

# **ARBITRATION RULES**

of the AUSTRALIAN INSTITUTE FOR  
COMMERCIAL ARBITRATION (AICA)

## **Section I. Introductory rules**

### *SCOPE OF APPLICATION*

#### **Article 1.**

1. Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the Australian Institute for Commercial Arbitration Rules, or the AICA Rules, then such disputes shall be settled in accordance with these Rules.
2. By demonstrating an intention to have such disputes referred to arbitration and referring to these Rules, the parties have intended to incorporate each of these Rules as terms of their arbitration agreement, subject to such modification as the parties may agree in writing.
3. Where the parties have not otherwise specified the scope of disputes to be resolved by arbitration, such scope is to be any dispute, controversy or claim arising out of, relating to, or in connection with their contract, or the breach, termination or invalidity thereof.
4. Unless otherwise specifically agreed by the parties in writing the law governing the substance of the arbitration agreement, as the case may be, is to be the law of the State of Victoria.
5. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

### *NOTICE, CALCULATION OF PERIODS OF TIME*

#### **Article 2.**

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at their habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

## *NOTICE OF ARBITRATION*

### **Article 3.**

1. The party initiating recourse to arbitration (hereinafter called the "Claimant") shall give to AICA and to the other party (hereinafter called the "Respondent") a Notice of Arbitration.
2. The Notice of Arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and addresses of the parties;
  - (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) An explanation of the defined legal relationship out of, in relation to, or in connection with, which the dispute arises;
  - (e) The general nature of the claim and an indication of the amount involved, if any;
  - (f) The relief or remedy sought;
  - (g) A proposal as to the number of arbitrators (e.g. one or three), if the parties have not previously agreed thereon.
3. The Notice of Arbitration may also include:

- (a) The proposals for the appointments of a sole arbitrator referred to in Article 7(1);
- (b) The Statement of Claim referred to in Article 22.

## **Article 4.**

1. Together with the Notice of Arbitration Claimant must pay to AICA a non-refundable initiation fee (the "Initiation Fee"). The Initiation Fee payable shall be fixed in accordance with the Schedule of Fees current at the time the Notice of Arbitration is received by AICA.
2. The Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Respondent, however the Arbitral Tribunal cannot be composed until AICA receives the Initiation Fee.
3. Any counterclaim or set off defence raised by Respondent shall also be subject to the payment of an Initiation Fee fixed in accordance with the Schedule of Fees current at the time the Notice of Arbitration is received by AICA. The Arbitral Tribunal may in its discretion refuse to hear such counterclaim or set off defence until it receives notification from AICA that the appropriate Initiation Fee has been paid.

## *REPRESENTATION AND ASSISTANCE*

### **Article 5.**

The parties may be represented or assisted by persons of their choice, specifically including legally qualified persons. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

## **Section II. Composition of the Arbitral Tribunal**

### *NUMBER OF ARBITRATORS*

## **Article 6.**

1. If the parties have not previously agreed on the number of arbitrators (e.g. one or three), and if within fifteen days after the receipt by the Respondent of the Notice of Arbitration the parties have yet not agreed then AICA will determine the number of arbitrators in its absolute discretion.
2. Unless it appears to AICA that the dispute warrants a greater number of arbitrators, the number of arbitrators shall be one. AICA shall have regard to, but is not limited to, such factors as: the amount in dispute; the complexity of the dispute; and the subject matter of the dispute. AICA is not required to provide reasons for its decision. Such decision will be final and binding on the parties.

### *APPOINTMENT OF ARBITRATORS*

## **Article 7.**

1. If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.
2. If within 15 days after receipt by a party of a proposal made in accordance with Article 7(1) the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by AICA.
3. AICA shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment AICA shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless AICA determines in its discretion that the use of the list-procedure is not appropriate for the case:
  - (a) At the request of one of the parties AICA shall communicate to both parties an identical list containing at least three names;
  - (b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

- (c) After the expiration of the above period of time AICA shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
  - (d) If for any reason the appointment cannot be made according to this procedure, AICA may exercise its discretion in appointing the sole arbitrator.
4. In making the appointment, the AICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **Article 8.**

1. If three arbitrators are to be appointed, each party shall nominate and appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Arbitral Tribunal.
2. If within 15 days after the receipt of a party's notification of the nomination of an arbitrator the other party has not notified the first party of the arbitrator it has nominated the first party may request AICA to nominate and appoint the second arbitrator. Such appointment is to be made having regard to the considerations described in Article 7(4).
3. If within 30 days after the nomination of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be nominated and appointed by AICA in the same way as a sole arbitrator would be appointed under Article 7.

## **Article 9.**

When AICA is requested to appoint an arbitrator pursuant to Article 7 or Article 8, it may do so notwithstanding the Notice of Arbitration may be incomplete.

## **Article 10.**

1. Prior to accepting their appointment, the nominated arbitrators may at their discretion meet with the parties to consider any preliminary matter deemed appropriate. Such a meeting shall only take place in the presence of all parties and each member of the nominated Arbitral Tribunal.
2. Subject to Article 4(2) the Arbitral Tribunal will be composed upon the appointment of all arbitrators.

## *APPOINTMENT PROCESS WHERE THERE ARE MULTIPLE PARTIES*

### **Article 11.**

1. Where there are multiple Claimants or multiple Respondents the appointment procedures described in Article 6 through to Article 8 are only applicable where the multiple Claimants or multiple Respondents, as the case may be, each provide signed written confirmation to AICA that they have acted jointly.
2. If the parties have not reached an agreement on the procedure for appointing the Arbitral Tribunal within 30 days of the last party to receive the Notice of Arbitration, the entire Arbitral Tribunal shall be appointed by AICA in its absolute discretion.

## *CHALLENGE OF ARBITRATORS*

### **Article 12.**

A prospective arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence to those who have made the approach. An arbitrator, once nominated or appointed, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

### **Article 13.**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

## **Article 14.**

1. A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Article 12 and Article 13 became known to that party.
2. The challenge shall be notified to the other party, all members of the Arbitral Tribunal (including the challenged arbitrator) and to AICA. The notification shall be in writing and shall state the reasons for the challenge.
3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

In both cases the procedure provided in Article 7 or Article 8 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

## **Article 15.**

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by AICA.
2. If AICA sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Article 7 and Article 8.

## *REPLACEMENT OF AN ARBITRATOR*

## **Article 16.**

In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator

shall be appointed or chosen pursuant to the procedure provided for in Article 7 or Article 8 that was applicable to the appointment or choice of the arbitrator being replaced.

### *REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR*

#### **Article 17.**

If under Article 14 through to Article 16 any arbitrator is replaced the Arbitral Tribunal may at its discretion:

- (a) accept and consider any evidence and or submissions received prior to the replacement of the arbitrator; and or
- (b) repeat any prior hearings.

### *TRUNCATED TRIBUNALS*

#### **Article 18.**

1. In circumstances other than those described in Article 16, if any member of a three person tribunal refuses or fails to participate in the deliberations of the Arbitral Tribunal without good cause (the "Non-participating Arbitrator"), the other arbitrators (the "Truncated Tribunal") shall have the power to determine whether to continue the arbitration, including the power to make any decision, ruling or award, notwithstanding the failure of the Non-participating Arbitrator.
2. In determining whether to proceed in the absence of the Non-participating Arbitrator the Truncated Tribunal shall have regard to the stage of the arbitration, any explanation provided by the Non-participating Arbitrator, and any other matters the Truncated Tribunal considers relevant. Any decision, ruling or award made by the Truncated Tribunal must be in writing and must clearly state the Truncated Tribunal's reasons for proceeding in that fashion.
3. Before exercising the power provided in Article 18(1) the Truncated Tribunal must notify AICA, the parties, and the Non-participating Arbitrator of its intention to do so in writing.
4. If the Truncated Tribunal decides it cannot proceed, it must notify AICA, and the parties of this decision in writing. Unless

otherwise agreed by the parties, AICA will then declare the office vacant and a substitute arbitrator appointed in accordance the procedures described in Article 8.

## **Section III. Arbitral proceedings**

### *GENERAL PROVISIONS*

#### **Article 19.**

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
2. If either party so requests at any stage of the proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.

### *SEAT OF ARBITRATION*

#### **Article 20.**

1. Unless the parties have agreed upon the seat where the arbitration is to be held, such seat shall be determined by the Arbitral Tribunal, having regard to the circumstances of the arbitration.
2. The Arbitral Tribunal may hear witnesses and hold meetings for consultation among its members wherever it deems appropriate, having regard to the circumstances of the arbitration.
3. The Arbitral Tribunal may meet wherever it deems appropriate for the inspection of goods, other property or documents. The

parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the seat of arbitration.

## *LANGUAGE*

### **Article 21.**

1. Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The Arbitral Tribunal may order that any documents annexed to the Statement of Claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

## *STATEMENT OF CLAIM*

### **Article 22.**

1. Unless the Statement of Claim was contained in the Notice of Arbitration, within 30 days after the composition of the Arbitral Tribunal, the Claimant shall communicate its Statement of Claim in writing to the Respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
2. The Statement of Claim shall include the following particulars:
  - (a) The names and addresses of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought.

The Claimant may annex to its Statement of Claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit.

## *STATEMENT OF DEFENCE*

### **Article 23.**

1. Within 30 days after receiving the Statement of Claim, or composition of the Arbitral Tribunal, whichever is the latter, the Respondent shall communicate its statement of defence in writing to the Claimant and to each of the arbitrators.
2. The statement of defence shall reply to the particulars of the Statement of Claim. The Respondent may annex to its statement the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit.
3. In its statement of defence, or at a later stage in the arbitral proceedings if the Arbitral Tribunal decides that the delay was justified under the circumstances, the Respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of a sufficiently related contract for the purpose of a set-off.
4. The arbitral tribunal shall have jurisdiction to hear a claim arising out of a sufficiently related contract for the purpose of a set-off, even when the contract from which this defence is said to arise is not within the scope of the arbitration agreement or is the object of another arbitration agreement or forum-selection clause. Whether a contract is 'sufficiently related' is a question of fact to be determined by the Arbitral Tribunal.
5. The provisions Article 22(2) to a counter-claim and a claim relied on for the purpose of a set-off.

## *AMENDMENTS TO THE CLAIM OR DEFENCE*

### **Article 24.**

During the course of the arbitral proceedings the Arbitral Tribunal may permit either party may amend or supplement its claim or defence upon such terms, including the payment of costs, as the Arbitral Tribunal deems fit. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

## *PLEAS AS TO JURISDICTION OF THE ARBITRAL TRIBUNAL*

## **Article 25.**

1. The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
2. The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 25, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
3. A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.
4. In general, the Arbitral Tribunal should rule on a plea concerning its jurisdiction as a preliminary question after its composition. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a plea in their final award.

## *FURTHER WRITTEN STATEMENTS*

### **Article 26.**

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## *PERIODS OF TIME*

### **Article 27.**

The periods of time fixed by the Arbitral Tribunal for the communication of written statements (including the Statement of Claim and statement of defence) should not exceed forty-five days. However, the Arbitral Tribunal may extend the time-limits if it concludes that an extension is justified.

## *EVIDENCE AND HEARINGS*

### **Article 28.**

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. The Arbitral Tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the Arbitral Tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his Statement of Claim or statement of defence.
3. At any time during the arbitral proceedings the Arbitral Tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

### **Article 29.**

1. In the event of an oral hearing, the Arbitral Tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the Arbitral Tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The Arbitral Tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.
4. Hearings shall be held *in camera* unless the parties agree otherwise. The Arbitral Tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The Arbitral Tribunal is free to determine the manner in which witnesses are examined.
5. The Arbitral Tribunal may direct that the evidence of witnesses also or alternatively be presented in the form of written statements signed by them, including by sworn affidavit.

6. The Arbitral Tribunal is not bound by the rules of evidence and shall determine the admissibility, relevance, materiality and weight of the evidence offered with all due regard to the rules of natural justice.
7. A party may adduce evidence from an expert witness subject to complying with Article 30.

## **Article 30.**

1. A party who intends to adduce the evidence of a person as an expert shall not later than 30 days prior to the date fixed by the Arbitral Tribunal for the hearing at which evidence is to be adduced from the expert serve a copy of the report from the expert on the other party to the arbitration.
2. The expert report shall state the opinion of the expert and provide:
  - (a) the name and address of the expert;
  - (b) the facts, matters and assumptions upon which his or her opinion is based, including the letter of instructions;
  - (c) any examinations, tests, or other investigations on which the expert has relied, identifying the person who carried them out and that persons qualifications;
  - (d) any qualification that the expert believes should be made to his or her opinion; and
  - (e) if the opinion is not a concluded opinion because of insufficient research or data or for any other reason.
3. The expert report shall be signed by the expert and accompanied by any applicable correspondence, plans, photographs, calculations, analyses, surveys or other extrinsic materials relied upon.
4. The general principle upon which expert evidence shall be received by the Arbitral Tribunal is that a person engaged as an expert witness shall seek to assist the Arbitral Tribunal impartially on matters relevant to the area of expertise of the witness and not as an advocate for a party.
5. A party shall not, except with the consent of the other party, or the Arbitral Tribunal or in cross examination of any witness, adduce any evidence from an expert witness except as provided in Article 30.

## MISCELLANEOUS POWERS OF THE TRIBUNAL

### **Article 31.**

1. Unless otherwise agreed by the parties, and subject to any provision of any law applicable to the arbitration from which the parties cannot derogate, the powers of the Arbitral Tribunal include but are not limited to:
  - (a) all such powers, as are permitted by law, that are necessary to conduct the arbitral proceedings in accordance with these Rules;
  - (b) conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, specifically including adopting an inquisitorial approach to the determination of the dispute;
  - (c) allow other parties to be joined in the arbitration with their express consent, and make a single final award determining all disputes between them;
  - (d) permit the consolidation of arbitral proceedings involving the same (or where not the same then consenting) parties on such terms as the Arbitral Tribunal thinks just;
  - (e) granting a stay of the arbitral proceedings until after the determination of any other relevant arbitral or legal proceedings;
  - (f) require a party to provide security for the legal or other costs of any party;
  - (g) making orders or giving directions to any party for an interim measure, including requiring the provision of security for such a measure;
  - (h) summons any legal entity (including any person and whether or not a party to the arbitral proceedings) to produce any document, property or thing, where the Arbitral Tribunal considers it may be relevant to subject matter of the dispute; (i) summons any person to attend before the Arbitral Tribunal to give evidence, where the Arbitral Tribunal considers that the person may be able to give testimony relevant to subject matter of the dispute;
  - (j) require a party to take positive steps to preserve or store any property or thing which is the subject matter of the dispute and is in that party's control or possession;
  - (k) stay any earlier decision, ruling or award of the Arbitral Tribunal.

2. The powers referred to in Article 31(1) are exercisable by the Arbitral Tribunal on its own volition or the application of any party. However before exercising any such power each party must have been given reasonable opportunity to make submissions on the decision, ruling or award proposed.
3. Where the parties and Arbitral Tribunal agree, a single member of the Arbitral Tribunal may decide on their own, subject to revision, if any, by the Arbitral Tribunal as a whole.

## *EXPERTS*

### **Article 32.**

1. The Arbitral Tribunal may appoint one or more experts, including legal experts, to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.
3. Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 29 and Article 30 shall be applicable to such proceedings.

## *DEFAULT*

### **Article 33.**

1. If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its claim without showing

sufficient cause for such failure, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

## *CLOSURE OF HEARINGS*

### **Article 34.**

1. The Arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

## *WAIVER OF RULES*

### **Article 35.**

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

## *CONFIDENTIALITY*

### **Article 36.**

1. The parties, the Arbitral Tribunal, and AICA must keep confidential any and all matters relating to the arbitral

proceeding to the extent such matters are not already within the public domain.

2. The party upon whose behalf a witness, expert or any other person appears is required to obtain confidentiality undertakings from such persons in a form deemed appropriate by the Arbitral Tribunal.
3. The blanket confidentiality requirement in Article 36(1) is subject only to:
  - (a) the of making an application to a competent court, including any necessary enforcement application;
  - (b) disclosure by compulsion of law;
  - (c) the publication by AICA of statistical information concerning arbitrations conducted under its auspices provided such information does not reveal the identity of any parties.
4. If prior to the conclusion of the arbitration, a party wishes to disclose confidential information for any reason, that party must notify the Arbitral Tribunal, the other party and AICA at least 7 days before any disclosure occurs. The notice must provide details of the circumstances in which the information became know and to whom.
5. In the event any confidential information is to be disclosed for any reason other than Article 36(3)(c), the party wishing to disclose the information must notify the other party and AICA at least 7 days before any disclosure occurs. The notice must provide details of the circumstances in which the information became know and to whom.

## **Section IV. The award**

### *FORM AND EFFECT OF THE AWARD*

#### **Article 37.**

1. In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The Arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award may be made public only with the consent of both parties.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the Arbitral Tribunal.
7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the Arbitral Tribunal, the Arbitral Tribunal shall comply with this requirement within the period of time required by law.

#### *APPLICABLE LAW, AMIABLE COMPOSITEUR*

### **Article 38.**

1. The Arbitral Tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The Arbitral Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the Arbitral Tribunal to do so in writing and if the law applicable to the arbitral procedure permits such arbitration.
3. In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

#### *SETTLEMENT OR OTHER GROUNDS FOR TERMINATION*

### **Article 39.**

1. If, before the award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for

the termination of the arbitral proceedings or, if requested by both parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 39(1), the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 37(2), and Article 37(4) to Article 37(7), shall apply.

#### *INTERPRETATION OF THE AWARD*

##### **Article 40.**

1. Within thirty days after the receipt of the award, either party, with notice to the other party and to AICA, may request that the Arbitral Tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty- five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 37(2) through to Article 37(7), shall apply.

#### *CORRECTION OF THE AWARD*

##### **Article 41.**

1. Within thirty days after the receipt of the award, either party, with notice to the other party and to AICA, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of Article 37(2) through to Article 37(7), shall apply.

### *ADDITIONAL AWARD*

#### **Article 42.**

1. Within thirty days after the receipt of the award, either party, with notice to the other party and to AICA, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of Article 37(2) through to Article 37(7), shall apply.

### *COSTS*

#### **Article 43.**

The Arbitral Tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

- (a) The fees of the Arbitral Tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 44;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the Arbitral Tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;
- (e) The costs for representation (including legal representation) and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of AICA.

#### **Article 44.**

1. The fees of the Arbitral Tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. The Arbitral Tribunal in fixing its fees shall take the AICA Schedule of Arbitrators Fees into account to the extent that it considers appropriate in the circumstances of the case.

## **Article 45.**

1. Except as provided in Article 45(2), the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. With respect to the costs of representation and assistance referred to in Article 43(e), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
3. When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 43 and Article 44(1), in the text of that order or award.
4. No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Article 40 through to Article 42.

## *DEPOSIT OF COSTS*

## **Article 46.**

1. The Arbitral Tribunal, on its composition, may request each party to deposit an equal amount as an advance for the costs referred to in Article 43(a), through to Article 43(c) and Article 43(f).
2. During the course of the arbitral proceedings the Arbitral Tribunal may request supplementary deposits from the parties.
3. If the required deposits are not paid in full within thirty days after the receipt of the request, the Arbitral Tribunal shall so

inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the arbitral proceedings.

4. After the award has been made, the Arbitral Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

## *EXCLUSION OF LIABILITY*

### **Article 47.**

1. To the fullest extent permitted by law, none of AICA, its officers, employees, or members, any member of the Arbitral Tribunal or expert appointed by the Arbitral Tribunal shall be liable for any act or omission in connection with any arbitration conducted by reference to these Rules, including negligence, other than where the act or omission is found to amount to a conscious and deliberate wrongdoing committed by the alleged liable party.
  2. Following the delivery of the final award and after any such period allowed for interpretation or correction of the final award or the making of any additional award, each party warrants and undertakes not to seek to have any of AICA, its officers, employees, or members, any member of the Arbitral Tribunal or expert appointed by the Arbitral Tribunal appear as witnesses or in any other way provide evidence in any legal proceedings of any kind arising out of the arbitration, nor is any such person obliged to make any statement regarding the arbitration whatsoever.
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