

## **MODEL TERMS OF REFERENCE**

### **DISCLAIMER**

This model is intended solely to assist arbitrators acting in ICC arbitrations in the drafting of the Terms of Reference. It does not constitute an exhaustive, mandatory or otherwise binding document.

This model is provided for guidance only and should be adapted to the facts and circumstances of each case.

If a party does not sign the Terms of Reference, provisions which reflect additional agreements of the Parties need to be adapted or removed.

Square brackets demarcate the beginning and end of the optional sentences suggested in the model, and slashes refer to the various options.

For any questions, the arbitrators may contact their respective case management teams.

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## TERMS OF REFERENCE

Pursuant to Article 23 of the ICC Arbitration Rules in force as of  
 [1 January 2012] / [1 March 2017] / [1 January 2021]  
*[check the relevant Article of other versions of the Rules where applicable]*

**ICC Arbitration \*\*\*\*\*/\*\*\***

**Claimant/s v/ Respondent/s v/ Additional Party/Parties**

### The Parties and their Representatives

<p><b>Claimant/s</b></p> <p><b>NAME</b> Address</p>	<p><b>[Represented by] / [Not represented] / [Not participating]</b></p> <p><b>NAME</b> Law firm Address Telephone Email</p>
<p><b>Respondent/s</b></p> <p><b>NAME</b> Address</p>	<p><b>[Represented by] / [Not represented] / [Not participating]</b></p> <p><b>NAME</b> Law firm Address Telephone Email</p>
<p><b>Additional Party/Parties</b></p> <p><b>NAME</b> Address</p>	<p><b>[Represented by] / [Not represented] / [Not participating]</b></p> <p><b>NAME</b> Law firm Address Telephone Email</p>

### The Arbitral Tribunal

<p><b>NAME</b> Law firm Address Telephone Email</p>	<p><b>NAME</b> Law firm Address Telephone Email</p>	<p><b>NAME</b> Law firm Address Telephone Email</p>
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**NAME**  
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***[Include a Table of Content]***

***Optional Provision***

**I. Defined Terms**

1. The following defined terms are used in these Terms of Reference:
  - International Chamber of Commerce (“ICC”)
  - International Court of Arbitration of the International Chamber of Commerce (“Court”)
  - Secretariat of the International Court of Arbitration (“Secretariat”)
  - ICC Arbitration Rules in force as of [1 January 2012] / [1 March 2017] / [1 January 2021] (“Rules”)
  - Arbitral Tribunal, includes one or more arbitrators (“Tribunal”)
  - Claimant/s, Respondent/s and any Additional Party/Parties together (“Parties”)
  - [Any other definition that may be necessary]

**II. The Parties and their Representatives**

2. Any addition or change to the registered office of any party or to a party’s legal representation after the date of these Terms of Reference must be notified to the other Parties, the Tribunal and the Secretariat in writing immediately after such addition or change.
3. When a relationship exists between a new party representative and an arbitrator which in the Tribunal’s view may create a conflict of interest, the Parties agree that the Tribunal may take appropriate measures to ensure the integrity of the arbitration, including the exclusion of the new party representative from participating in all or part of the arbitration.
4. By signing these Terms of Reference, the Parties confirm that the above mentioned representatives of the Parties are duly authorised to act and express themselves in this arbitration in the name and for the account of the party that appointed them, in particular for the execution of these Terms of Reference. Each may validly exercise his/her power and authority individually or collectively.

**III. Constitution of the Tribunal**

5. The Tribunal was constituted as follows:

On \_\_\_\_, \_\_\_\_ [name]

/[was confirmed as co-arbitrator by the [Secretary General/Court] upon [joint] nomination by Claimant/s [and the Additional Party/Parties], pursuant to Article 13(1).]

/[was appointed as co-arbitrator by the Court on behalf of Claimant/s [and the Additional Party/Parties] upon the proposal of the \_\_\_\_ ICC National Committee/Group of the ICC, pursuant to Article 13(3).]

/[was appointed directly by the Court as co-arbitrator on behalf of Claimant/s [and the Additional Party/Parties], pursuant to Article [13(3).] / [13(4)/(a)/(b).]

On \_\_\_\_, \_\_\_\_ [name]

/[was confirmed as co-arbitrator by the [Secretary General/Court] upon [joint] nomination by Respondent/s [and the Additional Party/Parties], pursuant to Article 13(1).]

/[was appointed as co-arbitrator by the Court on behalf of Respondent/s [and the Additional Party/Parties] upon the proposal of the \_\_\_\_ ICC National Committee/Group of the ICC, pursuant to Article 13(3).]

/[was appointed directly by the Court as co-arbitrator on behalf of Respondent/s [and the Additional Party/Parties], pursuant to Article [13(3).] / [13(4)/(a)/(b).]

On \_\_\_\_, \_\_\_\_ [name]

/[was confirmed as sole arbitrator/president of the Tribunal by the [Secretary General/Court upon joint nomination by the Parties/co-arbitrators], pursuant to Article 13(1).]

/[was appointed by the Court as sole arbitrator/president of the Tribunal, upon the proposal of the \_\_\_\_ ICC National Committee/Group of the ICC, pursuant to Article 13(3).]

/[was appointed directly by the Court as sole arbitrator/president of the Tribunal, pursuant to Article 13(4)/(a)/(b).]

### **Optional Provision**

*[Add where an administrative secretary has been/is being appointed]*

6. The Parties agree to the appointment of \_\_\_\_ as administrative secretary for the Tribunal, in conformity with the section on Administrative Secretaries of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration.
7. By signing these Terms of Reference, each party confirms that the Tribunal has been properly constituted.
8. Accordingly, the Parties waive any objections in respect of matters known to the Parties at the date of signature.

### **IV. Notifications and Communications**

9. Pursuant to Article 3 of the Rules, the Parties and the Tribunal must send copies of all written correspondence directly to all other Parties' representatives, each arbitrator and the Secretariat simultaneously to the addresses indicated on page \_\_\_\_.
10. Communications shall be sent to the Party representatives' email addresses as set out above on or before any date set by the Tribunal and by courier only when required.
11. Documents must be sent to the Secretariat in electronic form only.
12. [Any requirement regarding notification and/or depositing of an award at the place of arbitration may need to be addressed.]
13. Subject to any requirements of mandatory law that may be applicable, and unless the Parties agree otherwise, (1) the Terms of Reference may be signed in counterparts and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 of the Rules by email or any other means of telecommunication that provides a record of the sending thereof.
14. Likewise, subject to any requirements of mandatory law that may be applicable, the Parties may agree (1) that any award be signed by the members of the Tribunal in counterparts and/or (2) that all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of

telecommunication that provides a record of the sending thereof, pursuant to Article 35 of the Rules.

## V. Procedure to Date

15. On \_\_\_\_\_, the Secretariat received a Request for Arbitration filed by Claimant/s.
16. In its/their Request, Claimant/s [indicated that in accordance with the arbitration agreement/s the arbitration is submitted to a sole arbitrator / three-member Tribunal [and nominated \_\_\_\_\_ as co-arbitrator.] / [proposed that the arbitration be submitted to a sole arbitrator / three-member Tribunal [and nominated \_\_\_\_\_ as co-arbitrator.]
17. The Secretariat notified the Request for Arbitration to Respondent/s on \_\_\_\_\_.
18. On \_\_\_\_\_, [following an extension of time granted by the Secretariat], [the Secretariat received an Answer to the Request for Arbitration / [and counterclaims.] filed by Respondent/s.] / [The Secretariat also received a Request for Joinder filed by Respondent/s.]
19. In the Answer, Respondent/s [indicated that in accordance with the arbitration agreement/s the arbitration is submitted to a sole arbitrator / three-member Tribunal [and nominated \_\_\_\_\_ as co-arbitrator.] / [proposed that the arbitration be submitted to a sole arbitrator / three-member Tribunal [and nominated \_\_\_\_\_ as co-arbitrator.] / [agreed with Claimant/s to submit the arbitration to a sole arbitrator / three-member Tribunal.]
20. [The Secretariat notified the Request for Joinder to Claimant/s and the Additional Party/Parties on \_\_\_\_\_.]
21. On \_\_\_\_\_, [following an extension of time granted by the Secretariat], Claimant/s and/or Additional Party/Parties filed an Answer to the Request for Joinder.
22. [Respondent/s/The Additional Party/Parties raised a plea/s pursuant to Article 6(3) of the Rules or did not submit an Answer.]  
[It/They however requested that said plea/s be decided directly by the Tribunal.]  
[Such plea/s will be decided directly by the Tribunal, after providing the Parties with an opportunity to comment.]  
[The matter was not referred to the Court. The Tribunal must decide any question of jurisdiction or of whether the claims may be determined together, after providing the Parties with an opportunity to comment.]  
[At its session of \_\_\_\_\_, the Court decided pursuant to Article 6(4) [that this arbitration will proceed.] / [that this arbitration will not proceed as to \*\*\* and \*\*\*.] / [that this arbitration will not proceed as to Claimant's/s' / Respondent's/s' / the Additional Party's/Parties' claims brought under \*\*\* and \*\*\* (*name of contracts*).]
23. Pursuant to Article 16 of the Rules the file was transmitted to the Tribunal on \_\_\_\_\_.
24. [As required by Article 24 of the Rules, the Tribunal convened a case management conference which took place [via telephone conference] on \_\_\_\_\_ to consult the Parties on procedural measures that may be adopted pursuant to Article 22(2) of the Rules and Appendix IV to the Rules.]
25. [At its session of \*\*\* the Court extended the time limit for establishing the Terms of Reference until \*\*\* pursuant to Article 23(2) of the Rules.]

**VI. Arbitration Agreement**

26. /[[Claimant/s /Respondent/s /the Additional Party/Parties] made claims under arbitration agreement/s contained in [*mention agreement(s), date(s), signatories*], which provides:

*[Quote in full the dispute resolution clause(s).]*

**VII. Applicable Substantive Law**

27. *[Quote in full the choice of law clause(s) and/or any subsequent agreement by the parties or with the Tribunal for instance that the Tribunal may decide ex aequo et bono/amiabile compositeur; otherwise indicate whether this must be determined by the Tribunal.]*

**VIII. Applicable Procedural Rules**

28. Pursuant to Article 19 of the Rules, the proceedings shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

**IX. Language of the arbitration**

29. *[Refer to the arbitration agreement(s) and/or any subsequent agreement by the parties; failing agreement, the Tribunal must decide on the language prior to establishing the Terms of Reference and reflect its decision in the Terms of Reference.]*

30. /[[Accordingly], the language of the arbitration is \_\_\_\_\_.

**X. Place of Arbitration**

31. [The arbitration agreements/s provide/s for \_\_\_\_\_ as place of arbitration.] [The place of arbitration was not provided in the arbitration agreement/s. The Court decided to fix \_\_\_\_\_ (*city/country*) as place of arbitration (Article 18(1)). / The Parties subsequently agreed on \_\_\_\_\_ (*city/country*) as place of arbitration.]

32. Pursuant to Article 18(2) of the Rules, the Tribunal may, after consultation with the Parties, conduct hearings and meetings at any location it considers appropriate.

33. Pursuant to Article 18(3) of the Rules, the Tribunal may deliberate at any location it considers appropriate.

**XI. Parties' Respective Positions and Relief Sought**

34. The purpose of the following summaries is to satisfy the requirement of Article 23(1) of the Rules, without prejudice to any other or further allegations, arguments, contentions and denials contained in the submissions already on record, and in future pleadings or submissions in this arbitration, subject to Article 23(4) of the Rules.

35. Therefore, no Party shall make new claims which fall outside the limits of these Terms of Reference once they have been signed or approved, unless it has been authorised to do so by the Tribunal who shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

36. No statement or omission in the summary of any Party is to be interpreted as a waiver or admission of any issue of fact or law. The summary neither reflects any fact finding by the Tribunal nor any admission by any other Party.
37. [The summaries of the Parties' respective positions and relief sought provided in these Terms of Reference are based on the submissions made by the Parties to date: Request for Arbitration dated \_\_\_\_, [Answer to the Request for Arbitration dated \_\_\_\_], [Request for Joinder dated \_\_\_\_], [Answer to the Request for Joinder dated \_\_\_\_].]
38. [Based on the Parties' submissions, a summary of facts is hereafter provided.] / [The following summary of facts is uncontested.] / [The Parties' have summarised their position as follows.]
39. By signing these Terms of Reference, the Parties neither subscribe nor acquiesce to the summary of the other Party's position set forth below.

**A- Claimant's/s' Position and Relief sought**

*[to be completed]*

**B- Respondent's/s' Position and Relief sought**

40. [Respondent/s [and the Additional Party/Parties] raise jurisdictional objections on the ground that \_\_\_\_.]
41. [Any question of jurisdiction or admissibility shall be decided by the Tribunal.]
42. [By signing these Terms of Reference, [Respondent/s [and the Additional Party/Parties] do/does not waive its/their jurisdictional objections.]

*[to be completed]*

**C- Additional Party's/Parties' Position and Relief sought**

*[To be completed.]*

**XII. Amount in Dispute**

43. [The amount in dispute is currently quantified at US\$/Euros/[other currency] \_\_\_\_.] / [To date, Claimant's/s' quantified claims amount to \_\_\_\_ and Respondent's/s' quantified counterclaims amount to \_\_\_\_.] / [The amount in dispute is currently unquantified; Claimant/s /Respondent/s /the Parties will determine the amount of their claims or quantify the damages during the arbitration.]

**XIII. Issues to be determined**

44. The issues to be determined by the Tribunal may include but are not limited to the following:

*[To be completed; include any jurisdictional issues and issues related the costs to be determined by the Tribunal; where Terms of Reference are to be approved, identify any issue of jurisdiction as an issue to be determined]*



45. In any event, the issues to be determined shall be those resulting from the Parties' submissions, including forthcoming submissions, and those relevant to the decision of the Parties' respective claims and defenses, without prejudice to Article 23(4) of the Rules.
46. The Tribunal shall be free to decide any issue by way of partial or interim awards, or by a final award as it may deem appropriate and after having provided the Parties a reasonable opportunity to present their case.

#### **Optional Provisions which may be included when all parties are expected to sign**

#### **XIV. Protection of Personal Data**

47. The parties, their legal representatives acknowledge, and shall ensure that all those acting on their behalf acknowledge, that the ICC is subject to EU Regulation 2016/679 ("GDPR") and related French data protection laws and regulations, acts as a controller of personal data for some of the data processed during the arbitration for the purposes detailed in the [ICC Data Privacy Notice for ICC Dispute Resolution Proceedings](#), but not for the activities undertaken by others in the context of ICC proceedings.
48. The GDPR or other data protection laws and regulations may also apply to the parties, their legal representatives, the arbitrators and others acting on their behalf or at their request. The party that considers itself or others acting on its behalf to be bound by the GDPR or other relevant data protection laws and regulations shall inform the arbitral tribunal as soon as practicable. The party shall insure that anyone acting on its behalf is notified of such information of the arbitral tribunal. This means that, absent unusual circumstances, any data protection issues shall be raised at the case management conference if not before.
49. Each party, legal representative and arbitrators acting as data controller to which the GDPR applies has a separate responsibility to comply with the provisions of the GDPR.
50. To the extent applicable, the arbitral tribunal, the parties, and their legal representatives shall put in place, and shall ensure that all those acting on their behalf put in place, appropriate technical and organisational measures to comply with any applicable data protection laws during the arbitration and the applicable retention period in a proportionate manner that minimizes the impact on the personal data.
51. The arbitral tribunal has authority to issue directions applying the data protection laws to the proceedings, which shall be binding on the parties for the purposes of the arbitration.
52. The parties and their legal representatives shall put in place and shall ensure that all those acting on their behalf put in place:
  - a. appropriate technical and organisational measures to ensure a reasonable level of security appropriate to the arbitration, taking into account the scope and risk of the processing, the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the arbitration, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive business, proprietary or confidential information; and
  - b. mechanisms to ensure that they comply with data breach notification procedures.

## **XV. Other Procedural Matters**

### ***Procedural Orders***

53. Any procedural matter may be determined by way of procedural orders after consultation with the Parties.
54. Any procedural order may be made by the President alone on behalf of the Tribunal, after consulting with the co-arbitrators. In case of urgency, the President may issue procedural orders and directions alone.

### ***Efficiency***

55. In accordance with Article 22(1) of the Rules, the Tribunal and the Parties agree to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.

### ***Optional Provisions***

*The Tribunal and the Parties may consider adding provisions related to any confidentiality agreement, any value added tax due on the arbitrators' fees, any reference to soft law such as the IBA Rules on Taking of Evidence and the IBA Guidelines on Party Representation and any reference to the use of ICC expertise services or the possibility of settling the dispute in accordance with the ICC Mediation Rules.*

### ***Confidentiality***

56. Unless disclosure is required by law, judicial or arbitral order, or for the purpose of enforcing a judgment, order, direction, decision or award, or as needed to protect or to pursue a Party's legal right, or to enable an arbitrator to respond to a challenge, the Parties and the Arbitral Tribunal undertake to preserve the confidential nature of the arbitration.

### ***Value Added Tax (VAT)***

57. In accordance with Article 2(13) of the Rules, amounts paid to the Arbitral Tribunal do not include any VAT. The undersigning Parties severally undertake to pay the VAT directly to the Arbitral Tribunal upon its request of payment following presentation of relevant invoices. The latter may arrange for the deposit of funds towards VAT due on the fees and expenses in accordance with the Note.

### ***Expertise***

58. Any party and/or the Tribunal may request the ICC International Centre for ADR to propose experts pursuant to the Proposal of Experts and Neutrals Rules.

### ***Mediation***

59. The Parties may, at any time, without prejudice to the present arbitration, seek to settle their dispute in accordance with the ICC Mediation Rules.

**Signature of the Terms of Reference**

Place of arbitration: (city, country)

Signatures:

\_\_\_\_\_  
Name  
For and on behalf of  
Claimant/s

Date:

\_\_\_\_\_  
Name  
For and on behalf of  
Respondent/s

Date:

\_\_\_\_\_  
Name  
For and on behalf of  
Additional Party/Parties

Date:

\_\_\_\_\_  
Name  
Co-arbitrator

Date:

\_\_\_\_\_  
Name  
President / Sole Arbitrator

Date:

\_\_\_\_\_  
Name  
Co-arbitrator

Date: