

EUCON Mediation Rules

in the version dated 15 September 2024

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Preamble

Mediation is a structured process in which the parties, with the help of one or more mediators, voluntarily and independently seek an amicable settlement to their differences or disputes.

EUCON assists in mediations with the aim of ensuring quality, transparency and the expeditious course of the mediation proceedings. During the entire mediation process EUCON supports the parties and the mediator in all matters of the mediation process. Accepting the mediation, the mediator is obliged to conduct the mediation in accordance with these mediation rules. Within the framework of the mediation proceedings, the parties may, in consultation with the mediator, commission third parties to carry out an objective and neutral assessment of the differences of opinion or disputes, or parts of these.

Mediation conducted under these rules normally last no longer than 90 calendar days from the start of the mediation.

1. Scope of application

- 1.1 These mediation rules shall apply if the parties have agreed to this in an independent agreement (mediation agreement) or in the form of a clause in a contract (mediation clause), or if one party requests the mediation proceedings in accordance with these mediation rules and the other party agrees to this.
- 1.2 Unless the parties agree otherwise, the EUCON mediation rules applicable at the time the mediation proceedings are initiated shall apply.
- 1.3 The parties may, by mutual agreement, adapt the mediation procedure in accordance with their individual needs and thus deviate from these mediation rules.

2. Initiation of mediation

- 2.1 The mediation process is initiated by a written application from one of the parties, to be submitted to the EUCON office (mediation application). The mediation application shall be submitted by email or can be sent by post or fax.
- 2.2 The request for mediation shall state that it is intended to conduct mediation proceedings in accordance with the EUCON mediation rules. It shall also include the following information:
 - (a) the names of the parties and, if applicable, their legal representatives; in the case of legal entities, the names of the legal representatives together with their addresses, telephone numbers, e-mail addresses and fax numbers; and

- (b) a brief description of the disagreement or dispute and an indication of the claims asserted.

2.3 The mediation application shall also include the following information:

- (a) the provisional value in dispute
- (b) information on whether the parties have agreed on a joint proposal for the person of the mediator and, if so, the name and contact details of that mediator or, if no agreement has yet been made on the person of the mediator, any qualifications the mediator might have;
- (c) if available, a copy of the mediation agreement or mediation clause.

2.4 After payment of the registration fee in accordance with Section 16, EUCON forwards the request for mediation to the other party without delay. If the parties have concluded a mediation agreement or agreed a mediation clause, the other party must, otherwise shall, comment on the mediation application within two weeks of receipt of the mediation application. In particular, and unless the parties have agreed on a joint proposal for the person of the mediator, it shall communicate the desired qualifications of the mediator and comment on the provisional value in dispute.

3. Start of the mediation

The mediation procedure begins when EUCON receives the request for mediation. EUCON informs the parties of the date of receipt of the request for mediation.

4. Appointment of the mediator proposed by mutual agreement of the parties

4.1 If the Parties have proposed a Mediator by mutual agreement, EUCON shall appoint a Mediator for the proceedings after payment of the procedural fee pursuant to Section 16 if

- (a) there are no doubts as to the independence and neutrality of the mediator based on the circumstances to be disclosed pursuant to Section 6 or the parties, despite these doubts, wish to appoint this mediator by mutual agreement after being fully informed and this is permissible under the applicable law, and
- (b) the Mediator has declared in writing to the Parties and EUCON its willingness to conduct the mediation on the basis of these Mediation Rules.

4.2 The parties shall ensure on their own responsibility that the mediator has the necessary professional competence to conduct the mediation, has liability insurance if requested

by them, and can conduct the mediation proceedings within the time frame requested by the parties.

- 4.3 If the parties wish to appoint several mediators (co-mediation), the above paragraphs shall apply accordingly.

5. Proposal and appointment of the Mediator by EUCON

- 5.1 If the parties do not propose a mediator by mutual agreement in accordance with Section 4, EUCON proposes up to three mediators to the parties after payment of the procedural fee in accordance with Section 16, enclosing the respective mediator's profile, the information of the respective mediators in accordance with Section 6 and the information as to whether liability insurance exists. The mediators proposed shall fulfil the requirements of Section 5.6 and, if possible, shall have the qualifications desired by the parties.
- 5.2 Each party shall inform EUCON within seven working days of receipt of the proposals of the order of preference of the proposed mediators and whether it rejects any of the proposed mediators.
- 5.3 EUCON shall appoint the Mediator who most closely matches the preferences communicated by the Parties. If two Mediators correspond equally to the preferences communicated by both Parties, EUCON shall appoint one of these Mediators. If only one of the Parties communicates its preferences in good time, EUCON shall appoint the Mediator from the list of proposals who best matches the preferences of that Party. If neither party communicates its preferences in good time, EUCON shall appoint the Mediator at its own discretion.
- 5.4 If the Mediator is not appointed by EUCON, either Party may request that EUCON propose additional Mediators.
- 5.5 EUCON shall inform the Parties of the outcome of the proceedings and notify the Mediator of his appointment.
- 5.6 The appointment of a mediator by EUCON requires that
- (a) if no doubts arise regarding the independence and neutrality of the mediator, or if, despite these doubts, the parties wish to appoint the mediator by mutual agreement after having been fully informed and if this is permissible under the applicable law;

- (b) the mediator has declared in writing to EUCON that he is professionally qualified to carry out the mediation, is willing and able to carry out the mediation on the basis of these mediation rules, and
- (c) the mediator states whether he or she has a professional liability insurance for the mediation.

5.7 In appropriate cases EUCON can suggest to the parties the appointment of several mediators. If the parties desire the appointment of several mediators (co-mediation), the above paragraphs shall apply accordingly.

6. Independence and neutrality of the mediator

- 6.1 The mediator shall disclose to the parties and EUCON any circumstances which might give rise to doubts concerning his independence and neutrality. This obligation shall apply for the duration of the mediation proceedings. The mediator shall be particularly obliged to inform the parties and EUCON in advance if he or any other person associated with him in the same professional practice or office has advised or is advising a party in the same or in a different matter.
- 6.2 No person may act as a mediator who has acted for a party in the same matter prior to the mediation. The mediator may also not act for a party in the same matter during or after the mediation.
- 6.3 The mediator may not accept any benefits from a party, its representative or third parties who may be directly or indirectly interested in the subject matter of the mediation, apart from the fee payable under these Mediation Rules.

7. Duties of the mediator

- 7.1 By accepting the mediation, the Mediator is obliged towards the Parties and EUCON to conduct the mediation on the basis of these Mediation Rules and may only accept the mediation if he is professionally qualified, willing and able to conduct the mediation swiftly and in accordance with the provisions of these Mediation Rules.
- 7.2 The mediator is equally committed to all parties. He shall encourage communication between the parties and ensure that the parties are involved in the mediation in an appropriate and fair manner. At the same time, the mediator works towards a speedy resolution of the differences of opinion or disputes. In all other respects, it is at the discretion of the mediator to decide how to support the parties in resolving the conflict, taking into account the requirements set out in Section 10.

- 7.3 If the Parties mutually agree to continue the mediation process with a different Mediator, they may terminate the contract with the Mediator at any time and propose a different Mediator in accordance with Section 4 or reapply for the appointment of Mediators by EUCON in accordance with Section 5.
- 7.4 At the end of the mediation, the mediator shall send a final report to the EUCON Executive Board containing the following information, which must be treated confidentially:
- (a) nature of the conflict
 - (b) value in dispute
 - (c) duration of the mediation
 - (d) Type of termination of the mediation
- 7.5 A mediator may only act as arbitrator in arbitration proceedings subsequent to the mediation proceedings which relate in whole or in part to the subject matter of the mediation proceedings with the express consent of both parties.

8. Obligations of the parties

- 8.1 If the parties have agreed to conduct mediation proceedings to resolve their differences of opinion or disputes, such mediation proceedings shall be conducted prior to the initiation of court or arbitration proceedings on the subject matter of the mediation proceedings. This does not apply to summary court proceedings and if the initiation of (arbitration) court proceedings is necessary to comply with a time limit. If the initiation of (arbitration) court proceedings is necessary to comply with a preclusive period, if a set-off is declared in (arbitration) court proceedings with a claim relating to the subject matter of the mediation proceedings or if (arbitration) court proceedings are already pending when the mediation agreement or mediation clause is concluded, the parties shall apply for the (arbitration) court proceedings to be suspended for the duration of the mediation proceedings.
- 8.2 The obligation to prioritise the mediation pursuant to Section 8.1 shall end with the end of the mediation pursuant to Section 13. If a party refuses to cooperate in the mediation proceedings in breach of duty, the other party shall be entitled to bring an action or an arbitration action on the subject matter of the mediation proceedings or to continue the dormant (arbitration) court proceedings. Such a refusal to cooperate in breach of duty shall also be deemed to have occurred if the other Party fails to comment on the mediation request within the time limit set out in Section 2.4 sentence 2 or fails to fulfil

its obligation to pay the pro rata procedural fee pursuant to Section 16 within the time limit set by EUCON.

- 8.3 The parties shall co-operate in the expeditious conduct of the mediation proceedings, bear the costs of the proceedings in accordance with Section 15 and observe confidentiality in accordance with Section 14.
- 8.4 If, in the opinion of one of the parties, an agreement has finally been ruled out or a continuation of the mediation procedure has become pointless for other reasons, it shall immediately disclose these circumstances to the mediator and, if possible, to the other party.
- 8.5 The Parties shall assess the work of the Mediator and EUCON within two weeks of the end of the proceedings if possible and inform EUCON of this assessment.

9. Procedural plan, preparation of the mediation meeting

- 9.1 The mediator shall, in agreement with the parties, determine the language of the proceedings, the rules of communication, the time, place and duration of the individual mediation sessions as well as any further procedural steps. To this end, the mediator shall immediately draw up a procedural plan.
- 9.2 Should a change become necessary, the procedural plan will be adapted accordingly.
- 9.3 The Mediator shall inform EUCON immediately of the procedural plan and any changes.
- 9.4 The mediator shall analyse the differences of opinion or disputes in preparation for the mediation session. He may, in agreement with the parties, obtain any necessary information from them. He shall agree with the parties who will attend the mediation session and shall take any other measures necessary for the effective conduct of the mediation session.
- 9.5 The parties shall provide each other and the Mediator with all correspondence, documents or other information that introduces them to the mediation. The Mediator may - with the prior express consent of all parties - receive confidential information in written form (in particular regarding the facts of the case and the interests of the parties) as well as proposals for the resolution of the conflict, which shall not be communicated to the other party.

10. Conduct of the mediation session

- 10.1 At the beginning of the first mediation session, the mediator shall discuss with the parties the main features of the mediation procedure, his role as mediator, the planned

procedure, the anticipated costs, the rights and obligations of the parties and the possibility of a confidentiality agreement.

- 10.2 Mediation sessions shall generally take place in the personal presence of the parties. If representatives of the parties attend, they should be familiar with the subject matter of the mediation procedure and be authorised to settle the differences of opinion or disputes by mutual agreement. In agreement with the other party, further persons may participate on the part of one party, who - if one party so wishes - must submit a confidentiality agreement in accordance with Section 14. At the mutual request of the parties, the mediator shall draw up minutes in which the main results of the meeting are recorded.
- 10.3 The mediator may, with the prior express consent of all parties, conduct confidential individual discussions with them.
- 10.4 In appropriate cases, the mediator shall inform the parties that third parties may be commissioned to provide an objective and neutral assessment of the differences of opinion or disputes or parts thereof as part of the mediation process.
- 10.5 In exceptional cases, the mediator may submit proposals for the final resolution of differences of opinion or disputes if all parties expressly request this and the mediator has informed the parties of his change of role and the resulting consequences. In particular, the mediator must reach agreement on whether the proposed solution should be based on certain (e.g. legal) assessment standards, the extent to which the mediator can take into account individual information from confidential documents or individual discussions for the proposed solution and that in this respect no reasons are given for the proposed solution.

11. Combination with evaluative procedures

- 11.1 The parties may, in consultation with the mediator, commission third parties to conduct an objective and neutral evaluation of the disagreement or dispute or parts thereof. Proceedings in this sense include any type of neutral evaluation, including limited or fully binding proceedings.
- 11.2 The third party shall undertake to carry out the valuation swiftly in accordance with objective standards based on a fair procedure and to maintain confidentiality in accordance with Section 14 and to guarantee its independence and the required or desired professional suitability. The parties shall be jointly responsible for commissioning the valuation. They shall bear the resulting costs (in particular fees and expenses).
- 11.3 The Mediator shall inform EUCON of the appointment of a third party and of the conclusion of its activities.

12. Agreement

- 12.1 If the parties reach an agreement on their differences of opinion or disputes (final agreement), this shall be included in a written agreement in the final mediation session between the parties. The final agreement shall contain a comprehensive and conclusive settlement of all matters of conflict identified during the mediation process. If the final agreement is not included in a written agreement between the parties at this mediation session, the mediator shall, at the request of the parties and in agreement with the parties, draw up a record of the key points of the agreement to be signed by the parties, if possible.
- 12.2 The mediator shall assist in the formulation of the agreement within the framework of the legal requirements. He shall discuss with the parties the advantages of the so-called one-text procedure and offer this to the parties. The mediator shall recommend to the parties who participate in the mediation without professional advice that they have the agreement reviewed by external advisors, in particular lawyers, and document this recommendation.
- 12.3 The mediator shall inform the parties of the possibility of compulsory enforcement of the final agreement and shall endeavour to ensure that the final agreement contains a mediation clause or another appropriate form of out-of-court dispute resolution.
- 12.4 If the parties are unable to reach an overall agreement, the mediator shall suggest a partial agreement. If this is also not possible, the mediator shall, at the request of the parties, make a recommendation for further proceedings after the end of the mediation.

13. End of the mediation

- 13.1 The mediation procedure shall end as soon as the parties have reached a final agreement on the resolution of the entire subject matter of the conflict in accordance with Section 12.1. If the parties reach only a partial agreement, the proceedings shall continue with regard to the remaining parts of the conflict.
- 13.2 Unless otherwise agreed, EUCON shall declare the mediation proceedings terminated after prior contact with the Parties if no final agreement has been reached within 90 calendar days of the start of the mediation, unless the Parties continue the proceedings by mutual agreement.
- 13.3 The Mediator shall inform the Parties two weeks prior to the expiry of the deadline pursuant to Section 13.2 of the above provisions on the termination of the proceedings and shall inform EUCON accordingly. The Mediator shall inform EUCON whether and for how long the Parties will continue the proceedings.

- 13.4 Either Party may terminate the mediation proceedings at any time after the first mediation session by giving written notice to EUCON and the Mediator. The mediation procedure shall end two weeks after receipt of these declarations, unless the mediation procedure is continued by mutual agreement before the expiry of this period.
- 13.5 The Mediator may only terminate the Mediator Agreement with the Parties for good cause. In this case, the Mediator must inform EUCON of the good cause in advance. If the Parties wish to continue the mediation by mutual agreement, Sections 4 and 5 of these Mediation Rules shall apply accordingly. Otherwise, EUCON shall declare the mediation proceedings terminated after consultation with the Parties.

14. Confidentiality

- 14.1 Unless expressly agreed otherwise, the Parties, their advisors, the Mediator, EUCON and its employees as well as third parties involved in the mediation shall treat all matters relating to the mediation process, including its conduct and outcome, as confidential, unless it concerns information which the respective Party already had before or independently of the mediation process or which it could have learnt without conducting the mediation process. This does not apply if disclosure of such circumstances is required by law or is necessary for the implementation of the mediation agreement or for the compulsory enforcement of the final agreement.
- 14.2 In the absence of an agreement to the contrary between the parties and unless required by law, no documents may be introduced in official, judicial, arbitration or similar proceedings as a means of attack or defence or as evidence:
- (a) documents, statements or communications submitted in connection with the mediation by the other party or the mediator, unless the party intending to use them already had them before or independently of the mediation or could have obtained them without conducting the mediation;
 - (b) the views, concessions and proposals of the other party or the mediator made solely in connection with the mediation and the fact that the other party has agreed to settle in the mediation or has rejected a settlement offer.
- 14.3 EUCON is entitled to include information about the mediation process in statistics and to publish it in anonymised form in its media offerings (brochures, homepage, etc.). It must be ensured that neither the differences of opinion and disputes nor the parties can be identified from this.
- 14.4 Unless expressly agreed otherwise, none of the parties to the mediation proceedings may be called as a witness in subsequent (arbitration) court proceedings for facts relating to the mediation proceedings or a circumstance referred to in Section 14.2. If the mediator is called as a witness or expert witness in subsequent (arbitration) court

proceedings with regard to the mediation proceedings, the mediator must exercise existing rights to refuse to testify in order to maintain confidentiality, unless he is expressly released from his duty of confidentiality by all parties.

- 14.5 The Mediator shall endeavour to ensure that all parties involved in the mediation who are not already bound by these Rules of Mediation undertake to observe the confidentiality provisions of these Rules.

15. Fees, charges, costs

- 15.1 Unless otherwise agreed, the parties shall bear the fees incurred in accordance with Section 16, the agreed fee of the mediator in accordance with Section 17 including the mediator's expenses, any costs associated with the rental of a mediation room and any expenses associated with the mediation proceedings arising from the consensual involvement of third parties in equal shares.

- 15.2 In all other respects, each party shall bear its own costs.

16. Fees and advance payment

- 16.1 EUCON is entitled to a registration fee for initiating the proceedings and clarifying the willingness of the Parties to conduct mediation proceedings, as well as a procedural fee for proposing and appointing the Mediator and for conducting the remaining proceedings. The fees shall be calculated in accordance with EUCON's scale of fees and charges valid at the time of the initiation of the mediation proceedings as set out in the Annex.
- 16.2 After initiating the mediation and, if necessary, after hearing the Parties, EUCON shall set a provisional value in dispute and determine the provisional amount of the procedural fee.
- 16.3 EUCON shall charge the registration fee to the Applicant and the procedural fee to the Parties in equal shares.
- 16.4 After the start of the mediation process and the appointment of the Mediator, EUCON shall, in consultation with the Mediator and, if necessary, after hearing the Parties, request the Parties in writing to make an advance payment towards the anticipated fee and expenses of the Mediator as well as the expenses required to conduct the mediation. If this is not sufficient, EUCON may request further advances.
- 16.5 EUCON is authorised to suspend the mediation process until payment has been received.

16.6 At the end of the mediation, EUCON shall, after hearing the Parties, determine the final value in dispute and the amount of the final procedural fee, reimburse the Parties for any overpayments or claim any additional payments from the Parties.

16.7 The parties shall be jointly and severally liable for the fees.

17. Fee of the Mediator

17.1 The Mediator's fee shall be based on the time spent on the mediation in accordance with EUCON's scale of fees and charges valid at the time the mediation proceedings are initiated as set out in the Annex. Reasonable expenses incurred by the Mediator shall be reimbursed on presentation of evidence.

17.2 At the end of the mediation, the Mediator shall inform EUCON of the time spent and any expenses incurred. EUCON shall invoice the fee and any expenses to the Parties on a pro rata basis, taking into account any advances.

17.3 The Parties are jointly and severally liable to the Mediator for the fee and expenses. EUCON is not liable for the payment of the Mediator's fee by the Parties to the Mediator.

18. Statute of limitations

The limitation period for claims that are the subject of the mediation proceedings shall be suspended from the beginning of the mediation proceedings pursuant to Section 3 or, if they were not already the subject of the mediation proceedings at the beginning of the mediation proceedings, from the time at which they became the subject of the mediation proceedings until the end of the mediation proceedings pursuant to Section 13, insofar as this is legally permissible and an valid mediation clause or mediation agreement existed at the beginning of the mediation proceedings or the party that did not request the mediation proceedings pursuant to these Mediation Rules has actively participated in the mediation proceedings. The limitation period shall commence at the earliest three months after the end of the suspension.

19. Liability

19.1 The Mediator and EUCON shall only be liable to the Parties for intentional behaviour or gross negligence. This limitation of liability does not apply to injury to life, limb or health.

19.2 EUCON is not liable for the fulfilment of the Mediator's obligations under the mediation contract.

20. Applicable law

The legal relationship between the Parties and EUCON and between the Mediator and the Parties shall be governed by German law.

21. Mediation and arbitration clause

21.1 In the event of differences of opinion or disputes between the Parties and EUCON in connection with these Mediation Rules, mediation proceedings in accordance with the Mediation Rules of the German Institution of Arbitration (DIS) shall be conducted.

21.2 In the event of differences of opinion or disputes between the Mediator and one or more parties in connection with the implementation of mediation on the basis of the Mediator Agreement or with regard to its effectiveness, mediation proceedings shall be conducted in accordance with these Mediation Rules.

21.3 Insofar as disputes pursuant to Section 21.1 or Section 21.2 cannot be resolved by the mediation procedure provided for in each case, they shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) to the exclusion of recourse to the courts of law.

22. Entry into force

These Mediation Rules enter into force on 15 September 2024.

23. Severability clause

Should individual provisions of the Mediation Rules be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions.

The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come closest to the legal and economic objective pursued by EUCON with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the Mediation Rules prove to be incomplete.

24. Leading version

Only the German version of these Mediation Rules shall be legally binding. The English language version is a mere convenience translation.

Annex to the EUCON Mediation Rules

EUCON Mediation Fee Schedule

in the version dated 15 September 2024

1. Scope of application

- 1.1 The Schedule of Fees and Charges shall apply to mediation proceedings conducted in accordance with the EUCON Mediation Rules (EUCON-MedO) in the version valid at the time the proceedings are initiated.
- 1.2 In addition to the fees and charges, the statutory value added tax shall be payable.

2. Registration fee

EUCON is entitled to a registration fee for initiating the procedure and clarifying the willingness of the parties to conduct a mediation procedure. The registration fee will not be refunded if the other party is not prepared to conduct mediation proceedings or if the mediation proceedings are not conducted for other reasons.

3. Procedural fee

- 3.1 EUCON is also entitled to a procedural fee, which covers the proposal of mediators and the appointment of the mediator as well as the conduct of the proceedings.
- 3.2 If the proceedings end before the start of the first mediation session, the procedural fee shall be reduced by half.
- 3.3 If, at the request of one of the parties, several (Section 5.7 EUCON-MedO) or additional mediators (Section 5.4 EUCON-MedO and Section 7.3 EUCON-MedO) are proposed, the procedural fee shall be increased by 20 %.

4. Amount of fees

The amount of the fees and charges depends on the value of the matter and is set out in the table of fees and charges.

5. Mediator's fee and expenses

- 5.1 The mediator's fee shall be calculated on the basis of the time spent on the mediation and the hourly rate set out in the table of fees and charges. Every 10 minutes or part

thereof shall be charged at one sixth of the hourly rate. The parties will receive a detailed time sheet.

- 5.2 Reasonable expenses, in particular travelling and accommodation expenses, shall be reimbursed separately against proof.
- 5.3 If a co-mediator is called in, the co-mediator's fee shall also be based on the Schedule of Fees and Charges.

6. Value in dispute

The value in dispute shall be determined by EUCON after hearing the parties.

Value in dispute in EUR	Registration fee in EUR	Procedural fee in EUR	Mediator's fee per hour in EUR
up to 100.000	250	500	250
over 100.000 to 1.000.000	250	2.000	350
over 1.000.000 to 10.000.000	250	6.000	350
over 10.000.000	250	8.000	350

7. Leading version

Only the German version of this Fee Schedule shall be legally binding. The English language version is a mere convenience translation.