

## Mediation Rules

(in force as from 1. June 2013)

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## **PREAMBLE**

Mediation is a structured procedure by which the parties aim for an amicable solution of disagreements and disputes on a voluntary and self-dependent basis, guided by the support of one or more mediators.

EUCON guides mediations with the goal to guarantee quality, transparency and an efficient course of the mediation proceeding. During the complete mediation proceeding, EUCON supports the parties and the mediator in all related matters. The mediator manages the mediation proceeding on the basis of a Mediator Contract as determined between the parties and the mediator as well as according to the acceptance of the mediation mandate. In the course of the mediation proceeding and in consultation with the mediator, the parties can instruct a third person with an objective and neutral evaluation of the disagreement or dispute, also of parts thereof.

A mediation proceeding conducted on the basis of these Mediation Rules should regularly last maximum 90 calendar days calculated from its commencement.

## **§ 1 SCOPE OF APPLICATION**

- (1) These Mediation Rules shall apply if the parties agree on in an independent undertaking (Mediation Agreement) or in terms of a clause as part of a contract (Mediation Clause), or if one party applied for the implementation of a mediation proceeding according to these Mediation Rules and if the other party agrees afterwards.
- (2) Otherwise agreed by the parties, the EUCON Mediation Rules in effect of the date of initiation of the mediation proceeding shall apply.
- (3) The parties can adjust the mediation proceeding amicably according to their individual requirements and insofar deviate from these Mediation Rules.

## **§ 2 INITIATION OF MEDIATION**

- (1) A mediation proceeding shall be initiated by a written application addressed to the EU-CON secretariat by one party (Mediation Request). The Mediation Request should be filed by Email or can be filed by mail or telefax.
- (2) The Mediation Request shall affirm that a mediation proceeding according to the Mediation Rules of EUCON is intended. Further it shall contain the following details:
  - a) name of the parties as well as eventually their counsels, in cases of corporate bodies also the names of the legal representatives and their addresses, phone numbers as well as Email-addresses and fax numbers, and
  - b) a short description of the disagreement or dispute as well as the description of claims.
- (3) The Mediation Request should additionally include the following details:
  - a) the preliminary value of dispute;
  - b) the information whether the parties already agreed amicably on a proposal for the mediator as well as eventually name and contact details of this mediator or – if no agreement regarding the mediator exists – eventually required qualifications of the mediator;
  - c) if available, a copy of the Mediation Agreement or the Mediation Clause.
- (4) After payment of the Registration Fee according to Sec. 16, EUCON transfers the Mediation Request immediately to the other party. If a Mediation Agreement or a Mediation Clause exists between the parties, the other party shall – in other cases should – respond to the Mediation Request within two weeks after its receipt. If the parties did not amicably agree on the mediator, the other party should comment on the requested qualifications of the mediator as well as on the preliminary value of dispute.

### **§ 3 COMMENCEMENT OF MEDIATION**

The mediation proceeding commences with the receipt of the Mediation Request by EUCON. EUCON informs the parties regarding the date of receipt of the Mediation Request.

### **§ 4 APPOINTMENT OF THE MEDIATOR AS AMICABLY PROPOSED BY THE PARTIES**

- (1) If the parties amicably proposed a mediator, EUCON appoints this mediator for the mediation proceeding after receipt of the Procedural Fee according to Sec. 16, if
  - a) no doubt on the independence and neutrality of the mediator exists according to circumstances which has to be disclosed in consideration of Sec. 6, or if the parties amicably demand the appointment of this mediator despite of according doubts after comprehensive information as far as this is acceptable according to the applicable law, and if
  - b) the mediator declares in writing his willingness vis-à-vis the parties and EUCON to conduct the mediation on the basis of these Mediation Rules.
- (2) The parties ensure in their own responsibility that the mediator has the necessary expertise for conducting the mediation as well as, if requested by the parties, that the mediator possesses liability insurance, and that the mediator is able to conduct the mediation proceeding within the timeframe as requested by the parties.
- (3) If the parties request the appointment of more mediators (Co-mediation), the aforementioned provisions shall be applied accordingly.

### **§ 5 PROPOSAL AND APPOINTMENT OF THE MEDIATOR BY EUCON**

- (1) If the parties do not propose the mediator amicably according to Sec. 4, EUCON proposes at least three mediators after payment of the Procedural Fee according to Sec. 16 and by presenting the according profiles of these mediators, the details of the particular mediators according to Sec. 6 as well as the information whether liability insur-

ance exists. The proposed mediators shall fulfill the requirements according to Sec. 5 para. 6 as well as, if possible, the qualifications as requested by the parties.

- (2) Each party informs EUCON within seven working days after receipt of the proposals in which priority the proposed mediators meet its preferences and whether individual proposed mediators are declined.
- (3) EUCON appoints the mediator how correlates in the best possible way with the parties' preferences. If two mediators correlate with the preferences of the parties in the same way, EUCON appoints one of these mediators. If only one party discloses its preferences in time, EUCON appoints one mediator from the proposal list who correlates with the preferences of this party in the best possible way. If no party discloses their preferences in time, EUCON appoints a mediator according to its own discretion.
- (4) If EUCON does not appoint a mediator accordingly, each party can apply for further proposals of mediators by EUCON.
- (5) EUCON informs the parties on the result of this procedure and informs the mediator regarding his appointment.
- (6) The appointment of a mediator by EUCON requires that
  - a) no doubts on independence and neutrality of the mediator exist or that the parties require the appointment of this mediator amicably despite of such doubts and in consideration of extensive information, provided that this is acceptable according to the applicable law;
  - b) the mediator confirms to EUCON in writing that he possesses the expertise for conducting the mediation proceeding as well as the possibility to conduct the mediation proceeding according to these Mediation Rules, and
  - c) the mediator informs whether liability insurance for this mediation proceeding exists.
- (7) EUCON can propose the appointment of more mediators to the parties in certain matters. If the parties request the appointment of more mediators (Co-mediation), the afore-mentioned provisions shall be applied accordingly.

## **§ 6 INDEPENDENCE AND NEUTRALITY OF THE MEDIATOR**

- (1) The Mediator shall disclose to the parties and to EUCON all circumstances which can create any doubt on his independence and neutrality. This obligation remains effective for the duration of the mediation proceeding. The mediator is especially obliged to inform the parties and EUCON in advance if he or one person who is connected to the mediator by a professional or office community has advised or advises one party in the same or another matter.
- (2) A person who has acted for a party in the same matter prior to the mediation is not allowed to act as mediator in this matter. The mediator must also not act during or after the mediation for one party in the same matter.
- (3) The mediator must not accept any advantages provided by one party, their representatives or third persons which are directly or indirectly interested in the subject matter of the mediation proceeding besides the agreed reimbursement according to these Mediation Rules.

## **§ 7 DUTIES OF THE MEDIATOR**

- (1) The mediator shall be obliged to the parties and to EUCON by acceptance of the mediation to conduct the mediation on a basis of these Mediation Rules. He shall accept the mediation if he is proper for the mediation according to his expertise, willing and able to conduct the mediation in a timely manner and according to the requirements of these Mediation Rules.
- (2) The mediator is obligated to all parties likewise. He supports the communication of the parties and safeguards that the parties are included in the mediation in an appropriate and fair manner. In the same time, he works towards an efficient settlement of the disagreements or disputes. Incidentally it is in the discretion of the mediator to decide how to support the parties for the settlement of the dispute in consideration of the requirements according to Sec. 10.

- (3) If the parties mutually decide to continue the mediation proceeding with another mediator, the parties can terminate the contract with the mediator at any time and can propose another mediator according to Sec. 4 or can apply for the nomination of mediators by EUCON according to Sec. 5.
- (4) After the end of the mediation, the mediator provides a final report to the Board of EUCON which has to include the following information and which has to be treated confidentially:
  - a) nature of the conflict,
  - b) value of the dispute of the mediation,
  - c) duration of the mediation,
  - d) way of finalization of the mediation.
- (5) A mediator may only accept the position as arbitrator in an arbitration which follows to the mediation proceeding and which will relate in total or partly to the subject matter of the mediation proceeding by the explicit approval of all parties.

## **§ 8 DUTIES OF THE PARTIES**

- (1) If the parties agreed to a mediation proceeding for the settlement of their disagreements or disputes, this mediation proceeding must be conducted before the commencement of a court proceeding or an arbitration related to the subject matter of the mediation proceeding. This obligation does not apply for expedited court proceedings and if the commencement of a court proceeding or an arbitration is necessary in order to ensure a term of exclusion. If the commencement of a court proceeding or an arbitration is necessary for observing a term of exclusion, or if the offset with the subject matter of the mediation proceeding has been declared in a court proceeding or an arbitration, or if a court proceeding or an arbitration is already pending at the time of the conclusion of a Mediation Agreement or a Mediation Clause, the parties shall apply for the stay of the court proceeding or the arbitration for the duration of the mediation proceeding.
- (2) The duty of preferred commencement of mediation according to para. 1 shall end with the end of the mediation according to Sec. 13. If a party refuses the cooperation in the

mediation proceeding contrary to duty, the other party shall be entitled to commence a court proceeding or arbitration referring to the subject matter of the mediation proceeding respectively to continue the inactive court proceeding or arbitration. If the other party does not respond to the Mediation Request within the deadline of Sec. 2 para. 4 sentence 2, or if the other party does not fulfil the obligation to pay the Procedural Fee pro rata within the deadline as set by EUCON according to Sec. 16, such behavior shall be considered as the refusal of cooperation contrary to duty.

- (3) The parties shall support an efficient execution of the mediation procedure, they shall bear the costs of the procedure according to Sec. 15 and they shall consider the confidentiality according to Sec. 14. If a party is of the opinion that a settlement cannot be achieved finally or if it is of the opinion that the continuation of the mediation proceeding becomes useless, these circumstances have to be disclosed to the mediator and if possible to the other party immediately.
- (4) The parties evaluate if possible within two weeks after the end of the proceeding the performance of the mediator and of EUCON, and disclose this evaluation to EUCON.

## **§ 9 PROCEDURAL PLAN, PREPARATION FOR THE MEDIATION MEETING**

- (1) The mediator determines in consultation with the parties the language of the proceeding, the rules of communication, time, place and duration of the single mediation meetings as well as possible further procedural steps. On this, the mediator shall prepare a Procedural Plan immediately.
- (2) If amendments are necessary, the Procedural Plan shall be adjusted accordingly.
- (3) The mediator informs EUCON immediately regarding the Procedural Plan as well as possible amendments.
- (4) The mediator analyzes the disagreements and disputes in preparation for the mediation meeting. In consultation with the parties he can collect possible necessary information from the parties. He agrees with the parties on the participants of the mediation



meeting and takes further measures to the efficient execution of the mediation proceeding.

- (5) The parties shall provide to each other as well as to the mediator all correspondence, documents and other information which are introduced to the mediation. The mediator can – after prior explicit approval by the parties – accept confidential information in writing (especially regarding the facts and the interests of the parties) as well as proposals for a solution of the conflict, without the exchange to the other party respectively.

## **§ 10 COMMENCEMENT OF THE MEDIATION MEETING**

- (1) The mediator shall discuss with the parties the beginning of the mediation meeting, the basics of a mediation procedure, his role as mediator, the planned course of action, the expected costs, the rights and duties of the participants as well as the possibility of a confidentiality agreement.
- (2) Basically, the parties appear in person to the mediation meetings. As far as representatives of the parties participate, they should be confident with the subject matter of the mediation proceeding and should be authorized for an amicable settlement of the disagreements or disputes. On the side of a party, further persons can participate if the other party agrees who have to provide a confidentiality declaration according to Sec. 14 on demand of one party. If the parties require amicably, the mediator shall protocol the main results of the meeting.
- (3) With prior explicit approval of the parties, the mediator can conduct private sessions with the parties.
- (4) If suitable, the mediator advises the parties that third persons can be instructed with an objective and neutral evaluation of the disagreements or disputes or of parts hereof.
- (5) In exceptional cases, the mediator can provide proposals for a final solution of the disagreements or disputes on explicit demand of all parties provided that the mediator has explained to the parties his change of function and the related consequences hereof.  
The mediator has to achieve an amicable arrangement especially to the question

whether the proposal for a solution should be based on (for example legal) standards of evaluation, to what extent certain information from the confidential documents or from private sessions should be considered for the proposal for solution and that insofar the proposal of solution shall be without any explanatory statement.

## **§ 11 COMBINATION WITH EVALUATIVE PROCEDURES**

- (1) The parties can in consultation with the mediator instruct third persons with an objective and neutral evaluation of the disagreements or disputes or of parts hereof. The procedure in this sense is any kind of a neutral evaluation including restricted or completely binding procedures.
- (2) The third person shall commit to an efficient procedure for the evaluation according to objective measurements on the basis of a fair procedure and shall also commit to confidentiality according to Sec. 14 as well as shall ensure his independence and the necessary or demanded expertise. The instruction shall be conducted amicably by the parties in their responsibility. The parties shall bear the according costs (especially fees and expenses).
- (3) The mediator informs EUCON regarding the instruction of a third person as well as regarding the finalization of his activity.

## **§ 12 SETTLEMENT AGREEMENT**

- (1) If the parties achieve a settlement regarding their disagreement or disputes (Settlement Agreement), it should be included in a written document in the course of the final mediation meeting between the parties. The Settlement Agreement should include a comprehensive and final arrangement of the complete cause of the conflict as discussed during the mediation proceeding. If the Settlement Agreement is not prepared in writing in this mediation meeting between the parties, the mediator prepares minutes related to the basic points of the settlement on demand of and in consultation with the parties which should be signed by the parties if possible.

- (2) The mediator assists with the drafting of the Settlement Agreement according to the statutory requirements. He discusses with the parties the advantages of the so-called one-text-procedure and offers this procedure to the parties. The mediator shall recommend to the parties who participate in the mediation without professional advice the review of the Settlement Agreement by external advisors, especially lawyers, as well as he shall document this recommendation.
- (3) The mediator informs the parties regarding the possibility for enforcement of the Settlement Agreement and works toward the inclusion of a mediation clause or another appropriate form of alternative dispute resolution in the Settlement Agreement if possible.
- (4) If the parties cannot achieve a complete settlement, the mediator proposes a partly settlement. If such partly settlement is also not possible, the mediator recommends on the parties' demand the further procedure after the end of the mediation.

### **§ 13 END OF MEDIATION**

- (1) The mediation proceeding ends as soon as the parties achieved a Settlement Agreement for the solution of the complete cause for conflict according to Sec. 12 para. 1. If the parties achieve only a partly settlement, the proceeding shall be continued for the remaining parts of the cause for conflict.
- (2) If not otherwise agreed, EUCON terminates the mediation proceeding after prior consultation with the parties, if 90 calendar days after the commencement of the mediation lapsed and no Settlement Agreement could be achieved, unless the parties continue the proceeding amicably.
- (3) The mediator informs the parties two weeks prior to the deadline according to Sec. 13 para. 2 regarding the afore-mentioned regulation for ending the proceeding and informs EUCON accordingly. He informs EUCON in addition whether and how long the parties intend to continue the proceeding.

- (4) Each party is entitled to terminate the mediation proceeding at any time after the first mediation meeting in writing vis-à-vis EUCON and the mediator. The mediation proceeding ends two weeks after the receipt of such declaration, unless the mediation proceeding continues prior to this deadline amicably.
- (5) The mediator can terminate the Mediator Contract vis-à-vis the parties only for important cause. In such case he has to inform EUCON regarding the important cause in advance. If the parties demand the continuation of the mediation amicably, Sec. 4 and 5 of this Mediation Rules shall apply accordingly. Apart from that, EUCON declares the end of the mediation proceeding after consultation with the parties.

## **§ 14 CONFIDENTIALITY**

- (1) If not agreed otherwise, the parties, their advisors, the mediator, EUCON and all its employees as well as all third persons participating in the mediation shall treat all measures of the mediation proceeding including its execution and the results confidential, unless it relates to information which were available to each party already before or independent from the mediation proceeding or which the parties could also have known without the execution of the mediation proceeding. This is not obligatory if the disclosure of such circumstances is legally required or necessary for the transformation of the Mediation Agreement or for the enforcement of the Settlement Agreement. Parties who are obliged according to legal requirements to inform third persons regarding matters of the mediation proceeding have to inform the other party before the commencement of mediation.
- (2) In absence of another parties' agreement and unless not required by law, the following information must not be introduced in official, judicial, arbitrational or other proceedings as defensive means as well as for a proof:
  - a) documents, statements or information which have been disclosed in connection with the mediation by the other party or the mediator, unless the party who intends to use these documents has received these documents before or independently of the mediation proceeding, or could have received such information also without execution of the mediation proceeding;

- b) opinions, confessions and proposals of the other party or of the mediator which have been proclaimed exclusively in connection with the mediation, as well as the fact that the other party declared its willingness to conclude a settlement, or that a party refused a settlement proposal.
- (3) EUCON is entitled to use information regarding the mediation proceeding for statistics and to publish these information its media products (brochures, homepage etc.) in an anonymized way. It must be guaranteed that neither the disagreements and disputes nor the parties can be identified hereof.
- (4) As far as not otherwise agreed, none of the participants of the mediation proceeding shall be called as witness in a later judicial or arbitral proceeding regarding facts which are related to the mediation proceeding or to one of the matters as mentioned in Sec. 14 para. 2. As far as the mediator will be called as witness or expert in a later judicial or arbitral proceeding with respect to the mediation proceeding, he shall make use of his privilege to refuse to give evidence, provided he is not released from his obligation to confidentiality by all parties.
- (5) The mediator works towards the obligation of all participants of the mediation as far as they are not bound by these Mediation Rules, to consider the content of this provision regarding confidentiality.

## **§ 15 REIMBURSEMENT, FEES AND COSTS**

- (1) As far as not otherwise agreed, the parties bear all fees according to Sec. 16, the agreed reimbursement of the mediator according to Sec. 17 including his expenses, eventually the costs for the rental of a mediation room as well as possible expenses for the amicable inclusion of third persons related to the mediation proceeding in equal parts.
- (2) Incidentally, each party bears its own costs.

## **§ 16 FEES AND ADVANCE**

- (1) EUCON is entitled to claim a Registration Fee for the introduction of the proceeding and for the clarification of the parties' willingness to conduct a mediation proceeding, as well as to claim a Procedural Fee for the proposal and the appointment of a mediator and for the execution of the proceeding as such. The fees are calculated on the basis of the Rules for Reimbursement and Fees as in force at the time of commencement of the mediation proceeding and as attached.
- (2) EUCON assesses the preliminary value of dispute and the preliminary amount of the Procedural Fee after commencement of the mediation and eventually after consultation of the parties.
- (3) The Registration Fee shall be charged to the applicant by EUCON, to Procedural Fee shall be charged to both parties in equal parts.
- (4) After commencement of the mediation proceeding and of the appointment of the mediator, EUCON summons the parties in writing in consultation with the mediator and eventually after consultation of the parties to pay an advance of the estimated fees and expenses of the mediator as well as of the expenses required for the execution of the mediation. If this advance is not sufficient, EUCON can demand further advance payments.
- (5) EUCON is entitled to stay the mediation proceeding until the receipt of the payments.
- (6) At the end of the mediation, EUCON calculates the final value of dispute as well as the amount of the final Procedural Fee after consultation of the parties. EUCON also refunds the parties for eventual excess payments and it demands from the parties possible subsequent payments.
- (7) The parties are jointly and severally liable debtors for the fees.

## **§ 17 REIMBURSEMENT OF THE MEDIATOR**

- (1) The reimbursement of the mediator shall be calculated according to the expenditure of time for the mediation according to the Rules for Reimbursement and Fees as in force at the time of commencement of the mediation proceeding and as attached. Reasonable expenses of the mediator have to be reimbursed against receipt.
- (2) At the end of the mediation, the mediator informs EUCON regarding the accumulated expenditure of time as well as regarding possible expenses. EUCON charges the reimbursement as well as the expenses to the parties on a pro rata basis in consideration of eventual advance payments.
- (3) The parties are jointly and severally liable debtors for the reimbursement and the expenses to the mediator.

## **§ 18 STATUTE OF LIMITATION**

The limitation of claims which are subject matter of the mediation proceeding is constrained from the commencement of the mediation proceeding according to Sec. 3 respectively from the point in time when these claims become subject matter of the mediation proceeding if such claims were not included in the mediation proceeding from its beginning. Such claims are constrained until the end of the mediation proceeding according to Sec. 13 provided such constraint is legally acceptable and provided that at the time of commencement of the mediation proceeding a valid Mediation Agreement existed or provided that the party which did not apply for the mediation proceeding according to these Mediation Rules accepted the execution of the mediation proceeding. The limitation of claims shall commence earliest three months after the end of the constraint.

## **§ 19 LIABILITY**

- (1) EUCON shall only be liable for wilful intent or gross negligence as conducted by EUCON. This limitation of liability shall not apply for the violation of life, body or health.

- (2) EUCON shall not be liable for the performance of the mediator's duties resulting from the Mediator Contract. Insofar, the mediator shall directly be liable according to the Mediator Contract as concluded between him and the parties.

## **§ 20 CHOICE OF LAW**

The legal relationship between the parties and EUCON as well as between the mediator and the parties is governed by German law.

## **§ 21 MEDIATION CLAUSE AND ARBITRATION CLAUSE**

- (1) For disagreements and disputes as arising in connection with these Mediation Rules between the parties and EUCON, preferably a mediation proceeding according to the Mediation Rules of the German Institution for Arbitration e. V. (DIS) shall be conducted.
- (2) For disagreements and disputes between the mediator and one or more parties in connection with the execution of the mediation according to the Mediator Contract or regarding its validity, a mediation proceeding according to these Mediation Rules shall be conducted.
- (3) As far as disputes according to para. 1 or para. 2 cannot be resolved by the respectively considered mediation proceeding, such disputes shall be finally decided according to the Arbitration Rules of the German Institution for Arbitration e. V. (DIS) excluding the jurisdiction of a court.