



**Rules of International Arbitration of Aerosuisse**  
(The Umbrella Organisation of Swiss Aviation)

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## Rules of Arbitration of Aerosuisse

### *MODEL ARBITRATION CLAUSE*

Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Rules of Arbitration of Aerosuisse in force on the date when the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators<sup>1</sup> shall be ... (one or three);

The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city abroad);

The arbitral proceedings shall be conducted in ..... (insert desired language).

### *INTRODUCTION*

(a) In order to promote institutional arbitration in Swiss aviation, Aerosuisse, the umbrella association of Swiss aviation, has adopted the present uniform rules, the Rules of Arbitration of Aerosuisse (hereinafter the "Rules").

These Rules are based on the UNCITRAL Arbitration Rules (adopted by the General Assembly of the United Nations on 15 December 1976), which have had changes and additions made to them as follows:

- i. Changes and additions required to adapt the UNCITRAL Arbitration Rules to institutional arbitration;
- ii. Changes and additions reflecting modern practice and comparative law in the field of international arbitration;
- iii. Alignment to the Swiss Federal Law governing International Private Law (IPRG).

For the rest, the Rules of Arbitration correspond to the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce.

<sup>1</sup> *For the sake of convenience only the masculine form is used within these Rules.*

- (b) When a Notice of Arbitration is submitted to Aerosuisse, an arbitral tribunal shall be constituted in accordance with these Rules.
- (c) The secretariat of Aerosuisse shall be responsible for the administration of arbitrations under these Rules. The Aerosuisse Board Committee shall act as the Arbitration Committee which shall render decisions under Articles 11 and 12 on the challenge and revocation of arbitrators and under Article 16 on the seat of arbitration.
- (d) The present Rules replace the Aerosuisse Arbitral Tribunal Rules of June 1982.

## **Section I. Introductory rules**

### *SCOPE OF APPLICATION*

#### **Article 1**

1. These Rules shall govern national and international arbitrations, where an agreement to arbitrate refers to these.
2. The parties are free to designate the seat of the arbitration in Switzerland or elsewhere.
3. These Rules shall come into force on January 1<sup>st</sup>, 2005 and, unless the parties have agreed otherwise, shall apply to all arbitral proceedings in which the Notice of Arbitration is submitted on or after that date.

### *NOTICE, CALCULATION OF PERIODS OF TIME*

#### **Article 2**

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered to its habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3. If the circumstances so justify, Aerosuisse may extend the time-limits provided in Section I (Introductory Rules) and Section II (Composition of the arbitral tribunal), as well as any time-limits that Aerosuisse has set.

*NOTICE OF ARBITRATION AND ANSWER TO THE NOTICE OF ARBITRATION*

**Article 3**

1. The party initiating recourse to arbitration (hereinafter called the "Claimant" or, where applicable, "Claimants") shall submit a Notice of Arbitration to Aerosuisse at the address specified in Appendix A.
2. Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by Aerosuisse.
3. The Notice of Arbitration shall be submitted in as many copies as there are other parties (hereinafter called the "Respondent" or, where applicable, "Respondents"), together with an additional copy for each arbitrator and one copy for Aerosuisse, and shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names, addresses, telephone and fax numbers and e-mail addresses (if any) of the parties and of their counsel;
  - (c) A copy of the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) A reference to the contract or other legal instrument(s) out of or in relation to which the dispute arises;
  - (e) The general nature of the claim and an indication of the amount involved, if any;
  - (f) The relief or remedy sought;
  - (g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
  - (h) The payment, by check or transfer, to the account of Aerosuisse of the Registration Fee as required by Appendix B (Schedule of the Costs of Arbitration) in force on the date when the Notice of Arbitration is submitted.

4. The Notice of Arbitration may also include:
  - (a) The Claimant's proposals for the appointment of a sole arbitrator referred to in Article 7;
  - (b) The Claimant's designation of an arbitrator, for the purpose of constituting a three-member arbitral tribunal referred to in Article 8;
  - (c) The Statement of Claim referred to in Article 18.
5. If the Notice of Arbitration is incomplete or if the copies or attachments are not submitted in the required number, or if the Registration Fee is not paid, Aerosuisse may request the Claimant to remedy the defect within an appropriate period of time. Aerosuisse may also request within such time-limit a translation of the Notice of Arbitration if it is not submitted in English, German, French or Italian. If the Claimant complies with such directions within the applicable time-limit, the Notice of Arbitration shall be deemed to have been validly filed on the date when the initial version was received by Aerosuisse.
6. Aerosuisse shall provide without delay a copy of the Notice of Arbitration and of any exhibits included therewith to the Respondent, unless Aerosuisse decides, after consultation with the Special Committee, that there is manifestly no agreement to arbitrate referring to these Rules.
7. Within thirty days from receipt of the Notice of Arbitration, the Respondent shall submit to Aerosuisse an Answer to the Notice of Arbitration. This Answer to the Notice of Arbitration shall be submitted in as many copies as there are other parties, together with an additional copy for each arbitrator and one copy for Aerosuisse, and shall, to the extent possible, include the following:
  - (a) The name, address, telephone and fax numbers and e-mail address (if any) of the Respondent and of its counsel (if different from the description contained in the Notice of Arbitration);
  - (b) Any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;
  - (c) The Respondent's comments on the particulars set forth in the Notice of Arbitration, pursuant to Article 3, paragraph 3(e);
  - (d) The Respondent's answer to the relief or remedy sought in the Notice of Arbitration, pursuant to Article 3, paragraph 3(f);

- (e) The Respondent's proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon, pursuant to Article 3, paragraph 3(g).
8. The Answer to the Notice of Arbitration may also include:
- (a) The Respondent's proposals for the appointment of a sole arbitrator referred to in Article 7;
  - (b) The Respondent's designation of an arbitrator for the purpose of constituting a three-member arbitral tribunal referred to in Article 8;
  - (c) The Statement of Defence referred to in Article 19.
9. Any counterclaim or set-off defence shall in principle be raised with the Respondent's Answer to the Notice of Arbitration. The provisions of Article 3, paragraph 3 are applicable to the counterclaim or set-off defence.
10. If no counterclaim or set-off defence is raised with the Respondent's Answer to the Notice of Arbitration, or if there is no indication of the amount of the counterclaim or set-off defence, Aerosuisse may rely exclusively on paragraph 3 (e) of the present Article 3 in order to determine the possible application of Article 42, paragraph 2 (Expedited Procedure).
11. Aerosuisse shall provide without delay a copy of the Answer to the Notice of Arbitration and of any exhibits included therewith to the Claimant.
12. Once the Registration Fee has been paid and all arbitrators have been confirmed, Aerosuisse shall transmit without delay the file to the sole arbitrator or to the arbitral tribunal.
13. The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and Aerosuisse; such communication must specify whether the appointment is being made for purposes of representation or assistance.

*CONSOLIDATION OF ARBITRAL PROCEEDINGS (JOINDER), PARTICIPATION OF THIRD PARTIES*

**Article 4**

1. Where a Notice of Arbitration is submitted between parties already involved in other arbitral proceedings pending under these Rules, Aerosuisse may decide, after consulting with the parties to all proceedings and the Special Committee, that the new case shall be referred to the arbitral tribunal already constituted for the existing proceedings. Aerosuisse may proceed likewise



where a Notice of Arbitration is submitted between parties that are not identical to the parties in the existing arbitral proceedings. When rendering its decision, Aerosuisse shall take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings. Where Aerosuisse decides to refer the new case to the existing arbitral tribunal, the parties to the new case shall be deemed to have waived their right to designate an arbitrator.

2. Where a third party requests to participate in arbitral proceedings already pending under these Rules or where a party to arbitral proceedings under these Rules intends to cause a third party to participate in the arbitration, the arbitral tribunal shall decide on such request, after consulting with all parties, taking into account all circumstances it deems relevant and applicable.

## **Section II. Composition of the arbitral tribunal**

### *CONFIRMATION OF ARBITRATORS*

#### **Article 5**

1. All designations of a sole arbitrator or of the arbitrators composing a three-member arbitral tribunal, made by the parties or the arbitrators, are subject to confirmation by Aerosuisse, upon which the appointments shall become effective. Aerosuisse has no obligation to give reasons when it does not confirm an arbitrator.
2. Where a designation is not confirmed, Aerosuisse may
  - (a) either invite the party or parties concerned, or the arbitrators, as the case may be, to make a new designation within a reasonable time-limit; or
  - (b) proceed directly with the appointment.

### *NUMBER OF ARBITRATORS*

#### **Article 6**

1. If the parties have not agreed upon the number of arbitrators, Aerosuisse shall decide whether the case shall be referred to a sole arbitrator or to a three-member arbitral tribunal, taking into account all relevant circumstances.
2. As a rule, Aerosuisse shall refer the case to a sole arbitrator, unless the complexity of the subject matter and/or the amount in dispute justify that the case be referred to a three-member arbitral tribunal.

3. If the arbitration agreement provides for a three-member arbitral tribunal and if this appears inappropriate in view of the amount in dispute or of other circumstances, Aerosuisse shall advise the parties that they may wish to agree to refer the dispute to a sole arbitrator.
4. Where the amount in dispute does not exceed CHF 1,000,000 (one million Swiss francs), the provisions of Article 42, paragraph 2 (Expedited Procedure), shall apply.

#### *APPOINTMENT OF A SOLE ARBITRATOR*

##### **Article 7**

1. Where two or more parties have agreed that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within thirty days from the date when the Notice of Arbitration was received by the Respondent(s) unless the parties' agreement provides otherwise.
2. Where the parties have not agreed upon the number of arbitrators, they shall jointly designate the sole arbitrator within thirty days from the date when Aerosuisse's decision that the dispute shall be referred to a sole arbitrator was received by them.
3. If the parties fail to designate the sole arbitrator within the applicable time-limit, Aerosuisse shall proceed with the appointment.

#### *APPOINTMENT OF ARBITRATORS IN BI-PARTY OR MULTI-PARTY PROCEEDINGS*

##### **Article 8**

1. Where a dispute between two adverse parties is referred to a three-member arbitral tribunal, each party shall designate one arbitrator, unless the parties have agreed otherwise.
2. If a party fails to designate an arbitrator within the time-limit set by Aerosuisse or resulting from the arbitration agreement, Aerosuisse shall appoint the arbitrator. Unless the parties' agreement provides otherwise, the two arbitrators so appointed shall designate, within thirty days from the confirmation of the second arbitrator, a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation, Aerosuisse shall appoint the presiding arbitrator.
3. In multi-party proceedings, the arbitral tribunal shall be constituted in accordance with the parties' agreement.

4. If the parties have not agreed upon a procedure for the constitution of the arbitral tribunal in multi-party proceedings, Aerosuisse shall set an initial thirty-day time-limit for the Claimant or group of Claimants to designate an arbitrator and set a subsequent thirty-day time-limit for the Respondent or group of Respondents to designate an arbitrator. If the group or groups of parties have each designated an arbitrator, Article 8, paragraph 2 shall apply by analogy to the designation of the presiding arbitrator.
5. Where a party or group of parties fail(s) to designate an arbitrator in multiparty proceedings, Aerosuisse may appoint all three arbitrators and shall specify the presiding arbitrator.

#### *INDEPENDENCE AND CHALLENGE OF ARBITRATORS (Articles 9 to 12)*

##### **Article 9**

1. All arbitrators conducting an arbitration under these Rules shall be and remain at all times impartial and independent of the parties.
2. A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

##### **Article 10**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

##### **Article 11**

1. If the arbitrator being challenged does not withdraw, the Aerosuisse Special Committee shall decide on the challenge.
2. The decision of the Aerosuisse Special Committee is final. The Special Committee has no obligation to give reasons.

##### **Article 12**

1. If an arbitrator fails to perform his functions despite a written warning from the other arbitrators or from Aerosuisse, the Aerosuisse Special Committee may revoke the appointment of that arbitrator.

2. The arbitrator shall have an opportunity to present his position to the Aerosuisse Special Committee. The decision of the Special Committee is final. The Special Committee has no obligation to give reasons.

#### *REPLACEMENT OF AN ARBITRATOR*

##### **Article 13**

1. If an arbitrator designated by a party deceases or becomes unable to perform his functions due to any reasons beyond his control, Aerosuisse shall set a time-limit for the party having designated that arbitrator to designate a replacement arbitrator. This rule also applies if an arbitrator has been successfully challenged, has been otherwise removed or has resigned.
2. If the party concerned fails to designate a replacement arbitrator within the applicable time-limit, Aerosuisse shall appoint a replacement arbitrator.

#### *CONSEQUENCES OF THE REPLACEMENT OF AN ARBITRATOR*

##### **Article 14**

If an arbitrator is replaced, the proceedings shall as a rule resume at the stage where the arbitrator who was replaced ceased to perform his functions, unless the arbitral tribunal decides otherwise.

### **Section III. Arbitral proceedings**

#### *GENERAL PROVISIONS*

##### **Article 15**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that it ensures equal treatment of the parties and their right to be heard.
2. At any stage of the proceedings, the arbitral tribunal may hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. After consulting with the parties, the arbitral tribunal may also decide to conduct the proceedings on the basis of documents and other materials.
3. At an early stage of the arbitral proceedings and in consultation with the parties, the arbitral tribunal shall prepare a provisional time-table for the arbitral proceedings, which shall be provided to the parties and, for information, to Aerosuisse.

4. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.
5. The arbitral tribunal may, after consulting with the parties, appoint a secretary. Article 9 of these Rules shall apply by analogy to the secretary.
6. All participants in the arbitral proceedings shall act in accordance with the requirements of good faith.

#### *SEAT OF THE ARBITRATION*

##### **Article 16**

1. If the parties have not determined the seat of the arbitration, or if such designation is unclear or incomplete, the Aerosuisse Special Committee shall determine the seat of the arbitration taking into account all relevant circumstances, or shall request the arbitral tribunal to determine the seat.
2. Without prejudice to the determination of the seat of the arbitration, the arbitral tribunal may decide where the proceedings shall be conducted. In particular, it may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
4. The award shall be deemed to be made at the seat of the arbitration.

#### *LANGUAGE*

##### **Article 17**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

*STATEMENT OF CLAIM***Article 18**

1. Unless the Statement of Claim was contained in the Notice of Arbitration, within a period of time to be determined by the arbitral tribunal, the Claimant shall communicate its Statement of Claim in writing to the Respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
2. The Statement of Claim shall include the following particulars:
  - (a) The names and addresses of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought.
3. As a rule, the Claimant shall annex to its Statement of Claim all documents it deems relevant.

*STATEMENT OF DEFENCE***Article 19**

1. Within a period of time to be determined by the arbitral tribunal and unless the Statement of Defence was contained in the Answer to the Notice of Arbitration, the Respondent shall communicate its Statement of Defence in writing to the Claimant and to each of the arbitrators.
2. The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 18, paragraph 2). If the Respondent has raised an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection. As a rule, the Respondent shall annex to its Statement of Defence all documents on which it relies for its defence.
3. The provisions of Article 18, paragraphs 2 (b) – (d), shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

*AMENDMENTS TO THE CLAIM OR DEFENCE***Article 20**

1. During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

2. The arbitral tribunal may adjust the costs of the arbitration if a party amends or supplements its claims, counterclaims or defences.

#### *PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL*

##### **Article 21**

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
3. As a rule, a plea that the arbitral tribunal does not have jurisdiction shall be raised in the Answer to the Notice of Arbitration, but in no event later than in the Statement of Defence referred to in Article 19, or, with respect to a counterclaim, in the reply to the counterclaim.
4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.
5. The arbitral tribunal shall have jurisdiction to hear a set-off defence even when the relationship out of which this defence is said to arise is not within the scope of the arbitration clause or is the object of another arbitration agreement or forum-selection clause.

#### *FURTHER WRITTEN STATEMENTS*

##### **Article 22**

The arbitral tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall set the periods of time for communicating such statements.

*PERIODS OF TIME***Article 23**

The periods of time set by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

*EVIDENCE AND HEARINGS (Articles 24 and 25)***Article 24**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in its Statement of Claim or Statement of Defence.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

**Article 25**

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Any person may be a witness or an expert witness. If witnesses or expert witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses or expert witnesses it intends to present, the subject upon and the languages in which such witnesses or expert witnesses will give their testimony.
3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.



4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses or expert witnesses during the testimony of other witnesses or expert witnesses. The arbitral tribunal is free to determine the manner in which witnesses or expert witnesses are examined.
5. Evidence of witnesses or expert witnesses may also be presented in the form of written statements or reports signed by them.
6. It shall not be improper for a party, its officers, employees, legal advisors or counsel to interview witnesses, potential witnesses or expert witnesses.
7. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### *INTERIM MEASURES OF PROTECTION*

##### **Article 26**

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary or appropriate.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to order the provision of appropriate security.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.
4. The arbitral tribunal shall have discretion to apportion the costs relating to a request for interim measures in the interim award or in the final award.

#### *TRIBUNAL-APPOINTED EXPERTS*

##### **Article 27**

1. The arbitral tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 25 shall be applicable to such proceedings.
5. The provisions of Article 9 shall apply by analogy to any expert appointed by the arbitral tribunal.

#### *DEFAULT*

##### **Article 28**

1. If, within the period of time set by the arbitral tribunal, the Claimant has failed to communicate its claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time set by the arbitral tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

#### *CLOSURE OF PROCEEDINGS*

##### **Article 29**

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the proceedings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the proceedings at any time before the award is made.

*WAIVER OF RULES***Article 30**

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

**Section IV. The Award***DECISIONS***Article 31**

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.
2. In the case of questions of procedure, when the arbitral tribunal so authorises, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

*FORM AND EFFECT OF THE AWARD***Article 32**

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards. If appropriate, the arbitral tribunal may also award costs in awards that are not final.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one or two of them fail(s) to sign, the award shall state the reason for the absence of the signature(s).
5. Publication of the award is governed by Article 43.
6. Originals of the award signed by the arbitrators shall be communicated to the parties and to Aerosuisse by the arbitral tribunal. Aerosuisse shall retain a copy of the award.

*APPLICABLE LAW, AMIABLE COMPOSITEUR***Article 33**

1. The arbitral tribunal shall decide the case in accordance with the rules of law agreed upon by the parties or, in the absence of a choice of law, by applying the rules of law with which the dispute has the closest connection.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

*SETTLEMENT OR OTHER GROUNDS FOR TERMINATION***Article 34**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and to Aerosuisse. Where an arbitral award on agreed terms is made, the provisions of Article 32, paragraphs 2 and 4 to 6, shall apply.

*INTERPRETATION OF THE AWARD***Article 35**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award. The arbitral tribunal may set a time-limit, normally not exceeding thirty days, for the other party to comment on such request.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 32, paragraphs 2 to 6, shall apply.

#### *CORRECTION OF THE AWARD*

##### **Article 36**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may set a time-limit, normally not exceeding thirty days, for the other party to comment on such request.
2. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing, and the provisions of Article 32, paragraphs 2 to 6, shall apply.

#### *ADDITIONAL AWARD*

##### **Article 37**

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. The arbitral tribunal may set a time-limit, normally not exceeding thirty days, for the other party to comment on such request.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of Article 32, paragraphs 2 to 6, shall apply.

#### *COSTS (Articles 38 to 40)*

##### **Article 38**

The arbitral tribunal shall determine the costs of arbitration in its award. The term "costs" includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be determined by the tribunal itself in accordance with Article 39;
- (b) The travel and other expenses incurred by the arbitrators;

- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) The costs for the administration of the arbitration payable to Aerosuisse in accordance with Appendix B (Schedule of the Costs of Arbitration).

### **Article 39**

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case, including, but not limited to, the discontinuation of the arbitral proceedings in case of settlement or other reasons. In the event of such discontinuation, the fees of the arbitral tribunal may be less than the minimum amount resulting from Appendix B (Schedule of the Costs of Arbitration).
2. The fees of the arbitral tribunal shall be determined in conformity with Appendix B (Schedule of the Costs of Arbitration).
3. The arbitral tribunal shall decide on the allocation of the fees among its members. As a rule, the Chairman shall receive between 40 % and 50 % and each co-arbitrator between 25 % and 30 % of the total fees, in view of the time and efforts spent by each arbitrator.

### **Article 40**

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. With respect to the costs of legal representation and assistance referred to in Article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall determine the costs of arbitration referred to in Article 38 and Article 39, paragraph 1, in the text of that order or award.

4. Before rendering the award, the arbitral tribunal shall submit its draft award to Aerosuisse for consultation on the decision as to the assessment and apportionment of the costs.
5. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Articles 35 to 37.

### *DEPOSIT OF COSTS*

#### **Article 41**

1. The arbitral tribunal, on its establishment, shall request each party to deposit an equal amount as an advance for the costs referred to in Article 38, paragraphs (a), (b), (c) and (f). The arbitral tribunal shall provide a copy of such request for information to Aerosuisse.
2. Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the arbitral tribunal may in its discretion establish separate deposits.
3. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties. The arbitral tribunal shall provide a copy of such request for information to Aerosuisse.
4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. In its final award, the arbitral tribunal shall render an accounting to the parties of the deposits received. Any unexpended balance shall be returned to the parties.

### **Section V. Expedited Procedure**

#### **Article 42**

1. If the parties so agree, or if the provisions of Article 42, paragraph 2 are applicable, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the foregoing provisions of these Rules, subject to the following changes:
  - (a) Aerosuisse may shorten the time-limits for the appointment of arbitrators;

- (b) After the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim) and, where applicable, one Statement of Defence in reply to the Counterclaim;
  - (c) Unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the arbitral tribunal shall hold a single hearing for the examination of the witnesses and expert witnesses as well as for oral argument;
  - (d) The award shall be made within six months from the date when Aerosuisse transmitted the file to the arbitral tribunal. In exceptional circumstances, Aerosuisse may extend this time-limit;
  - (e) The arbitral tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.
2. The following provisions shall apply to all cases in which the amount in dispute representing the aggregate of the claim and the counterclaim (or any set-off defence) does not exceed CHF 1'000'000 (one million Swiss francs), unless Aerosuisse decides otherwise taking into account all relevant circumstances:
- (a) The arbitral proceedings shall be conducted in accordance with the Expedited Procedure set forth in Article 42, paragraph 1;
  - (b) The case shall be referred to a sole arbitrator, unless the arbitration agreement provides for a three-member arbitral tribunal;
  - (c) If the arbitration agreement provides for a three-member arbitral tribunal, Aerosuisse shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree to refer the case to a sole arbitrator, the fees of the three arbitrators shall be determined in accordance with Appendix B (Schedule of the Costs of Arbitration), but shall in no event be less than the fees resulting from the hourly rate of Section 2.8 of Appendix



## **Section VI. Confidentiality and exclusion of liability**

### **Article 43**

1. Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitral proceedings not otherwise in the public domain, save and to the extent that a disclosure may be required of a party by a legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the tribunal-appointed experts, the secretary of the arbitral tribunal and Aerosuisse.
2. The deliberations of the arbitral tribunal are confidential.
3. An award may be published, whether in its entirety or in the form of excerpts or a summary, only under the following conditions:
  - (a) A request for publication is addressed to Aerosuisse;
  - (b) All references to the parties' names are deleted; and
  - (c) No party objects to such publication within the time-limit fixed for that purpose by Aerosuisse.

### **Article 44**

1. Neither Aerosuisse or their staff, arbitrators, tribunal-appointed experts or the secretary of the arbitral tribunal shall be liable for any act or omission in connection with an arbitration conducted under these Rules, save where the act or omission is shown to constitute deliberate wrongdoing or extremely serious negligence.
2. After the award has been made and the possibilities of correction, interpretation and additional awards referred to in Articles 35 to 37 have lapsed or been exhausted, neither Aerosuisse nor the arbitrators, the tribunal-appointed experts or the secretary of the arbitral tribunal shall be under an obligation to make statements to any person about any matter concerning the arbitration, nor shall a party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

**APPENDIX A: Addresses of Aerosuisse and the arbitrators****Aerosuisse**

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12. APPENDIX B: Schedule of the Costs of Arbitration  
(All amounts in this Appendix B are in Swiss francs, hereinafter “CHF”)

**1. Registration Fee**

- 1.1 When submitting a Notice of Arbitration, the Claimant shall pay a Registration Fee of
- CHF 4'500 for arbitrations where the amount in dispute does not exceed CHF 2'000'000;
  - CHF 6'000 for arbitrations where the amount in dispute is between CHF 2'000'001 and CHF 10'000'000;
  - CHF 8'000 for arbitrations where the amount in dispute exceeds CHF 10'000'000.

If the amount in dispute is not quantified, the Claimant shall pay a Registration Fee of CHF 6'000.

If the Claimant fails to pay the Registration Fee, Aerosuisse shall not proceed with the arbitration.

The Registration Fee is not refundable.

The above provisions shall apply to any counterclaim.

**2. Arbitrators' fees and Aerosuisse's Administrative Costs**

- 2.1 The arbitrators' fees (Article 38, paragraph a) shall cover the activities of the arbitral tribunal from the moment the file is transmitted until the last award.
- 2.2 Where the amount in dispute exceeds the threshold specified in Section 2.3 of this Appendix B, Administrative Costs shall be payable to Aerosuisse, in addition to the Registration Fee.
- 2.3 As a rule, the arbitrators' fees and Aerosuisse's Administrative Costs shall be computed on the basis of the following scale, taking into account the criteria of Article 39, paragraph 1:

Amount in dispute (in Swiss francs)	Fee of Sole Arbitrator <sup>1</sup>		Fee of three-member arbitral tribunal		Administrative Costs <sup>2</sup> fixed by Aerosuisse
	min.	max.	Min.	max.	
up to CHF 300'000	4%	12%	10%	30%	
CHF 300'001 to CHF 600'000	2%	8%	5%	20%	
CHF 600'001 to CHF 1'000'000	1.5%	6%	3.75%	15%	
CHF 1'000'001 to CHF 2'000'000	0.6%	3.6%	1.5%	9%	
CHF 2'000'001 to CHF 10'000'000	0.38%	1.5%	0.95%	3.75%	CHF 4'000 +0.2%
CHF 10'000'001 to CHF 20'000'000	0.3%	0.6%	0.75%	1.5%	0.1%
CHF 20'000'001 to CHF 50'000'000	0.1%	0.2%	0.25%	0.5%	0.05%
CHF 50'000'001 to CHF 100'000'000	0.06%	0.18%	0.15%	0.45%	0.01%
CHF 100'000'001 to CHF 250'000'000	0.02%	0.1%	0.05%	0.25%	CHF 50'000
over CHF 250'000'000	0.01%	0.06%	0.025%	0.15%	CHF 50'000

The fees and administrative costs payable for each successive range in this chart are **added together**.

The arbitrators' fees and Aerosuisse's Administrative Costs may exceed the amounts set out in the scale above only in exceptional circumstances and with prior approval by Aerosuisse.

2.4 Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to set-off defences, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off claims will not require significant additional work.

<sup>1</sup> The fees for a sole arbitrator represent 40% of the fees for a three-member arbitral tribunal.

<sup>2</sup> This is a contribution, in the maximum amount of CHF 50'000, to the administrative costs of Aerosuisse, in addition to the Registration Fee. In the event of discontinuation of the arbitral proceedings (Article 39, paragraph 1), Aerosuisse may, in its discretion, reimburse all or part of the Administrative Costs.

- 2.5 Interest claims shall not be taken into account for the calculation of the amount in dispute. However, when the interest claims exceed the amounts claimed in principal, the interest claims alone shall be considered in calculating the amount in dispute.
- 2.6 Currencies other than the Swiss franc shall be converted into Swiss francs at the average rate of exchange between the date when the Notice of Arbitration is received by Aerosuisse and the date when the final award is made. For the purpose of determining the Registration Fee under Section 1 of this Appendix B, the rate of exchange shall be that of the date when the Notice of Arbitration is received by Aerosuisse.
- 2.7 If the amount in dispute is not quantified, the Arbitrators' fees and Aerosuisse's Administrative costs shall be fixed by the arbitral tribunal, taking into account all relevant circumstances.
- 2.8 Where the parties do not agree to refer the case to a Sole arbitrator as provided for by Article 42, paragraph 2 (Expedited Procedure), the fees of the three arbitrators shall be determined in accordance with the above Schedule of the Costs of Arbitration but shall in no event be less than the fees resulting from the application of an hourly rate of CHF 350 (three hundred fifty Swiss francs).

### **3. Arbitrators' expenses**

The expenses of the arbitrators shall relate to the actual disbursements for the arbitration, such as expenses relating to: travel (first class airfare accepted only for distances exceeding 4000 kilometres), accommodation, meals (if in home city, only meals among arbitrators are taken into account), taxi, communications costs, and any other costs related to the conduct of the proceedings (such as rental of hearing rooms, court reporting services, interpreters, etc.). Aerosuisse may issue general guidelines to the arbitrators for the accounting of their expenses.

### **4. Income earned on deposits made by the parties**

In consultation with the parties, the arbitral tribunal may invest the deposits made by the parties, taking into account market conditions and criteria of prudent and secure investment. When deciding whether to make such investments, the arbitral tribunal shall also have due regard to the possible need to make the deposited funds available immediately. Any income earned shall be included in the final computation of the costs of the arbitration in favour of the party or parties having made the deposit or deposits so invested.

## APPENDIX C: Arbitrators' fees

### Sole Arbitrator

Amount in dispute (in Swiss francs)	Administrative costs	Sole Arbitrator	
		Minimum	Maximum
0 - 300'000	-	12'000	36'000
300'001 - 600'000	-	12'000 + 2% of amount over 300'000	36'000 + 8% of amount over 300'000
600'001 - 1'000'000	-	18'000 + 1.5% of amount over 600'000	60'000 + 6% of amount over 600'000
1'000'001 - 2'000'000	-	24'000 + 0.6% of amount over 1'000'000	84'000 + 3.6% of amount over 1'000'000
2'000'001 - 10'000'000	4'000 + 0.2% of amount over 2'000'000	30'000 + 0.38% of amount over 2'000'000	120'000 + 1.5% of amount over 2'000'000
10'000'001 - 20'000'000	20'000 + 0.1% of amount over 10'000'000	60'400 + 0.3% of amount over 10'000'000	240'000 + 0.6% of amount over 10'000'000
20'000'001 - 50'000'000	30'000 + 0.05% of amount over 20'000'000	90'400 + 0.1% of amount over 20'000'000	300'000 + 0.2% of amount over 20'000'000
50'000'001 - 100'000'000	45'000 + 0.01% of amount over 50'000'000	120'400 + 0.06% of amount over 50'000'000	360'000 + 0.18% of amount over 50'000'000
100'000'001 - 250'000'000	50'000	150'400 + 0.02% of amount over 100'000'000	450'000 + 0.1% of amount over 100'000'000
> 250'000'000	50'000	180'400 + 0.01% of amount over 250'000'000	600'000 + 0.06% of amount over 250'000'000

## APPENDIX C: Arbitrators' fees

### Three Arbitrators

Amount in dispute (in Swiss francs)		Administrative costs	Three-member arbitral tribunal	
			Minimum	Maximum
0 -	300'000	-	30'000	90'000
300'001 -	600'000	-	30'000 + 5% of amount over 300'000	90'000 + 20% of amount over 300'000
600'001 -	1'000'000	-	45'000 + 3.75% of amount over 600'000	150'000 + 15% of amount over 600'000
1'000'001 -	2'000'000	-	60'000 + 1.5% of amount over 1'000'000	210'000 + 9% of amount over 1'000'000
2'000'001 -	10'000'000	4'000 + 0.2% of amount over 2'000'000	75'000 + 0.95% of amount over 2'000'000	300'000 + 3.75% of amount over 2'000'000
10'000'001 -	20'000'000	20'000 + 0.1% of amount over 10'000'000	151'000 + 0.75% of amount over 10'000'000	600'000 + 1.5% of amount over 10'000'000
20'000'001 -	50'000'000	30'000 + 0.05% of amount over 20'000'000	226'000 + 0.25% of amount over 20'000'000	750'000 + 0.5% of amount over 20'000'000
50'000'001 -	100'000'000	45'000 + 0.01% of amount over 50'000'000	301'000 + 0.15% of amount over 50'000'000	900'000 + 0.45% of amount over 50'000'000
100'000'001 -	250'000'000	50'000	376'000 + 0.05% of amount over 100'000'000	1'125'000 + 0.25% of amount over 100'000'000
> 250'000'000		50'000	451'000 + 0.025% of amount over 250'000'000	1'500'000 + 0.15% of amount over 250'000'000



