

## RULES OF ARBITRATION PROCEDURE OF DANISH ARBITRATION - 2008

### Article 1

Disputes which by agreement between the parties are to be settled in accordance with the rules of Danish Arbitration shall be decided by an arbitral tribunal appointed by Danish Arbitration for each individual dispute.

### Article 2

The place of arbitration shall be Copenhagen unless otherwise agreed between the parties. The arbitral tribunal may decide that meetings are to be held outside the place of arbitration.

### Article 3

Parties that have agreed to having their dispute settled on the basis of the rules of Danish Arbitration shall be deemed to having agreed that the case is to be decided on the basis of the rules applicable at the time the arbitration case is filed, unless it is stipulated in their agreement to resort to arbitration that the dispute shall be decided on the basis of the rules applicable at the time the arbitration agreement was concluded.

## A. Request for arbitration and statement of claim

### Article 4

*Par. 1:* A party wishing to have a dispute settled by arbitration in accordance with the present rules shall file a request therefor with Danish Arbitration. If the request for arbitration is not accompanied by a statement of claim, it must as a minimum state the full names and addresses of the parties, an explicit and unconditional demand for the initiation of arbitration proceedings and a brief outline of the issues to be considered by the arbitral tribunal. Danish Arbitration shall immediately inform the claimant and the respondent of its receipt of the request and the date it was received. Together with the communication informing claimant and respondent of the receipt of the request for arbitration the parties shall receive a copy of the Danish version of "*Rules of Arbitration Procedure*" of Danish Arbitration, however see article 57.

*Par. 2:* The date on which Danish Arbitration received the request for arbitration shall in all respects be considered to be the date on which the arbitration case was filed.

### Article 5

*Par. 1:* The request for arbitration submitted to Danish Arbitration must be accompanied by the payment of a registration charge of DKK 7,500 / EUR 1,000. Registration charges are non-refundable.

*Par. 2:* If Danish Arbitration is not in receipt of the charge stipulated in par. 1 above not later than by the time the request for arbitration is filed, it shall set a deadline for payment. Failure to effect payment of the amount by such deadline shall cause Danish Arbitration to terminate the case, but this shall not preclude the claimant from filing another request for arbitration on the same issue at a later stage.

## Article 6

Within 30 days of having filed the request for arbitration stated in Article 4 above, the claimant must submit a statement of claim containing the following information:

1. The full names and addresses of the parties.
2. Information about any legal counsel retained by the claimant, including the full name and address of such legal counsel.
3. The claimant's claim.
4. A statement of the facts and legal points supporting the claim.
5. A reference to the documents and other evidence upon which the claimant intends to rely his claim, including the arbitration agreement.
6. Any comments regarding the place of arbitration, the country whose law shall apply to the resolution of the case, and the language to be used in the proceedings.
7. Any comments regarding the number of arbitrators and any candidates for appointment as arbitrators, including their full names and addresses, as well as any information about a person proposed by the parties jointly for appointment as chairman of the arbitral tribunal, and other information required by Danish Arbitration for its appointment of members of the arbitral tribunal in accordance with the provisions of Articles 14 - 26.

*Par. 2:* Documents referred to in the statement of claim, including the arbitration agreement, shall be enclosed in the form of original documents or copies thereof.

*Par. 3:* The statement of claim shall be accompanied by copies of the statement of claim and the documents it refers to in a number sufficient to allow a copy to be handed out to the members of the arbitral tribunal and to each party.

*Par. 4:* Danish Arbitration may upon request extend the period stated in par. 1 of this article.

## Article 7

If the submitted statement of claim does not comply with the above provisions, Danish Arbitration shall set a deadline for compliance. Failure to supply any missing elements before the deadline may cause Danish Arbitration to terminate the case, but this shall not preclude the claimant from filing another request for arbitration on the same issue at a later stage. If the case is terminated due to failure to comply with the rules for the filing of a statement of claim, Danish Arbitration shall inform the parties that the case has been terminated without prejudice to the possibility of filing a claim at a later stage.

## **B. The respondent's statement of defence and possible counterclaims**

### Article 8

Danish Arbitration shall forward to the respondent one of the received copies of the statement of claim and the documents on which the claimant relies, asking the respondent to submit a statement of defence within 30 days.

### Article 9

*Par. 1:* The respondent's statement of defence shall contain the following information:

1. The respondent's full name and address.
2. The respondent's claim.
3. A statement of the facts and legal points supporting the defence.



4. A reference to the documents and other evidence upon which the respondent intends to rely his claim.
5. Any comments regarding the place of arbitration, the country whose law shall apply to the resolution of the case, and the language to be used in the proceedings.
6. Any comments regarding the number of arbitrators and any candidates for appointment as arbitrators, including their full names and addresses, as well as information about a person proposed by the parties jointly for appointment as chairman of the arbitral tribunal, and other information required by Danish Arbitration for its appointment of members of the arbitral tribunal in accordance with the provisions of Articles 14 - 26.
7. Any objections to the jurisdiction of the arbitral tribunal, see Article 44.

*Par. 2:* Documents referred to in the statement of defence shall be enclosed in the form of original documents or copies thereof.

*Par. 3:* The respondent's statement of defence and any exhibits shall be forwarded in the number of copies stated in Article 6 (3).

### Article 10

At the reasoned request of the respondent, Danish Arbitration may extend the deadline for the submission of the respondent's statement of defence, provided that any comments that the respondent wishes to make with regard to the matters raised in Article 9 (1, point 6) have been produced by the deadline previously set by Danish Arbitration for the respondent's statement of defence. If the respondent fails to comply with this provision, the arbitral tribunal shall be set up in accordance with the provisions of Articles 14 - 26.

### Article 11

*Par. 1:* If the respondent advances a counterclaim against the claimant, such counterclaim shall be contained in the respondent's statement of defence where it shall be included under the claims made by the respondent. Moreover, in the event of a counterclaim being advanced, the statement of defence submitted by the respondent shall also contain a statement of the facts and legal points supporting the counterclaim and a reference to the documents and other evidence upon which the respondent intends to rely in relation thereto. Also, the respondent shall provide security in accordance with Article 27.

*Par. 2:* If the respondent's statement of defence contains a counterclaim that does not arise out of the same case as the one set out in the statement of claim, the counterclaim shall be considered a separate arbitration case which, at the request of the parties, the arbitral tribunal may decide to process together with the case first filed. When submitting the statement of defence, the respondent must also effect payment of the registration charge stated in Article 5 and provide security in accordance with article 27.

### Article 12

Danish Arbitration shall forward to the claimant a copy of the respondent's statement of defence and any exhibits, unless the respondent has sent a copy of such documents directly to the claimant.

### Article 13

The claimant shall forward a reply to the counterclaim made by the respondent within 30 days of receipt of the respondent's statement of defence containing the counterclaim. The claimant's reply shall contain the information stated in Article 9 (1, points 2, 3 and 4). The provisions of par. 2 and 3 of Article 9 shall also apply. Danish Arbitration may extend this deadline upon receipt of a reasoned request therefor.

### C. Appointment of Arbitrators

#### Article 14

*Par. 1:* Any person acting as arbitrator shall be independent and impartial.

*Par. 2:* Danish Arbitration shall appoint all arbitrators after having heard the parties, see Article 17. The appointment of arbitrators shall have due regard to any qualifications required for appointment as arbitrator by the agreement between the parties and to considerations likely to secure the appointment of an independent and impartial arbitrator.

*Par. 3:* Before being appointed by Danish Arbitration, the arbitrator shall sign a statement of independence and impartiality in which are stated any circumstances which, in the opinion of either party to the arbitration case, may give rise to justifiable doubt as to the arbitrator's impartiality or independence. The arbitrator shall also produce information on his professional and educational background, etc. (CV/resume). Danish Arbitration shall submit the statement and the information about the arbitrator's professional and educational background, etc., (CV/resume) to the parties, setting a deadline for any comments.

*Par. 4:* The arbitrator shall immediately inform the parties and Danish Arbitration of any circumstances that should have been included in the statement mentioned in par. 3 had they existed at the time.

*Par. 5:* A party may challenge the appointment of an arbitrator only if it finds that circumstances exist which give rise to justifiable doubts as to the impartiality or independence of the arbitrator, or if the party finds that the arbitrator does not possess the qualifications agreed on by the parties. A written statement of the reasons for the challenge must be filed with Danish Arbitration within 15 days of the parties having become aware of the circumstances upon which the challenge relies.

*Par. 6:* An arbitrator may challenge the appointment of another arbitrator if he finds that circumstances exist which give rise to justifiable doubts as to the impartiality or independence of the other arbitrator, or if he finds that the other arbitrator does not possess the qualifications agreed on by the parties. A written statement of the reasons for the challenge must be filed with Danish Arbitration within 15 days of the arbitrator having become aware of the circumstances upon which the challenge relies.

*Par. 7:* Danish Arbitration shall notify the parties and the arbitrators of its receipt of a challenge raised in pursuance of par. 5 and 6 above, stating a deadline for any comments.

*Par. 8:* Unless the arbitrator withdraws from office or the other parties in the arbitration case agree to refrain from appointing the arbitrator or to revoke his appointment, the chairmanship of Danish Arbitration shall decide whether or not the challenge is to be successful. If one member, respectively both members, of the chairmanship has a conflict of interest or is otherwise prevented from participating in this decision, another Council member, respectively two other Council members, shall participate. If a challenge against an arbitrator is not successful, within 30 days of having received notice of the decision to reject the challenge the challenging party may apply to the courts of law to decide on the challenge, see Article 13 (3, 1<sup>st</sup> clause) of the Danish Arbitration Act.

*Par. 9:* Even in the absence of a challenge in pursuance of par. 5 and 6 above, the chairmanship of Danish Arbitration may decide not to appoint an arbitrator or to revoke his appointment if it finds that there are justifiable doubts as to the impartiality or independence of



the arbitrator, or if it finds that he does not possess the qualifications agreed on by the parties. If one member, respectively both members, of the chairmanship has a conflict of interest or is otherwise prevented from participating in the decision, another Council member, respectively two other Council members, shall participate.

### Article 15

The arbitral tribunal shall consist of three arbitrators, unless the parties have agreed to have only one arbitrator.

### Article 16

The chairman of the arbitral tribunal shall have a law degree. The other members of the arbitral tribunal shall also have a law degree, unless the parties propose otherwise and this is deemed by Danish Arbitration to be adequate in view of the nature of the case.

### Article 17

Where a case is to be decided by three arbitrators, the claimant may propose an arbitrator in his statement of claim. The respondent may also propose an arbitrator in the statement of defence, see Articles 9 and 10. The third arbitrator, who will be the chairman of the arbitral tribunal, shall be proposed by Danish Arbitration, unless the parties jointly propose a chairman before the deadline for the respondent's submission of his statement of defence, see Articles 9 and 10.

### Article 18

If there are two or more claimants in an arbitration case, they shall all act jointly in proposing an arbitrator. The same shall apply if there are two or more respondents in a case. Failing such joint proposals, the arbitrator(s) in question shall be appointed by Danish Arbitration.

### Article 19

If, according to the arbitration agreement, all arbitrators are to be appointed by Danish Arbitration, or if a party has failed to propose an arbitrator, or if the parties have not jointly proposed a chairman, see Article 17, or if Danish Arbitration finds that it is not possible to appoint the chairman or an arbitrator proposed by the parties, Danish Arbitration shall propose an arbitrator/arbitrators or a chairman to the parties, setting a deadline for any comments and at the same time sending to the parties the statement mentioned in Article 14 (3) and the information about the arbitrator's professional and educational background, etc. (CV/resume) contained therein.

### Article 20

Where not all parties to the dispute are domiciled in the same country, the person appointed chairman shall be domiciled in a country other than those in which the parties reside, unless otherwise agreed by the parties.

### Article 21

If the case is to be decided by a sole arbitrator, the parties may jointly propose a candidate not later than by the deadline set for the submission of the respondent's statement of defence, see Articles 9 and 10. Failing this, Danish Arbitration shall propose an arbitrator to the parties, setting a deadline for any comments and at the same time sending to the parties the statement mentioned in Article 14 (3) and the information about the arbitrator's professional and educational background, etc. (CV/resume) contained therein.

### Article 22

The sole arbitrator shall meet the conditions for being appointed chairman of an arbitral tribunal.

### Article 23

*Par. 1:* If, after having been appointed, an arbitrator dies, wishes to resign, or has his appointment revoked by Danish Arbitration, or if a person proposed as arbitrator is not appointed, Danish Arbitration shall appoint a substitute arbitrator.

*Par. 2:* An appointment made pursuant to par. 1 above shall be made according to the same rules as those that applied to the appointment of the arbitrator being replaced, etc., unless Danish Arbitration finds the application of these rules inappropriate in view of the delay that this may cause.

### Article 24

If the arbitration case does not progress effectively and efficiently, or if the other duties vested in the arbitrator are not fulfilled, Danish Arbitration may revoke the appointment of one or more arbitrators.

### Article 25

If an arbitrator is replaced, the arbitral tribunal shall decide – after hearing the parties – whether the procedural actions already taken in the case are to be repeated before the newly composed arbitral tribunal.

### Article 26

As soon as it has appointed the members of the arbitral tribunal, Danish Arbitration shall inform the parties of the establishment of the arbitral tribunal, stating the names, addresses, telephone and fax numbers, and e-mail addresses of the members of the arbitral tribunal and indicating who is the chairman of the arbitral tribunal.

## D. Financial security

### Article 27

*Par. 1:* In addition to the registration charge mentioned in Article 5, the parties shall pay a cash deposit as security for the estimated costs of the arbitration case, including a fee to Danish Arbitration.

*Par. 2:* Danish Arbitration shall decide the amount of the security. Normally the two parties will be asked to pay identical amounts. Failure by a party to pay its share shall require the other party to pay the full amount in order for the case to be processed.

*Par. 3:* The parties shall pay the amount within 30 days of receiving notice of its size. In the event that Danish Arbitration decides to appoint experts to report to it on issues in the case, see Article 35, or if for other reasons the costs estimated to accrue from the case prove to exceed the amount originally anticipated, Danish Arbitration may demand that the amount be increased and that the additional amount be paid before proceedings continue.

*Par. 4:* Failure to pay the security demanded by Danish Arbitration before the deadline set may cause Danish Arbitration to terminate proceedings, however without prejudice to the claimant's possibility of filing another statement of claim about the same issue at a later stage. Having made that decision, Danish Arbitration shall inform the parties that the proceedings have been terminated due to failure to pay the security, but that this shall not preclude the possibility of a claim being brought at a later stage.



*Par. 5:* If, in its statement of defence, the respondent advances a counterclaim as described in Article 11, the provisions of par. 1-3 of the present article shall apply correspondingly to the case concerning the counterclaim. Failure by the respondent to pay shall have the effect described above in par. 4 as far as the counterclaim is concerned.

## Article 28

The chairman of the arbitral tribunal shall keep Danish Arbitration informed about developments in the case for the purpose of ensuring that the amount lodged in security is adequate at any point in time. This is particularly relevant prior to the oral hearing or in connection with a decision to initiate particularly cost-consuming activities, such as comprehensive expert opinions, site inspections requiring the tribunal to travel, and the like.

## E. Conduct of the Arbitral Proceedings

### Article 29

When it has appointed the members of the arbitral tribunal and received the amount demanded in deposit, Danish Arbitration shall forward the documents of the case together with a copy of existing correspondence to the members of the arbitral tribunal.

### Article 30

*Par. 1:* The arbitral tribunal shall take over the handling of the case upon receipt of the documents, etc., described in Article 29. Henceforth, all correspondence shall be directly between the arbitral tribunal and the parties with copies to Danish Arbitration which will follow developments in the case by means of the copies so that, if necessary, it may assist the arbitral tribunal in ensuring that the case progresses effectively and efficiently.

*Par. 2:* When taking over the handling of the case, the arbitral tribunal shall convene the parties for a preparatory meeting, unless the arbitral tribunal finds it inappropriate. In the notice convening the meeting, the arbitral tribunal shall set out the issues of special importance to be addressed at the meeting, including the position taken by the parties in relation to the facts and legal points of the case, as well as

1. the organisation of, and a timetable for, any additional preparatory work,
2. a deadline for the preparatory work, and
3. the time and place of the oral hearing, and possibly
4. any objections on a point of law,
5. whether or not the parties can agree to a decision by the arbitral tribunal to decide the case on the basis of written submissions only,
6. calls to a party for the submission of factual information, including the presentation of documents or other evidence,
7. requests for the commissioning of expert opinions or statements by organisations or authorities,
8. the phrasing of questions to be put to experts, organisations or authorities,
9. costs that may accrue from the case, including the need to make decisions involving particularly cost-consuming activities, see Article 28, and
10. the organisation of the oral hearing.

*Par. 3:* At the preparatory meeting, the parties shall be asked to express their position on the facts and legal points of the case in order for the arbitral tribunal to get a basis for identifying those circumstances about which there is no dispute, and those circumstances for which the production of evidence is required. At the preparatory meeting, and having conferred with the

parties, the arbitral tribunal shall also try to set out a plan for the proceedings in the case, including a timetable for any additional preparatory work. Also, insofar possible the arbitral tribunal shall decide a date for the oral hearing.

*Par. 4:* The arbitral tribunal may allow the preparatory meeting to be held as a conference call, a video conference or by means of other types of technology, or the attendance by either party in the preparatory meeting in a similar manner.

*Par. 5:* In the absence of a preparatory meeting as described in par. 2 above, when taking over the handling of the case the arbitral tribunal shall draw up a draft timetable for the proceedings including, insofar possible, a date for the oral hearing.

### Article 31

*Par. 1:* The arbitration case shall be processed in accordance with the present rules. If an issue is not covered by the present rules, it shall be decided in accordance with the rules agreed between the parties or, in the absence of such agreed rules, in accordance with such rules as the arbitral tribunal may see fit to lay down.

*Par. 2:* The arbitral tribunal shall be fair and impartial and shall ensure that all parties are treated with equality and are given full opportunity to present their case.

### Article 32

*Par. 1:* The parties may agree on the language(s) to be used in the arbitration case. Failing such agreement, the arbitral tribunal shall make the decision after consulting with the parties. Unless otherwise provided by the parties' agreement or the arbitral tribunal's decision, the agreement or the decision shall apply to written submissions by the parties, to oral hearings before the tribunal and to awards, decisions and other communications from the arbitral tribunal.

*Par. 2:* The arbitral tribunal may decide that written evidence be accompanied by a translation into the language(s) agreed between the parties or decided by the tribunal.

### Article 33

*Par. 1:* The arbitral tribunal shall decide the case in accordance with the rules of law chosen by the parties as applicable to a decision of the substance of the dispute. Unless otherwise expressed, any references to a country's legislation or legal system shall be construed as directly referring to the substantive law of that country and not to its rules on international private law.

*Par. 2:* Failing a designation by the parties of the rules of law applicable to the decision of the substance of the dispute, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable after having consulted the parties.

*Par. 3:* The arbitral tribunal shall decide the case as amiable compositeur or ex aequo et bono only if the parties have expressly authorised it to do so.

*Par. 4:* The arbitral tribunal shall in any case decide the case in accordance with the provisions of the contract and with due regard to the usages of the trade applicable to the case.

### Article 34



*Par. 1:* Before a date is set for the oral hearing of the case, the parties shall be given an opportunity to exchange – in addition to statement of claim and statement of defence – a reply and a rejoinder and, if the arbitral tribunal sees fit, other written submissions before deadlines set by the arbitral tribunal.

*Par. 2:* Well in time before the oral hearing of the case, each party shall inform the arbitral tribunal and the other party of any witnesses it would like to bring and forward copies of any additional documents on which it intends to rely. Failing this, the arbitral tribunal may, if it deems it necessary, postpone the oral hearing or refuse permission to bring these witnesses or include the new documents in the case.

### Article 35

*Par. 1:* At the request of one party and after having heard the other party/parties in the case, the arbitral tribunal may decide to appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. The arbitral tribunal may order a party to give the expert any and all relevant information and grant him access to inspect documents and other evidence.

*Par. 2:* In cases where the arbitral tribunal has decided as outlined in par. 1 above, Danish Arbitration shall produce one or more candidates for appointment as expert(s) by the arbitral tribunal after having heard the parties thereon.

*Par. 3:* When the arbitral tribunal has appointed the expert, Danish Arbitration shall ask the expert for an estimate of the costs likely to arise out of the production of his opinion to the arbitral tribunal. At the same time, as a general rule the expert is asked to refrain from doing any work in the case until he is notified by Danish Arbitration that security has been provided for the estimated costs of his services, see Article 27. Also, Danish Arbitration will ask the expert to report to it in case the estimated costs of his work exceed the amount lodged in security. Danish Arbitration may demand that the amount in security be increased, and that the additional amount be paid in, before the expert continues his work.

*Par. 4:* Danish Arbitration shall charge a fee for the appointment of experts amounting to DKK 3,750/EUR 500 per expert.

*Par. 5:* After having heard the parties thereon, the arbitral tribunal shall decide the fee payable to the expert for the services provided by him. The fee to the expert shall be paid once Danish Arbitration has received the full amount in costs arising from his work, see Article 27.

*Par. 6:* At the request of either party, or if deemed necessary by the arbitral tribunal, upon the delivery of his written or oral report the expert may be required to attend a preparatory meeting or the oral hearing during which the parties will be given opportunity to put questions to the expert and to call in expert witnesses for statements on the points at issue.

*Par. 7:* The parties shall be entitled to call in their own expert witnesses.

*Par. 8:* If it deems it appropriate, the arbitral tribunal may carry out an on-site inspection.

### Article 36

The arbitral tribunal, or a party having obtained the prior consent of the arbitral tribunal, may request the courts of law to assist in taking evidence in accordance with the general provisions of the Danish Administration of Justice Act.

## Article 37

If the arbitral tribunal finds that an issue related to EU law will have to be decided before it makes its award, it may apply to the courts of law requesting them to bring the matter before the Court of Justice of the European Communities.

## Article 38

The arbitral tribunal shall generally decide on the preparation of the case, taking into account the wishes of the parties insofar possible, and shall ensure that the case progresses effectively and efficiently.

## Article 39

*Par. 1:* The arbitral tribunal shall decide when the preparatory work in the case is to end.

*Par. 2:* Prior to the conclusion of the preparatory work in the case, all submissions, documents and other information produced to the arbitral tribunal by one party shall be communicated to the other party. Also expert opinions and evidentiary documents received by the arbitral tribunal directly from third parties shall be communicated to the parties.

*Par. 3:* A party may add to its claims, make new submissions and produce new evidence during the processing of the arbitration case, unless the arbitral tribunal does not find it appropriate in view of the delay it may cause.

## Article 40

Unless the time and place of the oral hearing of the case has already been decided, see par. 2-4 of Article 30, the arbitral tribunal shall decide thereon after having heard the parties. However, subject to the prior consent of the parties the arbitral tribunal may decide that the case is to be resolved on the basis of written submissions only.

## Article 41

Once it finds that the case has been adequately clarified and that the parties have had adequate time and opportunity to safeguard their interests in the case, the arbitral tribunal shall conclude the oral hearing and set down the case for an award.

## Article 42

*Par. 1:* Before making its award the arbitral tribunal shall forward a draft version of the award and a statement of the costs of the arbitration case to Danish Arbitration.

*Par. 2:* The fees payable to the members of the arbitral tribunal shall be decided by Danish Arbitration on the basis of a reasoned written proposal drafted by the chairman of the arbitral tribunal and setting out the size of the total fee and its distribution upon the arbitrators. Danish Arbitration shall make the final computation of the total costs of the arbitration case, including the charge payable to Danish Arbitration. The fees to the arbitrators and the charge payable to Danish Arbitration shall be decided in accordance with the rates applicable at the time the arbitration proceedings are concluded, see Article 51. The amount in costs stated in the award shall equal the amount decided by Danish Arbitration.



*Par. 3:* Before the award is made, Danish Arbitration shall peruse the draft award mentioned in par. 1 above. Subject to prior discussion with the arbitral tribunal, Danish Arbitration may incorporate changes in the structure and lay-out of the award and, without challenging the competence of the arbitral tribunal, direct the arbitral tribunal's attention to other issues, including issues of importance to the validity of the award, its recognition and enforcement. Although the award is perused by Danish Arbitration as stated in the first clause of this paragraph, responsibility for the contents of the award lies exclusively with the arbitral tribunal.

### Article 43

*Par. 1:* The arbitral tribunal shall make its award as soon as possible upon the conclusion of the oral hearing and, if possible, not later than four weeks after the case was set down for an award. If the award has not been made within a period of four weeks after the case was set down for an award, the arbitral tribunal shall notify the parties and Danish Arbitration of the time it expects to make an award in the case.

*Par. 2:* The award shall be in writing and shall be signed by the arbitrator(s). The award shall state its date and the place of arbitration and, unless otherwise agreed between the parties, a presentation of the facts of the case including the claims made by the parties and, if required, a rendition of the witness statements made, as well as a presentation of the facts and legal points considered important by the arbitral tribunal in its decision of the case. The award shall further contain a rendition of the submissions made by the parties and, unless the parties have agreed not to have a reasoned award, a detailed reasoned decision of the issues in dispute.

*Par. 3:* The award of the arbitral tribunal shall contain provisions regarding the size and payment of the costs of the arbitration case, including the reimbursement of outlays, payments to experts appointed by the arbitral tribunal, the fee to the arbitrators, and the charge payable to Danish Arbitration, see Article 42.

*Par. 4:* The award of the arbitral tribunal shall indicate whether or not the losing party shall effect reimbursement to the other party of the costs incurred by the latter in connection with the case, unless the parties have agreed otherwise. In its determination of the amount in costs to be paid by the losing party to the other party, the arbitral tribunal shall rely on the principles for the determination of costs applied by the Danish courts of law. However, if special circumstances apply, the arbitral tribunal may decide that the losing party shall effect no or only partial reimbursement to the other party of costs incurred. If the losing party has offered to pay to the other party the amount due to it, the other party shall effect reimbursement to the losing party of the costs incurred in connection with the remaining part of the process.

### Article 44

*Par. 1:* The arbitral tribunal shall rule on its own jurisdiction, also in relation to any objections with respect to the existence or validity of the arbitration agreement. For that purpose an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal to the effect that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

*Par. 2:* Objections to the jurisdiction of the arbitral tribunal shall be raised not later than in the statement of defence submitted by the respondent, see Article 9 (1, point 7). A party shall not be precluded from raising an objection to the jurisdiction of the arbitral tribunal by the fact that it has appointed, or participated in the appointment of, an arbitrator. Objections to the effect

that, during the arbitral proceedings, the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised. The arbitral tribunal may in either case admit a later objection if it considers the delay justified.

*Par. 3:* The arbitral tribunal may make a separate decision in issues relating to the scope of its authority, or it may decide the issue in the award on the merits of the case. If the arbitral tribunal makes the separate decision that it does have jurisdiction, within 30 days after receiving notice of such ruling either party may request that the issue be decided by a court of law. While such a request is pending before the court of law, the arbitral tribunal may continue the arbitral proceedings and make an award.

*Par. 4:* Objections to the jurisdiction of the arbitral tribunal cannot later be relied upon in a claim for the annulment of the award or as a reason for refusing recognition or enforcement of the arbitral award, unless the nature of the dispute is such that it cannot be decided by arbitration. However, a consumer shall forfeit his right to invoke a claim that he is not bound by the arbitration agreement only if the consumer is party to the arbitration case after having been notified that the arbitration agreement is not binding.

### Article 45

*Par. 1:* A case in which arbitration has been agreed and an arbitral tribunal has been appointed by Danish Arbitration shall be seen through whether or not one of the parties refuses to participate in the processing of the case or fails to make an appearance. If the claimant fails to make an appearance, the arbitral tribunal may dismiss the case.

*Par. 2:* If a party fails to make an appearance or proves unwilling to participate in the clarification of the case, the case shall be seen through in the best possible way as decided by the arbitral tribunal. Upon the conclusion of the oral hearing, the arbitral tribunal shall make its award on the basis of the information made available to it.

### Article 46

*Par. 1:* If the arbitrators cannot reach agreement among themselves, the case shall be decided on the basis of a majority of votes. If the votes are equal, the chairman shall have the casting vote. Issues relating to the processing of the case may be decided by the chairman of the arbitral tribunal alone, if the parties or the entire tribunal has authorised him to do so.

*Par. 2:* An arbitrator who finds himself to be in a minority regarding the reasons given and/or the outcome of the case may insist that his vote be noted in the award.

*Par. 3:* If an arbitrator refuses to participate in the preparation and/or adoption of the award or to sign it, the award may be prepared, adopted and/or signed by the other members of the arbitral tribunal. The reason why not all arbitrators have participated in the preparation and/or adoption of the award or have signed it shall be stated in the award.

*Par. 4:* After the making of the award a copy thereof carrying the signatures of the arbitrator(s), see par. 1 above, shall be sent to each party.

### Article 47

*Par. 1:* The costs stated in the award that exceed the deposit made shall be paid to Danish Arbitration who will handle payments to the arbitrators, experts, and others.



*Par. 2:* The parties shall be jointly and severally liable for the total costs of the arbitration case regardless of the way costs have been assigned in the award and whether or not the amount exceeds the security lodged. If this means that one party has to pay for the other party, the former shall have a right of recourse against the latter. The lawyers of the parties shall be liable for costs only if they have undertaken such liability.

*Par. 3:* Any excess amount of the deposit shall be repaid on the basis of the statement drawn up by Danish Arbitration without addition of interest.

### Article 48

The arbitral award shall be final and conclusive and binding on the parties.

### Article 49

*Par. 1:* If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties and not objected to by the arbitral tribunal, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms.

*Par. 2:* An arbitral award on agreed terms shall be made in accordance with the provisions of Article 43 and shall state that it is an arbitral award. Such an arbitral award shall have the same status and legal effect as any other arbitral award on the merits of the case.

### Article 50

*Par. 1:* Within 30 days of receipt of the arbitral award either party may request from the arbitral tribunal:

- 1) a correction of an award where, due to an error in computation, a clerical or typographical error or similar errors, the contents of the award are not in accordance with the opinion of the arbitral tribunal,
- 2) an interpretation of the arbitral award, or
- 3) the making of an additional award with regard to claims which, although they were presented to the arbitral tribunal and should have been decided by it, were omitted from the arbitral award.

*Par. 2:* A request for a correction to or an interpretation of an arbitral award or for the making of an additional award shall be filed with the arbitral tribunal and the other parties with copy to Danish Arbitration. The parties must be given an opportunity to give their opinion. The arbitral tribunal will allow the request if it considers it justified. A decision to make a correction or give an interpretation of the arbitral award or to make an additional award shall be made within 4 weeks of receipt of such request by the arbitral tribunal.

*Par. 3:* The arbitral tribunal may make corrections to the arbitral award of the type referred to in point 1 of par. 1 above at its own initiative within 30 days of having made the award. The parties must be heard before the tribunal makes the corrected award.

*Par. 4:* Under special circumstances the arbitral tribunal may extend the periods stated in par. 1 – 3 above.

*Par. 5:* The provisions of par. 1-4 above shall also apply to decisions to correct or interpret the arbitral award as well as to an additional award.

## Article 51

*Par. 1:* The arbitration case shall be terminated by the making of the final arbitral award or by a decision by the arbitral tribunal in pursuance of par. 2 below, Article 45 (1, 2<sup>nd</sup> clause), or Article 49 (1, 1<sup>st</sup> clause). The arbitration case shall also be terminated if Danish Arbitration issues a communication in pursuance of Article 5(2), Article 7 or Article 27 (4).

*Par. 2:* The arbitral tribunal shall decide to terminate the case in the event that:

1. the claimant withdraws his claim, unless the respondent objects to the case being terminated and the arbitral tribunal finds that the respondent has a legitimate interest in obtaining a final settlement of the dispute,
2. the parties agree to terminate the arbitral proceedings, or
3. the arbitral tribunal finds that, for other reasons, a continuation of the arbitral proceedings has become unnecessary or impossible.

*Par. 3:* The mandate of the arbitral tribunal shall terminate upon the termination of the arbitral proceedings, however see Article 50.

## Article 52

*Par. 1:* When the arbitration case has been terminated and the costs of the case have been paid, Danish Arbitration shall return original documents, drawings and similar documents to the parties. Everything else that has been submitted in the case shall remain the property of Danish Arbitration.

*Par. 2:* Danish Arbitration shall keep awards and settlements reached before an arbitral tribunal in its files for a minimum of 10 years.

## Article 53

The arbitral tribunal shall prepare minutes of meetings held, stating the place and time of the meeting, the participants of the meeting, and the decisions made at the meeting. These minutes shall be forwarded to the parties. If the parties so desire, oral hearings may be recorded on tape partially or in their entirety or shorthand minutes may be taken.

## F. Miscellaneous provisions

### Article 54

The members of the arbitral tribunal and Danish Arbitration shall treat all matters relating to the arbitration case as confidential.

### Article 55

All communications and announcements from Danish Arbitration or the arbitral tribunal shall be deemed to have been validly received by a party when forwarded by registered mail to a party's address or last known address, or if proven to have reached the party. The parties may send pleadings and related exhibits to the arbitral tribunal and Danish Arbitration by fax or email, if hardcopies of said documents involved are also sent by regular mail. Correspondence may generally be forwarded by means of fax or email, as decided by the arbitral tribunal.



## Article 56

Neither arbitrators nor Danish Arbitration, its Council, Board of Representatives or employees can be held liable for any act or omission in connection with a request for arbitration, the processing of an arbitration case, or an award made by an arbitral tribunal.

## Article 57

The present rules of arbitration procedure of Danish Arbitration have been prepared in Danish, English, German and French. In cases where the language used in the proceedings is Danish, German or French, the Danish, German or French version, respectively, of the rules shall apply. In all other cases, the English version of the rules shall apply.

## Article 58

These rules shall enter into force on 15 December 2008.

As adopted by the Council of Danish Arbitration on 20 September 2008.