

## **Centro Brasileiro de Mediação e Arbitragem**

### **Arbitration Rules**

The Brazilian Center of Mediation and Arbitration (hereinafter referred to as “the Center” or “CBMA”) was established on December 20, 2001 as a nonprofit organization, with the aim of promoting means of alternative dispute resolution, in particular, mediation and arbitration. The CBMA is associated with the Rio de Janeiro Trade Association – ACRJ, the Rio de Janeiro Confederation of Industry (FIRJAN) and FENASEG – the National Confederation of Insurers.

The Center hereby adopts the following Arbitration Rules (“the Rules”).

### **Preamble**

Any issue pertaining to rights over property (other than rights which the law deems to be inalienable) is capable of being the object of arbitration. Parties who elect to have their disputes resolved according to the rules of the Center will be under a duty to accept and comply with these Arbitration Rules as well as the Center’s Rules as to Costs. Furthermore, said Parties are deemed to acknowledge that the arbitral award proffered will be definitive and non-appealable.

ACRJ and FENASEG recommend that those who wish to submit their disputes to arbitration administered by the Center insert an arbitration clause into their contracts based on the model arbitration clause set out in Annex 1.

### *1 – Preliminary Provisions*

1.1 – Parties who agree to submit disputes for arbitration under the auspices of the Center are to accept and adopt the present Rules and the Rules of Center as to Costs in force on the date of filing of the request for arbitration.

1.2 – When the arbitration agreement refers to these Rules it is to be presumed that the Parties will, in the resolution of the dispute, make use of the services provided by the Center.

1.3 – The Center provides administrative and support services to facilitate compliance with these Rules and co-related acts. The Center will not resolve the dispute. The resolution of disputes is the remit of a sole arbitrator or an Arbitral Tribunal (hereinafter referred to, interchangeably, as ‘Tribunal’; ‘Arbitrator’; or ‘Arbitrators’).

1.3(a) “Neither the arbitrators, nor the Center and its employees, shall be liable to any person for any act or omission in connection with the arbitration”

1.4 – The Arbitral Tribunal will decide on any dispute as to the interpretation and application of the Rules, giving preference, in its decision, to the current or established practices of the Center. When there are several Arbitrators, the decision will be that of the majority. In the absence of a majority ruling, the vote of the Chairman of the Arbitral Tribunal shall prevail.

## 2. Communications and Time limits.

2.1 – Sufficient copies of all documents, written petitions, reports and communications must be filed, corresponding to the number of Parties and the number of Arbitrators, with a further copy to be provided to the Secretariat of the Center

2.2 – All communications which the Tribunal and Secretariat of the Center send to the Parties are to be sent by recorded delivery to the address provided to the Center by the interested Party. Service may also be effected by any other means capable of proving delivery of the communication, such as e-mail, facsimile transmission or telegram.

2.3 – The time periods set forth in these Rules shall begin to run on the business day following the day of receipt of the communication (and any attached document) . The last day of the time period is included for the purposes of computation of said period.

2.4 - If the last day of the time period falls on an official national or local holiday at the seat of arbitration or at the Center or at the place of any of the Parties’ headquarters, or, if for any reason, the Center is not open for business on said last day, the time period will be extended to the next business day .

2.5 – The Parties may establish time limits which are different to those set forth in these Rules, subject, however, to the Tribunal’s approval. The Tribunal may, at its sole discretion, extend any time limits if the Tribunal deems it necessary to do for the purposes of compliance with the provisions of these Regulations or the applicable legislation.

## 3 – *Commencement of the Arbitration*

3.1 – A Party who wishes to commence arbitration must communicate this fact to the Secretariat of the Center, by means of a Request for Arbitration. The Secretariat will then notify the other Party.

3.2 – Once the Request for Arbitration is received in the form described in item 3.3 below, the arbitration will be deemed to have been commenced.

3.3 – The Request for Arbitration should contain proof of payment of the fees at the rate established by the Center prior to the commencement of the arbitration and also:

(a) The names and identification of the Parties.

(b) A brief description of the dispute and the cause of action

(c) The claim and the amount in issue, or, if it is impossible to determine said amount in issue, an estimate of the economic or financial value of the claims.

(d) Copy/copies of the contract(s) in relation to which the dispute arose and a copy of the agreement to arbitrate/arbitration clause.

(e) An indication of the number of Arbitrators and, when applicable, information as to the Party which appointed the respective Arbitrator.

(f) Information as to the place of arbitration, the applicable law and language and other relevant details pertaining to the arbitration.

3.4 – The Center shall send to the other Party or Parties the Request for Arbitration and the documents which the Center received pursuant to the above provisions, in order for said Party or Parties to respond within 30 days.

3.5 – In its Statement of Defense, the Party is to set out its position in relation to the matters referred to in item 3.3 (above) and, when applicable, to put forward the name of its respective Arbitrator.

3.6 – The Center may, at its discretion, extend the period set forth in item 3.4 upon the request of a Party, provided said Party presents its considerations regarding the constitution of the tribunal and, where relevant, nominates a co-arbitrator.

3.7 – If the Respondent intends to file a Counterclaim or Cross-claim, it should do at the same time as it files its Statement of Defense.

3.8 – In the event of the filing of a Counterclaim or Cross-claim, the opposing Party shall have 30 days to respond. This term may be extended in line with the provisions set forth in item 3.6 above.

#### *4– Efficacy of the Arbitration Agreement*

4.1 – In the event of any challenge to the existence, validity or efficacy of the arbitration agreement, the Center shall proceed with the arbitration unless it forms the view that the arbitration agreement is manifestly non-existent, invalid or non-effective.

4.2 – It will fall to the Arbitral Tribunal to rule on the existence, validity or efficacy of the arbitration agreement and of the contract which contains an arbitration clause and to rule on its (Tribunal's) own jurisdiction. A decision by the Center to proceed with the arbitration, in line with item 4.1 above, will not bind the Arbitral Tribunal.

4.3 – A Party which seeks to assert the non-existence, invalidity or non-effectiveness of the arbitration agreement or the non-arbitrability of the dispute, must do so at the first opportunity said Party has of setting out its position.

4.4 – The Center shall proceed with the arbitration even if the Respondent refuses or fails to file a Statement of Defense. In such circumstances, if the Party also fails to nominate an Arbitrator, the Center shall appoint one. The absent Party is, despite its default, to be informed of the subsequent proceedings and procedural acts.

4.5 – In the event of the occurrence of the circumstances provided for in item 4.4 above and when the arbitration agreement provides for resolution of the dispute by a sole Arbitrator, the Center shall appoint said Arbitrator Center.

## 5– *The Arbitral Tribunal*

5.1 – The Parties may select their Arbitrators from members of the Center's body of arbitrators, or from elsewhere. The tribunal is always to be made up of an uneven number of arbitrators, in accordance with the provisions of art. 13 of Law n. 9.307/96.

5.2 – Persons whose conduct or characteristics would be grounds for their disqualification on the grounds of impediment or suspicion (of partiality), in line with, *inter alia*, the provisions of the Brazilian Civil Procedure Code, are prohibited from exercising the function of Arbitrator.

5.3 – The Arbitrator must be and remain independent and impartial, and must proceed with competence, diligence and discretion.

5.4 – Prior to being confirmed as an arbitrator, a nominated person must disclose any fact which gives rise to or might cause any justifiable doubt as to his impartiality, independence and availability and shall sign Terms of Independence, Impartiality and Availability.

5.5 – Upon the occurrence, following the signature of the Terms of Independence, Impartiality and Availability, of any supervening fact or circumstance which might cause any justifiable doubt as to his impartiality or independence, the Arbitrator must immediately inform the Center, the other arbitrators and the Parties, in writing, of such fact or circumstance.

5.6 – The decisions of the Center regarding the appointment, confirmation, refusal and substitution of the Arbitrator are definitive.

5.7 – The Arbitrator’s acceptance of appointment shall subject said Arbitrator to the rules set forth in the arbitration agreement and to the Terms of Reference and to the duties, rights, responsibilities and obligations set forth in the law and in the present Rules as well as to the precepts of the Code of Ethics of the Center.

5.8 – If the Parties have not agreed on the number of Arbitrators, the Center shall appoint a sole Arbitrator, albeit that the Center may opt to select three Arbitrators in cases in which the dispute, according to the criteria of the Center, is not suitable for trial by a sole Arbitrator. In this latter case, the Parties shall nominate their Arbitrators within the time limit established by the Center. The appointed Arbitrators shall appoint the third Arbitrator, unless the Parties have established another procedure. .

5.9 – If the Parties have agreed to the resolution of the dispute by a sole Arbitrator, said Arbitrator shall be chosen by common accord between the Parties. If the Parties fail to agree upon the appointment, within 30 days of the receipt by the Respondent of the Request for Arbitration, or within such other period of time as the Center may stipulate, said Center will itself appoint the arbitrator.

5.10 – If the dispute is not submitted for resolution by a sole Arbitrator, the Claimant, in its Request for Arbitration, and the Respondent, in its Reply, shall nominate Arbitrators for confirmation. The remaining Arbitrator, who will act as the Presiding Arbitrator of the Tribunal, shall be jointly nominated by the two Arbitrators appointed by the Parties, unless the Parties have established a different procedure. If, however, the Arbitrators appointed by the Parties fail to agree upon the appointment of the third Arbitrator, or the procedure established by the Parties does not lead to an appointment within time period established by the Parties or by the Center, the Center itself shall appoint the third Arbitrator. Any dispute as or omission regarding the appointment of arbitrators by the Parties and regarding the choice of the third Arbitrator, shall be resolved or otherwise dealt with by the Center.

5.11 – If one of the Parties is a national of another country, the Center shall have regard to such fact when selecting Arbitrators.

5.12 – Notice of the confirmation of the Tribunal by the Center shall be forwarded to the Parties immediately after the end of the period of time for challenge to appointment of an Arbitrator or for the rendering of a decision on such challenge.

5.13 – When it falls to the Center to appoint arbitrators, the Center shall have broad freedom to select the person it considers suitable, including the discretion to select an arbitrator from its own ranks. The Center will be exempt from all liability in relation to its selection of arbitrators.

## *6 – Plurality of Parties*

6.1 – If there is more than one Claimant or more than one Respondent, the Claimants are to jointly nominate an Arbitrator and the Respondents, likewise, will jointly nominate an Arbitrator. If the Parties are not able to come together to make their selection or if they are unable to reach a consensus in relation to the respective co-arbitrator, the Center may, having heard the Parties, appoint the respective co-arbitrator or may appoint all the members of the Arbitral Tribunal. .

## *7– Challenge to an Arbitrator*

7.1 – A Party interested in challenging an Arbitrator on the grounds of lack of independence or impartiality or any other reason shall send notice to the Center, within fifteen days of receiving notice of the appointment of said arbitrator, or within fifteen days of becoming aware of facts or circumstances which form the basis of the challenge. The challenge is to be filed via a request, setting out grounds and presenting relevant evidence.

7.2 – Once the Arbitrator and the other Parties have been heard, all Parties involved are to be made aware of the representations made and the Center will, at an opportune time, make a ruling on the challenge.

7.3 – When a challenge to the appointment of an arbitrator is filed and without prejudice to the filing of a Reply by the Respondent in accordance with the provisions of item 3.4, the period of time for the appointment of an arbitrator will be stayed pending a ruling on the challenge by the Center.

## *8 – Replacement of an Arbitrator*

8.1 – An Arbitrator whose appointment has been confirmed by the Center shall be replaced:

- (a) if he resigns
- (b) in the event of his death,
- (c) in the event of impossibility of his performing his functions,
- (d) in the event of the Center accepting a challenge to his appointment or
- (e) in the event of all Parties requesting his replacement.

8.2 – The Center may replace an Arbitrator who the Center considers to be in breach of the time periods and norms established in these Rules or other connected rules, or who is unable to perform the functions for which he was appointed.

8.3 – In the event of the replacement of an Arbitrator, the Party or Parties who appointed him shall make a fresh nomination within 15 days of the receipt of the notice of replacement. The Center may extend this period at its discretion. In exceptional circumstances, the Center itself will nominate an Arbitrator

8.4 – In the event of substitution of an Arbitrator, the Arbitral Tribunal may, at its discretion, repeat the evidence already produced.

## *9 – The Arbitral Proceedings*

9.1 – A Party may be assisted or represented in the arbitration by a person (or persons) of his choice. The names, addresses, addresses and telephone numbers of the representatives must be communicated, in writing, to the Arbitral Tribunal.

9.2 – In the absence of an agreement by the Parties the Tribunal will determine the seat of arbitration and the language.

9.3 – The Arbitral Tribunal may hold meetings and may meet with the Parties and other persons involved in the proceedings, at any location it deems appropriate, at the seat of arbitration or elsewhere. In order to optimize the arbitral proceedings and when circumstances so permit, the Arbitral Tribunal may replace physical meetings with telephone or video conferences, provided all Parties are given an opportunity to participate.

9.4 – The arbitral proceedings shall be governed by these Rules. The Arbitral Tribunal shall resolve, freely, any doubt, lacuna or conflict in the provisions of these Rules, taking into account the practices and earlier decisions adopted by the Center.

9.5 – In its conduct of the proceedings the Arbitral Tribunal is to adopt such provisions as are necessary and compatible with the principles of free volition, the absence of strict formality and the need for expeditiousness. The Arbitral Tribunal may waive formalities and may innovate in procedural steps, provided the principles of due process of law, adverse proceedings and equal treatment of the Parties are upheld.

9.6 – The Parties are free to agree on the rules of law that shall be applied to the arbitration and may, inter alia, stipulate that the arbitration is to apply general principles of law, customs and practice and international rules of trade.

9.7– The Arbitral Tribunal shall have the power to decide by equity if the Parties mutually agree to confer such powers on it.

9.8 – Based on the documentation received, or in the presence of the Parties, the Arbitral Tribunal is to draw up the Terms of Reference (“Terms”), which shall include:

(a) – The name and identification details of the Parties;

(b) – The address, telephone number and e-mail address of the Parties for the purposes of service of notice, summonses and communications;

(c) – A summary of the claims and the grounds that support them and of the amounts in issue in principal claim and any counterclaim, if such amounts can be ascertained

(d) – The issues which are to be the object of the ruling, (if the Arbitral Tribunal deems it appropriate to set them out);

(e) – The name, identification details and e-mail address of the Arbitrators and

(f) The seat of the arbitration, the language and the law, norms or principles to be applied to the resolution of the conflict.

9.9 – The Terms of Reference are to be signed within 45 days of the constitution of the Arbitral Tribunal.

9.10 – In the event any of the Parties refusing to participate in the drawing up of the Terms of Reference or refusing to sign them, said fact should be expressly set out in the Terms of Reference, and will not be a bar to proceeding with the arbitration. It will fall to the Center, in these circumstances, to approve the Terms of Reference.

9.11 – Concomitantly to the signature of the Terms of Reference, and after hearing the Parties, the Arbitral Tribunal shall present to the Parties an estimated schedule setting out the next steps and deadlines, including the deadline for the rendering of the arbitral award.

## 10. *Consolidation*

10.1 – The Arbitral Tribunal may, with the approval of the Center, consolidate the arbitration with any other arbitration proceedings, provided that every involved Party consents to said consolidation.

10.2 – The Arbitral Tribunal may, with the approval of the Center and upon the request of at least one of the Parties, consolidate the arbitration with other arbitration proceedings, provided that:

a) The dispute arising out of or related to the other contracts involves the same Parties as the existing arbitration or Parties which are bound by the same arbitration clauses;

b) All the contracts involve the same underlying economic relationship;

c) All the arbitration clauses are compatible;

d) The Arbitral Tribunal hearing the consolidated arbitration proceedings can be constituted in line with the arbitration agreements or the present Rules;



e) There are common issues of fact and/or of law in the proceedings so that consolidation would be more efficient than the existence of separate proceedings;

f) No Party will be prejudiced by the consolidation, due to consequent undue delay or conflicts of interest.

10.3 – If the request for consolidation occurs prior to the constitution of the Arbitral Tribunal, it will fall to the Center to decide on the question.

## *11 – Evidence*

11.1 – At any stage of the proceedings, the Arbitral Tribunal may require the Parties to produce the evidence the Tribunal deems necessary or appropriate.

11.2 – The need for and convenience of the submission of confidential material shall be the object of specific consideration by the Arbitral Tribunal, with the provisions agreed to by the Parties to be obeyed.

## *12 – Hearings*

12.1 – The Parties shall be given adequate advance notice of all hearings so as to enable them to take the necessary measures for said hearings.

12.2 – The President of the Arbitral Tribunal will open the hearing in the presence of the other Arbitrators, at the appointed time, day, and place.

12.3 – Once the hearing has commenced, the President of the Arbitral Tribunal will invite the Parties and/or their representatives or attorneys to set out their allegations and evidence, starting with the Claimant, followed by the Respondent.

12.4 – The oral evidence of the Parties and witnesses may be heard by videoconference, or by any other means which uses advanced technology of real time data, voice and image transmission.

12.5 – In the event of failure by a Party, without due cause, to comply with a direction to provide live evidence in person, the Arbitral Tribunal will take into account the conduct of the non-complying Party when rendering its Award. If (in the same circumstances) the person who fails to comply with the direction is a witness the Arbitral Tribunal or its president may submit an application to a court of law, submitting evidence to the court of the existence of an arbitration agreement and requesting the issue of a warrant compelling the attendance of the witness.

12.6 – The default of a Party (failure to attend the hearing) will not be a bar to the rendering of the arbitral award.

12.7 – Once the evidential phase of the proceedings has ended, the Arbitral Tribunal may establish a period of time for the Parties to submit closing arguments.

### *13 – Provisional Remedies, Injunctive or Interim Relief*

13.1 – At the request of any of the Parties or at the Arbitral Tribunal's sole discretion, the Arbitral Tribunal may grant such provisional remedies, injunctive or interim relief as it deems necessary.

13.2 – The Parties may apply to a competent court for conservatory measures or injunctive relief before the Arbitral Tribunal is constituted. In such circumstances, the party is to immediately notify the Center. Once the Arbitral Tribunal has been established, it may review, uphold, amend or revoke the relief granted by the court and may grant relief which the court denied.

13.3 – Parties are to comply with any measure ordered by the Arbitral Tribunal failing which a request may be made for enforcement by a competent court of law, so that said measure achieves all its legal purposes.

### *14 – The Arbitral Award*

14.1 – The deadline for the rendering of the arbitral award may be extended by the Center or by the Arbitral Tribunal, with the consent of the Center.

14.2 – The Arbitral Tribunal may issue partial awards.

14.3 – When there are several arbitrators, the decision shall be taken by a majority. In the absence of a majority agreement, the vote of the President of the Arbitral Tribunal shall prevail.

14.4 – An Arbitrator who dissents from the majority may, should he so desire, declare his vote separately.

14.5 – The following are essential elements of the award:

- a) – The report, which is to contain the names of the Parties and a summary of the dispute;

b)– The grounds for the award, setting out the analysis of issues of fact and law and expressly stating whether or not the arbitrators judged the case applying equity;

c) – The order, in which the arbitrators will resolve the issues submitted to them and set a deadline for compliance with said order, should that be pertinent; and

d) – The date and the place where the award was rendered.

14.6 – The arbitral award shall be signed by the sole Arbitrator, or by all the Arbitrators. In the event of one of the Arbitrators being unable or unwilling to sign the Award, the President of the Tribunal is to certify such fact.

14.7 – The arbitral award shall decide on the liability of the Parties for payment of the arbitration fees and costs as well as any liability for bad-faith litigation, if applicable, paying heed to the provisions in the arbitration agreement (if any such provisions exist).

14.8 – If, during the course of the arbitration, the Parties reach settlement, the arbitrator may, at the request of the Parties, make a declaration as to that fact in an arbitration award which is to contain the information required by item 14.5 above.

14.9 – Once the arbitral award has been rendered the arbitration will be deemed to have been concluded and the arbitrator or the President of the Tribunal is to send the as many copies of the award as are necessary, in accordance with item 2.1 above, to the Center, via postal delivery or by any other means of recorded delivery.

14.10 Once the Center, receives the award it is to forward it to the Parties by post or by any other means of registered or recorded delivery including direct delivery (with confirmation of receipt to be provided).

14.10.1 The Center may withhold disclosure of the arbitral award to the Parties pending full payment of all costs, disbursements and fees.

14.11 – Within five days of the receipt of the arbitral award, the interested Party may, by means of a communication to the other Party, request that the Arbitral Tribunal:

a) – correct any material error in the award;

b) – clarify any obscurity or contradiction in the arbitral award, or make a declaration on any omitted point which should have been dealt with in the decision.

14.12 – The Arbitral Tribunal shall make a decision within 30 days, amending the arbitral award, if necessary, and notifying the Parties.

## *15 – Effectiveness of the Arbitral Award*

15.1 – The arbitral award generates, for the Parties and their successors, the same effects as an order of a court of law. If the award contains an order for damages it will constitute an enforceable judicial instrument.

## *16 – Costs*

16.1 – The Center will fix the costs and the disbursements of the arbitration, and the Arbitrators' fees, based on the chart set out in Annex II of the present Rules.

16.2 .The payment of costs and fees due in the arbitration are to be effected in accordance with the Rules as to Costs. .

## *17 – Confidentiality*

17.1 – Unless otherwise agreed by the Parties, or required by the law applicable to the Parties, the members of the Tribunal and the Center shall keep confidential all matters relating to the arbitration, except those that have, per chance, already become public knowledge or have, by any other means, already been divulged.

17.2 – The Center may publicize the arbitral award, if previously authorized to do so by the Parties or, in the absence of such authorization, the Center may in any event, divulge excerpts from the award, provided that the identity of the Parties is withheld. .

## *18 – Final Considerations*

18.1 – Any amendment to these Rules is to comply with the provisions of the Bylaws of the Center.

18.2 The present Rules will come into force on the date they are filed with the Center.