

ACICA Mediation Rules

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Model Mediation Clauses

Optional Mediation

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia [**or choose another city**] and be administered by the Australian Centre for International Commercial Arbitration (ACICA).

Mediation followed by Arbitration

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by mediation in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia [**or choose another city**] and be administered by the Australian Centre for International Commercial Arbitration (ACICA).

If the dispute has not been settled pursuant to the said Rules within 60 days following the written invitation to mediate or within such other period as the parties may agree in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [**or choose another city**]. The language of the arbitration shall be English [**or choose another language**]. The number of arbitrators shall be one [**or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules**].

(The parties may agree on other mediation clauses.)

1. Application of the Rules

- 1.1 These Rules apply to mediation of disputes arising out of or relating to a contractual or other legal relationship where the parties have agreed that the ACICA Mediation Rules ("**Rules**") apply.
- 1.2 Where any of the Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

2. Commencement of Mediation Proceedings

- 2.1 A party or parties wishing to commence mediation proceedings pursuant to the Rules shall give to ACICA a Request for Mediation in two copies or such additional number as ACICA directs.
- 2.2 The Request for Mediation shall include the following:
 - (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
 - (b) a copy of the mediation clause or the separate mediation agreement that is invoked (where there is such an agreement between the parties to refer their dispute to the Rules);
 - (c) a brief description of the dispute including, if possible, an assessment of its value;
 - (d) the name of the proposed mediator, if all the parties have agreed on his or her identity; and
 - (e) payment for ACICA's registration fee as specified in Appendix A.

- 2.3 The Request for Mediation may also include a proposal regarding the qualifications of the mediator.
- 2.4 Subject to Article 2.5, the mediation proceedings shall be deemed to commence on the date on which the Request for Mediation or the registration fee is received by ACICA, whichever is the later.
- 2.5 If the Request for Mediation is incomplete or is not submitted in the required number ACICA may:
- (a) request the party or parties which filed the Request for Mediation to remedy the defect within an appropriate period of time; and
 - (b) delay the date of commencement of the mediation proceedings until such defect is remedied.
- 2.6 Subject to Article 2.5, upon receipt of the Request for Mediation ACICA shall communicate the Request for Mediation to the other party or parties referred to in Article 2.2(a), unless the Request for Mediation was submitted jointly by all parties.

3. Answer to Request for Mediation

- 3.1 This Article applies where the Request for Mediation was not submitted jointly by all parties.
- 3.2 The party or parties served with the Request for Mediation may provide to ACICA:
- (a) a proposal regarding the qualifications of a mediator; and
 - (b) brief comments on the dispute and its value.

4. Number of Mediators

- 4.1 There shall be one mediator, unless the parties have agreed otherwise.

5. Appointment of Mediator

- 5.1 Unless the parties have agreed on the name of a mediator the appointment shall be made by ACICA.
- 5.2 Any mediator agreed by the parties or appointed by ACICA must be independent and impartial.
- 5.3 No person may act as a mediator under the Rules unless he or she has given to ACICA a declaration in writing of independence and impartiality.

6. Submission of Statements to Mediator

- 6.1 The mediator, upon his or her appointment, may request each party to submit to him or her a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of its statement to the other party.
- 6.2 The mediator may request each party to submit to him or her a further written statement of its position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of its statement to the other party.

6.3 At any stage of the mediation proceedings the mediator may request a party to submit to him or her such additional information as he or she deems appropriate.

7. Representation and Assistance

7.1 The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the mediator. Such communication shall specify whether the appointment is made for purposes of representation or of assistance.

8. Role of Mediator

8.1 The mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

8.2 The mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

8.3 The mediator may conduct the mediation proceedings in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.

8.4 The mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree to this and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator in consultation with the parties and ACICA.

8.5 The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

9. Administrative Assistance

9.1 ACICA shall, at the request of the mediator or a party, make available, or arrange for, such facilities and assistance for the conduct of the mediation proceedings as may be required, including suitable accommodation for sittings of the mediator, secretarial assistance and interpretation facilities.

9.2 ACICA may charge for such services and require payment in advance or the provision of security before providing such services.

10. Communication Between Mediator and Parties

10.1 The mediator may invite the parties to meet with him or her or may communicate with them orally or in writing. He or she may meet or communicate with the parties together or with each of them separately.

10.2 Unless the parties have agreed upon the place where meetings with the mediator are to be held, such place will be determined by the mediator, after consultation with the parties, having regard to the circumstances of the mediation proceedings.

11. Disclosure of Information

- 11.1 When the mediator receives factual information concerning the dispute from a party, he or she shall disclose the substance of that information to the other party in order for the other party to have the opportunity to present any explanation which he or she considers appropriate. However, when a party gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

12. Co-operation of Parties with Mediator

- 12.1 The parties will in good faith co-operate with the mediator and, in particular, will endeavour to comply with requests by the mediator to submit written materials, provide evidence and attend meetings.

13. Suggestions by Parties for Settlement of Dispute

- 13.1 Each party may, on its own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

14. Settlement Agreement

- 14.1 When it appears to the mediator that there exist elements of a settlement which would be acceptable to the parties, he or she may formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of such observations.
- 14.2 If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement. If requested by the parties, the mediator shall draw up, or assist the parties in drawing up, the settlement agreement.
- 14.3 The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

15. Confidentiality

- 15.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 15.2 The parties, the mediator and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the mediation (including the existence of the mediation), the settlement agreement, materials created for the purpose of the mediation and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to the courts of any State to enforce the settlement agreement;
 - (b) pursuant to the order of a court of competent jurisdiction;
 - (c) if required by the law of any State which is binding on the party making the disclosure; or
 - (d) if required to do so by any regulatory body.
- 15.3 Any party planning to make disclosure under Article 15.2 must within a reasonable time prior to the intended disclosure notify the mediator, ACICA and the other parties (if during the mediation) or ACICA and the other parties (if the disclosure takes place after the conclusion of the mediation) and furnish details of the disclosure and an explanation of the reason for it.

15.4 To the extent that a witness is given access to evidence or other information obtained in the mediation, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

16. Termination of Mediation Proceedings

16.1 The mediation proceedings are terminated:

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or
- (d) on the expiration of 90 days, or such other period as is agreed by the parties, after the date that the request for mediation is received by ACICA.

16.2 The mediator shall promptly notify ACICA of the termination of the mediation proceedings.

17. Resort to Arbitral or Judicial Proceedings

17.1 Subject to Article 17.2, the parties undertake not to initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings.

17.2 A party may initiate arbitral or judicial proceedings for the purposes of enforcing its rights under the Rules or to seek relief of an interlocutory nature.

18. Costs

18.1 Upon termination of the mediation proceedings, the mediator shall fix the costs of the mediation and give written notice thereof to the parties. The term "costs" includes only:

- (a) The fee of the mediator which shall be reasonable in amount;
- (b) The travel and other expenses of the mediator;
- (c) The travel and other expenses of witnesses requested by the mediator with the consent of the parties;
- (d) The cost of any expert advice requested by the mediator with the consent of the parties;
- (e) The cost of any assistance provided pursuant to Articles 5, 9 and 19 of the Rules.

18.2 The costs, as defined above, shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

19. Deposits

- 19.1 The mediator, upon his or her appointment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 18.1 which he or she expects will be incurred.
- 19.2 During the course of the mediation proceedings the mediator may request supplementary deposits in an equal amount from each party.
- 19.3 The mediator shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.
- 19.4 With the consent of ACICA, the mediator may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the mediator. ACICA may make a charge for its trust account services.
- 19.5 If the required deposits under Articles 19.1 and 19.2 are not paid in full by both parties within thirty days, the mediator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- 19.6 Upon termination of the mediation proceedings, the mediator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

20. Role of Mediator in Other Proceedings

- 20.1 The parties and the mediator undertake that the mediator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings. The parties also undertake that they will not present the mediator as a witness in any such proceedings.

21. Admissibility of Evidence in Other Proceedings

- 21.1 The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the mediation proceedings;
- (a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
 - (b) Admissions made by the other party in the course of the mediation proceedings;
 - (c) Proposals made by the mediator; or
 - (d) The fact that the other party had indicated its willingness to accept a proposal for settlement made by the mediator.

22. Decisions made by ACICA

- 22.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.
- 22.2 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

23. Liability of Mediator

- 23.1 The mediator shall not be liable for any act or omission in connection with any mediation conducted by reference to these Rules save where the act or omission is fraudulent.