituted against that award, a claim for a declaration of immediate enforceability may be presented to the arbitral tribunal on arbitral appeal. Said claim, the other party having been heard, shall be decided immediately. The second and third sentences of the first paragraph shall apply *mutatis mutandis*.

3. If the award is declared immediately enforceable by the arbitral tribunal at first instance, however without attaching the condition that security be provided, and if arbitral appeal is instituted against that award, a claim to that end may be presented to the arbitral tribunal on appeal. Said claim, the other party having been heard, shall be decided immediately.

## **Article 1061j | Binding force of the arbitral award**

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In derogation of the provisions in Article 1059(3), an arbitral award made at first instance has binding force between the same parties in other proceedings from the day on which the time-limit for arbitral appeal has expired without being used, or earlier, from the day on which the possibility of appeal has been waived in writing, or later, at the moment of premature termination of the appeal, or from the day on which a decision has been made on appeal, if and insofar as the award at first instance has been confirmed in that appeal.

## **Article 1061k | Execution**

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1. An arbitral award granted at first instance that has been declared immediately enforceable, and an arbitral award that has been made on appeal, may be executed in accordance with the provisions in the Fourth Section of this Title. In addition to Article 1063(1), the provisional relief judge of the district court may also deny enforcement if immediate enforceability has been ordered contrary to Article 1061i.

2. An arbitral award made at first instance that has not been declared immediately enforceable may only be enforced in accordance with the provisions of the Fourth Section of this Title after the time-limit for instituting arbitral appeal has expired without being

used, or if and insofar as it has been confirmed on appeal, or earlier, if the possibility of appeal has been waived in writing, or later, at the moment of premature termination of the appeal.

### **Article 1061I | Remedies against arbitral appeal**

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1. Only the legal remedies of setting aside and revocation based on the Fifth Section of this Title are open against a final or partial final award made on arbitral appeal.
2. The setting aside or revocation of an arbitral award made on arbitral appeal entails, by operation of law, the setting aside or revocation of the arbitral award made at first instance, unless the court decides that the arbitral award made at first instance shall be upheld.
3. Only the legal remedies of setting aside and revocation based on the Fifth Section of this Title are open against a final or a partial final arbitral award made at first instance if the time-limit for arbitral appeal has expired without being used or earlier if each of the parties has waived the possibility of appeal in writing. In derogation of Article 1064a(2), the possibility of presenting a claim for setting aside such an award expires three months after the day on which the time-limit which applies for arbitral appeal has expired.
4. In regard to an arbitral interim award made at first instance or on appeal, Article 1064a(3) shall, in accordance with the provisions in this article, apply *mutatis mutandis*.

## **SECTION FOUR – ENFORCEMENT OF THE ARBITRAL AWARD**

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### **Article 1062 | Enforcement in The Netherlands**

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1. An arbitral award may only be enforced in the Netherlands after the provisional relief judge of the district court within whose district the place of arbitration is located has granted leave to do so at the request of any of the parties.
2. The leave for enforcement shall be recorded on the original of the award or, if the award has not been deposited, shall be laid down in a decision. The registry of the district court shall as soon as possible send to the parties a certified copy of the award on which the leave for enforcement has been recorded or a certified copy of the decision in which the leave for enforcement has been granted.
3. If the provisional relief judge of the district court grants the leave for enforcement, then only the legal remedies provided for in Article 1064 are open to the other party.
4. Setting aside or revocation of the arbitral award entails, by operation of law, the setting aside or revocation of the leave for enforcement.

### **Article 1063 | Refusal of enforcement**

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1. Enforcement of the arbitral award may only be refused by the provisional relief judge of the district court if it appears plausible to him after a summary investigation that the award will be set aside based on one of the grounds mentioned in Article 1065(1), or revoked based on one of the grounds mentioned in Article 1068(1), or if a penalty for non-compliance has been imposed contrary to Article 1056. In this last event the refusal shall concern only the enforcement of the penalty for non-compliance.

2. If the time-limit for presenting a claim for setting aside as referred to in Article 1064a has expired without being used, then the provisional relief judge of the district court may only refuse the request for leave for enforcement if it appears plausible to him after a summary investigation that the award is contrary to Article 1065(1)(e).

3. The registry of the district court shall as soon as possible send to the parties a certified copy of the decision of the provisional relief judge of the district court in which the leave for enforcement is refused.

4. Appeal against the decision in which the request for leave for enforcement is refused may be instituted before the Court of Appeal.

5. If the leave for enforcement is also not granted on appeal, appeal in cassation may be instituted.

6. If on appeal, or after appeal in cassation, the request for leave for enforcement is granted, the provisions in Article 1062(3) shall apply *mutatis mutandis*.

## **SECTION FIVE – SETTING ASIDE AND REVOCATION OF THE ARBITRAL AWARD**

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### **Article 1064 | Remedies against an arbitral award**

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Only the legal remedies of setting aside and revocation based on the provisions in this Section shall be open against a final or a partial final arbitral award.

### **Article 1064a | Claim for setting aside**

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1. The claim for setting aside shall be presented to the Court of Appeal in whose judicial district the place of arbitration is located. If the place of arbitration is in the judicial district of Amsterdam and the parties have expressly agreed to this place of arbitration, the claim for setting aside may be presented to the Amsterdam Court of Appeal “Netherlands Commercial Court of Appeal”. Article 30r shall apply *mutatis mutandis*.

2. The possibility to present the claim for setting aside shall expire three months after the day the award was sent. If the parties have agreed to make use of the provision in Article 1058(1)(b), this possibility shall expire three months after the deposit of the award. If, however, the award with leave for enforcement is served on the other party, then that party may, notwithstanding the expiry of the time-limit of three months mentioned in the previous sentence, still present a claim for setting aside within three months after such service.

3. The claim for setting aside an interim award may only be presented together with the claim for setting aside a final or partial final award.

4. All grounds for setting aside must, on pain of being barred, be presented in the writ of summons.

5. Appeal to the Supreme Court may be instituted against a judgment based on the first paragraph. The parties may agree that no appeal to the Supreme Court may be instituted against a judgment based on the first paragraph, unless any of them is a natural person not acting in the conduct of a trade or business.

## **Article 1065 | Grounds for setting aside**

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1. An award may only be set aside on one or more of the following grounds:

1. non-existence of a valid arbitration agreement;
2. the arbitral tribunal was composed in violation of the applicable rules;
3. the arbitral tribunal did not comply with its mandate;
4. the award was not signed or did not contain reasons in accordance with the provisions of Article 1057;
5. the award, or the manner in which it was made, violates public policy.

2. The ground referred to in paragraph (1)(a) above shall not constitute a ground for setting aside in the event mentioned in Article 1052(2).

3. The ground referred to in paragraph (1)(b) above shall not constitute a ground for setting aside in the event mentioned in Articles 1028(2) and 1052(3).

4. The ground referred to in paragraph 1.c. shall not constitute a ground for setting aside if the deviation from the mandate is not of a serious nature. Nor shall the ground referred to in 1.c. constitute a ground for setting aside if the party advancing this ground has failed to make an objection in the matter in accordance with Article 1048a.

5. If a ground for setting aside only concerns a part of the arbitral award, then the award shall not be set aside in respect of the remaining part, insofar as this, taking into account the content and purport of the award, is not inseparably connected with the part to be set aside.

6. If and insofar as the arbitral tribunal has not decided one or more claims or counterclaims presented to it, the claim for setting aside on the ground referred to in paragraph (1)(c) above shall be admissible only if an additional award referred to in Article 1061(1) has been made, or the request for an additional award referred to in Article 1061(1) has wholly or partially been denied.

7. In derogation of the provisions of Article 1064a(2), the time-limit for presenting a claim for setting aside referred to in the preceding paragraph shall expire three months after the day the additional award or the notice of denial referred to in Article 1061(5) was sent. If the parties have agreed to make use of the provision in Article 1058(1)(b), the time-limit

for presenting the claim for setting aside referred to in the preceding paragraph shall expire three months after the day of the deposit of the additional award or of the notice of denial referred to in Article 1061(5). The provisions in the first and second sentence shall apply *mutatis mutandis* to the correction of the award referred to in Article 1060.

### **Article 1065a | Suspension of setting aside proceedings**

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1. The Court of Appeal may, at the request of a party or of its own motion, suspend the setting aside proceedings for a period of time to be determined by the Court of Appeal to put the arbitral tribunal in a position to reverse the ground for setting aside by reopening the arbitral proceedings or by taking other measures as the arbitral tribunal considers appropriate. No appeal is open against a decision of the Court of Appeal.
2. Before the arbitral tribunal makes a decision, it shall give the parties an opportunity to be heard.
3. If the arbitral tribunal finds that the ground for setting aside may be reversed, it shall make an award accordingly that takes the place of the award for which a claim for setting aside has been presented.
4. After the suspension of the setting aside proceedings, the Court of Appeal shall decide as it considers, taking into account the circumstances.

### **Article 1066 | Suspension of enforcement**

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1. A claim for setting aside shall not suspend the enforcement of the award.
2. However, the court which decides on a claim for setting aside may, at the request of the most diligent party, if there are grounds to do so, suspend enforcement until a final decision has been made on the claim for setting aside.
3. A copy of the request for suspension shall be communicated by the registry of the Court of Appeal to the other party as soon as possible.
4. The court shall not decide on the request until the other party has been given an opportunity to comment on the matter.
5. When granting the request, the court may order the petitioner to provide security. When denying the request, the court may order the other party to provide security.
6. In the event that enforcement is suspended, the most diligent party may request the court to lift the suspension. The provisions of paragraphs (3) to (5) inclusive shall apply *mutatis mutandis*.

### **Article 1067 | Jurisdiction post-setting aside**

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As soon as the decision setting aside the award has become final, the jurisdiction of the court shall be revived if and insofar as the arbitral award has been set aside on the ground of non-existence of a valid arbitration agreement. If and insofar as the arbitral

award is set aside on any other ground, the arbitration agreement shall remain in force, unless the parties have agreed otherwise.

### **Article 1068 | Revocation of award**

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1. The award may only be revoked on one or more of the following grounds:

1. the award is wholly or partially based on fraud discovered after the award was made and committed during the arbitral proceedings by or with the knowledge of the other party;
2. the award is wholly or partially based on documents which, after the award was made, are discovered to have been forged;
3. after the award was made, a party obtains documents which would have had an influence on the decision of the arbitral tribunal and which were withheld as a result of the acts of the other party.

2. A claim for revocation shall be brought before the Court of Appeal in whose judicial district the place of arbitration is located, within three months after the fraud or forgery of documents has become known or the party has obtained the new documents. The provisions of Article 1066 shall apply *mutatis mutandis*.

3. If the court finds the ground or grounds for revocation presented to have merit, it shall set aside the award wholly or in part. Articles 1065a and 1067 shall apply *mutatis mutandis*.

## **SECTION SIX – ARBITRAL AWARD ON AGREED TERMS**

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### **Article 1069 | Settlement**

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1. If the parties reach a settlement during the arbitral proceedings, the arbitral tribunal may, at their joint request, record the contents of the settlement in an arbitral award. The arbitral tribunal may refuse this request without giving reasons.

2. An arbitral award on agreed terms shall be regarded as an arbitral award to which the provisions of Sections Three to Five inclusive of this Title shall be applicable, it being understood that:

1. the award may be set aside only on the ground that it is contrary to public policy; and
2. in derogation of the provisions of Article 1057, the award need not contain the grounds on which it is based.

## **SECTION SEVEN – FINAL PROVISIONS**

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### **Article 1070 | Appeal against provisional relief**

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No appeal is open against decisions of the provisional relief judge of the district court as referred to in Sections One to Three inclusive of this Title.



## **Article 1071 | Presentation by attorney**

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In the events referred to in Articles 1026(2) and (4), 1027(3), 1028(1), 1029(2), (4) and (5), 1041a(1), 1044(1) and 1062(1), the

petition and, insofar as applicable, the defence need not be presented by an attorney.

## **Article 1072 | Designation of a specific court**

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The parties may designate by agreement the provisional relief judge of a specific district court as the provisional relief judge competent for the matters as referred to in Articles 1026(2). and (4), 1027(3), 1028(1), 1029(2), (4) and (5), 1035(2), and 1041a(1).

## **Article 1072a | Application of articles 261 and 291**

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Insofar as not otherwise provided in this Title, Articles 261 to 291 inclusive shall apply *mutatis mutandis* to cases which are instituted with a petition in accordance with the provisions of this Title.

## **Article 1072b | Electronic communications**

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1. Insofar as any provision of this Title requires an agreement, a submission, a notice, a request or an action to take written form, these may also take electronic form if the addressee has communicated that it may be reached for these purposes by such means and the arbitral tribunal agrees thereto. The availability by such means shall be valid for the duration of the arbitral proceedings, unless the addressee communicates that it modifies, or, insofar as the parties have agreed to this possibility, withdraws this possibility. This paragraph does not apply to actions in judicial proceedings.
2. Documents as referred to in this Title shall also be understood to be data on a data carrier as well as data presented by electronic means.
3. The award referred to in Article 1057(2). may also be made in electronic form by providing it with a qualified electronic signature as referred to in Article 3(12) of Regulation EU. No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market repealing Directive 1999/93/EC (OJ 2014 L 257).
4. Instead of a personal appearance of a witness, an expert or a party, the arbitral tribunal may determine that the relevant person have direct contact with the arbitral tribunal and, insofar as applicable, with others, by electronic means. The arbitral tribunal shall determine, in consultation with those concerned, which electronic means shall be used to this end and in which manner this shall occur.
5. A notice or action that occurs by electronic means or a procedural document which is presented by electronic means shall be deemed to have been sent at the time at which the message has reached a data processing system for which the sender is not responsible.

## **Article 1072c | Death of a party**

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1. The death of a party shall terminate neither the arbitration agreement nor the mandate of the arbitral tribunal, unless the parties have agreed otherwise.
2. The arbitral tribunal shall suspend the proceedings for a period of time determined by it. The arbitral tribunal may, at the request of the legal successors of a deceased party, extend this period. The arbitral tribunal shall give the other party, at its request, the opportunity to be heard.
3. After the suspension the proceedings shall be continued from the stage they had reached, unless the parties have agreed otherwise.
4. If the party which has grounds to apply for setting aside or revocation of an arbitral award dies within the time-limits mentioned in Article 1064a(2), Article 1065(7) or Article 1068(2), Article 341 shall apply *mutatis mutandis*.

## **Article 1073 | Application of this Title**

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1. The provisions of this Title shall apply if the place of arbitration is located within the Netherlands.
2. If the parties have not determined the place of arbitration, the appointment or the challenge of the arbitrator or arbitrators or the secretary engaged by an arbitral tribunal may take place in accordance with the provisions in Section One B of this Title if at least one of the parties is domiciled or has his actual residence in the Netherlands.

## **TITLE TWO – ARBITRATION OUTSIDE THE NETHERLANDS**

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### **Article 1074 | Jurisdictional defence**

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A court in the Netherlands seized of a dispute in respect of which an arbitration agreement has been concluded and which entails that arbitration must take place outside the Netherlands shall declare that it has no jurisdiction if a party invokes the existence of said agreement before submitting a defence, unless the agreement is invalid under the law applicable to said agreement.

### **Article 1074a | Provisional conservatory measures**

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The agreement which entails that arbitration must take place outside the Netherlands shall not preclude a party from requesting a court in the Netherlands to grant provisional conservatory measures, or from applying to the provisional relief judge of the district court or the cantonal judge for a decision in summary proceedings in accordance with the provisions of Article 254.

### **Article 1074b | Preliminary questions**

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An arbitration agreement which entails that arbitration must take place outside the Netherlands shall not preclude a party from requesting a court in the Netherlands to order a preliminary witness hearing, a preliminary expert report or a preliminary on-site examination and viewing in the Netherlands.

#### **Article 1074c | Appointment of an examining magistrate**

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An arbitration agreement which entails that arbitration must take place outside the Netherlands shall not preclude a party from requesting the court to appoint an examining magistrate if a witness who is domiciled or has his actual residence in the Netherlands does not voluntarily appear. In that event the provisions of Article 1041a(1) to (3) inclusive shall apply *mutatis mutandis*.

#### **Article 1074d | Jurisdiction**

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If, in the events mentioned in Articles 1047a to 1074c inclusive, a party invokes the existence of an arbitration agreement before submitting a defence, the court shall only declare that it has jurisdiction if the requested decision cannot or cannot in a timely manner be obtained in arbitration.

#### **Article 1075 | Recognition and enforcement of foreign awards**

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1. An arbitral award made in a foreign State to which a treaty concerning recognition and enforcement is applicable may, at the request of any of the parties, be recognised and enforced in the Netherlands.
2. Articles 985 to 991 inclusive shall apply *mutatis mutandis* insofar as the treaty does not contain provisions in derogation thereof and it being understood that the Court of Appeal shall be substituted for the district court and the time-limit for appeal in cassation shall be three months.
3. Articles 261 to 291 inclusive shall apply *mutatis mutandis* to the request insofar as not otherwise provided in paragraph two of this article.

#### **Article 1076 | Refusal of recognition and enforcement**

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1. If no treaty concerning recognition and enforcement is applicable, or if an applicable treaty allows a party to rely upon the law of the country in which recognition and enforcement is sought, an arbitral award made in a foreign State may be recognised in the Netherlands and its enforcement may be sought in the Netherlands by any of the parties, upon submission of the original or a certified copy of the arbitration agreement and arbitral award, unless:

- A. the party against whom recognition or enforcement is sought, asserts and proves that:
1. no valid arbitration agreement under the law applicable thereto exists;
  2. the arbitral tribunal was composed in violation of the applicable rules;
  3. the arbitral tribunal did not comply with its mandate;

4. the arbitral award is open to appeal to arbitrators or the courts in the country in which the award was made;
5. the arbitral award was set aside by a competent authority of the country in which that award was made;

B. the court finds that the recognition or enforcement would be contrary to public policy.

2. The ground mentioned in paragraph (1)(A)(a). above shall not constitute a ground for refusal of recognition or enforcement if the party invoking this ground has appeared in the arbitral proceedings and, before submitting a defence, has not raised the plea that the arbitral tribunal has no jurisdiction on the ground of non-existence of a valid arbitration agreement.

3. The ground mentioned in paragraph (1)(A)(b) above shall not constitute a ground for refusal of recognition or enforcement if the party invoking this ground has cooperated in the composition of the arbitral tribunal, or if it has not cooperated in the composition of the arbitral tribunal, has appeared in the arbitral proceedings and, before submitting a defence, has not raised the plea that the arbitral tribunal has no jurisdiction on the ground that the arbitral tribunal was composed in violation of the applicable rules.

4. The ground mentioned in paragraph (1)(A)(c) above shall not constitute a ground for refusal of recognition or enforcement if the deviation from the mandate is not of a serious nature. Nor shall the ground mentioned in paragraph (1)(A)(c) above constitute a ground for refusal of recognition or enforcement if the party invoking this ground has participated in the arbitral proceedings without raising it in a timely manner, although it was known to it that the arbitral tribunal did not comply with its mandate.

5. If the award is in excess of, or different from, the relief sought, the arbitral award shall be capable of partial recognition or enforcement insofar as the part of the award which is in excess of or different from the relief sought may be separated from the remaining part of the award.

6. The provisions of Articles 985 to 991 inclusive shall apply *mutatis mutandis*, it being understood that the Court of Appeal shall be substituted for the district court, the time-limit for appeal to the Supreme Court shall be three months, and no documents need be submitted evidencing the enforceability of the arbitral award in the country in which it is made.

7. Articles 261 to 291 inclusive shall apply *mutatis mutandis* to the request insofar as not otherwise provided in the sixth paragraph of this article.

8. If a claim for setting aside an award made in a foreign State is made to a competent authority of the country in which the award was made, the provisions of Article 1066(2) to (6) inclusive shall apply *mutatis mutandis* when recognition or enforcement is sought in the Netherlands.

