



MILAN
CHAMBER OF
ARBITRATION

Dispute Resolution Board RULES



January 1st, 2016

DISPUTE RESOLUTION BOARD RULES

1. Definitions

In these Rules:

"Contract" means the agreement to which the provisions for establishing a Dispute Board under the Rules make reference.

"Recommendation" is the written determination issued by the Dispute Board, as described in the Rules.

"Dispute/s" means any matter arising out of or in connection with the Contract.

"DRB, Dispute Resolution Board, Dispute Board or Board" is a commission composed by one or three Members.

"DRB Rules or Rules" means these rules.

"Party/ies" means a Party/the Parties to the Contract.

"Member" means a member of the DRB.

"Position Statement" means the written statement describing the case produced by a Party to refer the dispute to the DRB.

"Response" means the written answer to the Position Statement by the other Party.

2. Standard clause

"The Parties agree to establish a Dispute Resolution Board ("DRB") in accordance with the Milan DRB Rules. The DRB shall have one/ three Members appointed in accordance with the Rules. Any dispute arising out of or in connection with this contract shall be referred to the DRB for a Recommendation. Should one or both Parties reject the Recommendation, the dispute, shall be settled by arbitration under the Arbitration Rules of the Milan Chamber of Arbitration which are deemed to be incorporated by reference into this clause".

3. Dispute Resolution Board aim

The DRB assists the Parties in avoiding or solving Disputes by giving informal opinions or by issuing a Recommendation.

4. Appointment of a DRB

- a. The DRB is composed by three Members if Parties have not stated otherwise.
- b. Parties may either determine the name/s of the Board Member/s in the Contract or appoint them within a time limit agreed upon. In the absence of any contractual provision, Members shall be appointed within 30 days from the effective date of the Contract.
- c. If the Board is composed by three Members, each Party shall select one for the approval of the other Party and then both Parties, after consultation with the first two Members appointed, choose the third, who will act as Chairman.
- d. The Parties shall jointly select the sole Member when the Contract provides for a sole Member DRB.
- e. Should the Parties fail to appoint the DRB within the term, the Milan Chamber of Arbitration will appoint the Member/s on request of any Party.
- f. The appointment of a Member can be terminated by agreement of both Parties. In this case – as well as in case of resignation of a Member - Parties have to appoint a qualified professional to replace him/her. The new Member shall be appointed in the same manner as the Member being replaced.
- g. Either Party may challenge a Member before the Milan Chamber of Arbitration on the grounds of conflicts of interest or failure to comply with these Rules. The decision of the Milan Chamber of Arbitration shall be final and binding.

5. Board Members' qualifications and obligations

1. Board Members must have all the necessary expertise and skills as to execute their mandate.
2. Board Members:
 - I. shall be conversant with the Contract and its performance.
 - II. have to be and remain impartial and independent from the Parties. By accepting the appointment as Board Member, they shall disclose to Parties and to the Milan Chamber of Arbitration any situation that could call into question their impartiality and independence and declare that there is no conflict of interest. If a Party does not rise written objection on such disclosure within 20 days, the appointment is confirmed.
 - III. undertake to respect these Rules and the agreement signed with the Parties.
3. Board Members shall guarantee their availability for the visits to the site where the Contract is performed and the meetings.
4. All information provided to the DRB during the mandate shall be covered by confidentiality and used only with the purpose of avoiding/settling disputes unless otherwise agreed by the Parties or by the applicable law.
5. Board Members can by their own joint initiative discuss a matter to prevent a Dispute and take all measures deemed necessary for the fulfilment of their task.

6. Site visits and meetings

- a. After the appointment, a first meeting shall be held between the DRB Members, the Parties, and those Parties' assistants with whom the Members will collaborate in person.

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- b. The schedule of the visits on the site where the Contract is performed, shall be agreed between the Board and the Parties. Visits will take place every 3 months in case no arrangement has been made by the Parties.
 - c. In occasion of each site visit DRB will issue a written report to be shared with the Parties.

7. Information

There is a strict obligation for Parties to provide the DRB with copies of the Contract and all relevant documents, information, reports pertinent to the performance of the Contract. The compliance with this obligation is crucial in order to promptly activate the DRB in case of issues that are likely to cause damages and delay the execution of the project.

8. Informal opinion

- a. Parties may, jointly and at any time, refer any matter to the Board for an informal opinion.
- b. Informal opinions are not binding on the DRB in a possible further referral of the same issue.
- c. Should one or both Parties be dissatisfied with the opinion of the Board, they can escalate to the referral of a Dispute according to article 9 of these Rules.

9. Referral to a DRB

- a. Any Party can refer a dispute to DRB.
- b. The referral is officially submitted when a Position Statement has been produced by either Party both to the DRB and the other Party/ies requesting the DRB to issue a Recommendation.
- c. The other Party may submit a Response on the matter within 20 days from the receipt of the Position Statement.
- d. The DRB shall issue a reasoned Recommendation within 90 days from the receipt of the Position Statement by the DRB Chairman or within the deadline otherwise agreed in writing by the Parties. The failure

of the DRB to issue the Recommendation within the term, entitles the Parties to commence arbitral or court proceedings, unless otherwise agreed in the Contract

- e. The Recommendation shall be notified to the Parties.
- f. Unless one or both Parties reject the Recommendation within 30 days from the date of receipt, the Recommendation shall become binding on both Parties and they will have to promptly comply with it. Parties are entitled to start the arbitral or court proceedings 30 days after the rejection or non-compliance date, unless otherwise agreed in the Contract
- g. The DRB can hold hearings, examine documents and records produced by the Parties, listen to witnesses, ask for more information.
- h. The DRB has full discretion provided that the procedure is fair, transparent, suitable to the case and it avoids delays and extra-costs.
- i. The Board shall act fairly and impartially and shall give the Party/ies the opportunity to put its case and respond to the other Party/ies's case.

10. Costs

Fees and expenses of the DRB shall be borne in equal measure by the Parties.

11. CAM Fees

For each request for appointment of a DB Member ex art. 4 d) of the Rules, Parties must deposit € 2.000 (+ VAT if applicable). Said sum is not refundable. No appointment request will be taken into consideration without the payment of said fee.

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