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Conciliation Rules

[As amended under the Arbitration
and Conciliation act, 1996]

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INDEX OF CONTENTS FOR CONCILIATION RULES

Article No.	Heading / Title	Page No.
Part 1	Abbreviation	2
Part 2	Rules	4
Article I	Appointment of Conciliator	4
Article II	Commencement of Conciliation Proceedings	5
Article III	Submission of statement to Conciliator	5
Article IV	Role of Conciliator	6
Article V	Communication between Conciliator And parties	7
Article VI	Case Manager Assignment	8
Article VII	Venue	9
Article VIII	Confidentiality	9
Article IX	Evidence and Admissibility	10
Article X	Disclosure of Information	10
Article XI	Settlement Agreement and Conciliators Award	11
Article XII	Appointment of experts	12
Article XIII	Conclusion, Suspension and Termination	12
Article XIV	Language	13
Article XV	Judicial Intervention	13
Article XVI	Representation and Support	13
Article XVII	Fees	14
Article XVIII	Costs	14
Article XIX	Exclusion of Liability	15
Article XX	Deposits	16

PART 1

ABBREVIATION

‘ACT’; ‘Act’; ‘the Act’; ‘THE ACT’; ‘the Act, 1996’	means the Arbitration and Conciliation Act, 1996 or any other law that may be enacted specifically for the purpose of Conciliation in India or in any other country/ territory, as may be applicable on a case to case basis.
Advocate	means an Advocate as defined under the Advocates Act, 1961 of India or any lawyer or attorney licensed to practice under the law of any other country.
‘Arbitration Court’; ‘The Arbitration Court’; ‘the Arbitration Court’	means; or Arco Dispute Resolution Centre; or an institutional service provider in Alternative Dispute Resolution (ADR); External Dispute Resolution (EDR); Online Dispute Resolution (ODR); or an independent ADR institution; or a division of Arco Dispute Resolution Private Limited.
Code of Conduct	shall mean the code of ethics and conduct that the DRPs shall abide for the duration of the case resolution process.
Conciliation	means the process by which a conciliator who is appointed by parties or by the Arbitration Court or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Act in so far as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.
Conciliation Agreement	means a written agreement prepared by the Conciliator setting forth the terms of agreement mutually signed and subscribed by both the parties.
Conciliation Rules	shall mean the rules and guidelines governing the process of conciliation initiated, pursued, adjourned, resolved, concluded and completed of Arco Dispute Resolution Centre.
Conciliator	A conciliator, also called an administrative judge, is responsible for helping 2 (two) parties come to an agreement or negotiate terms outside of the court. Conciliators act as neutral entities between opposing parties and work to ensure the parties to settle their dispute without turning to a court trial.
Cost	means the fees of the conciliator and any assistance provided and fee and charges for any administrative assistance shall be fixed by the Arbitration Court.
Court	shall have the same meaning as per Section 2(e) of the Arbitration and Conciliation Act, 1996.
Counsel	shall refer to persons with appropriate qualification in law and duly enrolled or admitted to a Bar Council or Association of any country,

	recognized under the law of such country, with license or permission to practice law. This term shall mean and include advocates, solicitors, barristers and attorneys at law.
Data	shall mean any information capable of being stored, retrieved, copied, transmitted in any form, including, but not limited to, typed, printed or converted to digital format, which may comprise of text, images, sounds, videos or any other content, whether live or not.
Dispute Resolution Clause	shall mean the pre-existing dispute resolution clause contained in a contract or agreement or a subsequent agreement between Parties to refer in case of dispute governed in accordance with the Conciliation Rules.
Dispute Resolution Professional ('DRP')	means impartial or a natural expert who will act as neutral and provide and manage the concerned parties with case resolution services.
Dispute Resolution Professional Review Committee	means expert's committee that shall resolve any queries or issues related to the procedures or rules but not limited to relating to conflict, replacement or recusal of the DRP appointment for any case referred.
Entity	shall mean and include individuals, private limited companies, public limited companies, partnership firms, associations, association of persons, societies, limited liability partnerships, corporate bodies, government, government bodies, state undertakings, trustees and non - governmental organizations, local bodies and corporations.
Invitation to conciliate	shall mean the invitation sent by 1 (one) party to another party to participate in the conciliation proceedings under Arco Dispute Resolution Centre Rules.
Online filing	means filing pleadings (including claim statements, written statements, applications etc.), documents in support of the pleadings and any other document or record of facts in digital format, uploaded in an appropriate readable manner, by the parties using any remote computer/ device, as provided under Arco Dispute Resolution Centre Rules.
ODR	refers to Online Dispute Resolution and is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties.
Party or Parties	refers to a person/persons or entity who takes part in conciliation proceedings.
Pre-Conciliation Call	shall mean introductory call made by the Case Manager to the parties and/or authorised representatives in relation to discuss or convey the details of the conciliation process for the dispute.
Remote Hearing	shall mean hearing that takes place using technology, rather than in a courtroom premise. In such hearing judges, parties, legal/ authorised representatives and/or witnesses ("participants") do not gather physically at the same location but normally connect through video link facility or telephonic mechanism.

PART 2

RULES

ARTICLE I

Appointment of Conciliator

- a. There shall be 1 (one) conciliator unless the parties have agreed that there shall be 3 (three) conciliators.
- b. The parties may agree to enlist the assistance of the Arbitration Court in connection with the appointment of conciliator, and in particular,
 - a party may request the Arbitration Court to recommend the names of suitable individuals to act as conciliator; or
 - where the agreement between the parties provides for the appointment of a conciliator by the Arbitration Court, a party may request the Arbitration Court in writing to appoint a conciliator.
- c. Where a request in pursuance of clause (a) or clause (b), is made to the Arbitration Court, the party making the request shall send to the Arbitration Court,
 - a copy of the invitation to conciliate;
 - a copy of the acceptance by the other party;
 - a copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by conciliation;
 - any qualifications required of the conciliator;
 - any additional information, if required, by the Arbitration Court.
- d. In recommending or appointing an individual to act as conciliator, the Arbitration Court shall consider the following criteria:
 - any qualification required of the conciliator by the agreement of the parties;
 - such considerations as are likely to secure the appointment of an independent and impartial conciliator; and

- where the parties are of different nationalities, the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.
- e. A successor conciliator will be appointed in the manner in which his/ her predecessor had been appointed.

ARTICLE II

Commencement of Conciliation Proceedings

- a. According to Section 62 of the Act, the conciliation proceedings are initiated by 1 (one) party by sending a written invitation to conciliate.
- b. The invitation should contain clear information about the dispute. And the conciliation proceedings are started when the other party accepts the invitation.
- c. If the other party rejects the invitation, then the conciliation proceedings do not take place.
- d. If the party who sends the invitation does not receive a reply by the other party within 7 (seven) days from the date the invitation or in the time mentioned in the invitation then he/ she can elect to treat this as rejection and inform the other party accordingly in writing.

ARTICLE III

Submission of Statement to Conciliator

- a. According to Section 65 of the Act, it is stated that after the appointment of the conciliator, the conciliator may ask both the parties to submit a written document stating the basic facts of the disputes and the issues of each party, should submit the statements to the conciliator. The conciliator may further ask each party to submit necessary evidence in support and any other additional information. The copies of these should be sent to the other parties as well.
- b. After the appointment of the Conciliator, within 7 (seven) days both Parties shall make their brief written statements indicating the nature of the dispute and points of

settlement, which will be shared with each party through the Arbitration Court ODR Platform.

- c. The Conciliator may require the parties to furnish supplementary and additional information with the documents available in support of them, as it deems fit and may make such submitted information / documents available to the other Party.
- d. In case both the parties agree mutually, they may present their joint statement/stands/terms and conditions agreed upon and the same shall be taken on record by the Conciliator for her/his due consideration during conciliation proceedings.
- e. In case of a co-conciliation, parties are required to send the statement and its related documentation to all appointed Conciliators.
- f. The Conciliator may, upon his/ her appointment, request each party to submit to him/ her and the Arbitration Court a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim. Each party shall send a copy of such statement to the other party.

ARTICLE IV

Role of Conciliator

- a. The Conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- b. The Conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- c. The Conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the Conciliator hear oral statements, and the need for a speedy settlement of the dispute.

- d. The Conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.

ARTICLE V

Communications between conciliator and parties

- a. Until the Case Manager is assigned, all communications relating to the process must be directed to legal@arbitrationcourt.co.in. Thereafter, all communications should be in accordance with the procedure as informed by the Case Manager in the Pre-Conciliation Call.
- b. Any application, agreement, request, instruction, direction, response, notice, or other communication required or referred to in these rules, must be made in writing through the Arbitration Court platform.
- c. All notifications, documents, or information provided to the Conciliator by a Party must simultaneously be communicated by the disclosing party to every other party to the case.
- d. The conciliator may invite the parties to meet him/ her or may communicate with them orally or in writing. He/ she may meet or communicate with the parties together or with each of them separately.
- e. Unless the parties have agreed upon the place where meetings with the Conciliator are to be held, such place shall be determined by the Conciliator, taking into consideration the circumstances of the conciliation proceedings:

Provided that where administrative assistance by the Arbitration Court, the place where meetings with Conciliator are to be held shall be determined in consultation with the Arbitration Court.

ARTICLE VI

Case Manager Assignment

- a. Within 24 (twenty four) hours of the reference of a conciliation proceeding to Arbitration Court by 1 (one) of the party to the dispute, Arbitration Court shall notify the parties, which lists out the details of the Case Manager and the particulars of the Pre-Conciliation Call to offer a brief overview of the process, how to use the Arbitration Court platform and answer any preliminary queries that the parties may have.
- b. The Pre-Conciliation Call shall occur within 7 (seven) days of the Conciliation notice, based on the availability and option of the Parties.
- c. The Case Manager shall be available for any administrative, secretarial and Arbitration Court related queries that the parties may have for the duration of the case.
- d. The Case Manager will inform the parties of important dates relating to the submission of statement, the appointment of the Conciliator and shall assist the parties in arriving at a 1st first date to commence the conciliation proceeding.
- e. The Case Manager shall also provide the duly signed conflict of interest agreement by the Conciliator appointed.
- f. There shall be 1 (one) Conciliator appointed by Arbitration Court, unless (i) the Conciliator appointed requests a co-conciliation based on a perusal of the case or (ii) owing to the complexity of the case, the Arbitration Court is of the opinion that a co-conciliation is necessary.
- g. Based on the case requirements, the Arbitration Court has sole discretion in assignment of a case to a DRP, parties are free to make a request for a Conciliator who is a part of the DRPs, however, the final assignment decision shall be with the Arbitration Court.
- h. In the conciliation notice, the Arbitration Court shall provide a disclosure agreement, outline any or no prior professional or personal engagement or affiliation between the parties and the DRPs.
- i. Parties may raise any substantial conflict concerns against the Conciliator identified and appointed as DRP for the case within 24 (twenty four) hours of the Pre-Conciliation Call.

Only if a substantial conflict issue (as defined under Arbitration Court Code of Conduct) is raised, will a change in DRP be entertained.

ARTICLE VII

Venue

- a. The parties have freedom to fix by their agreement the place where meetings with the conciliator are to be held. Where there is no such agreement, the place of meeting will be fixed by the conciliator after consultation with the parties. In doing so the circumstances of the conciliation proceedings will have to be considered.
- b. With the help and assistance of digital platforms, the Arbitration Court would be able to resolve various genres of commercial disputes in the fastest manner possible, with least human intervention and in the most affordable manner.
- c. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed upon by the parties and tested with all participants in advance of any meetings or hearings.

ARTICLE VIII

Confidentiality

- a. All parties are required to sign the Arbitration Court terms and conditions which outlines the confidentiality and privacy requirements relating to all information being shared during any case resolution process. The general terms of use can also be referred to on the Arbitration Court website at: www.arbitrationcourt.co.in
- b. Each person involved in the conciliation, including, in particular, the Conciliator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the Conciliator, shall respect the confidentiality of the conciliation and may not, unless otherwise agreed by the parties and the Conciliator, use or disclose to any outside party any information concerning, or obtained in the course of the conciliation.
- c. Unless otherwise agreed by the parties, each person involved in the conciliation shall, on the conclusion of the conciliation, as per these rules, return, to the party providing it, any

brief, document or other materials supplied by a party, without retaining any copy of such materials.

- d. The Conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement.

ARTICLE IX

Evidence and Admissibility

- a. The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,
- b. Views expressed or suggestions made by a Party in respect of a possible settlement of the dispute;
- c. Admissions made by a Party in the course of the conciliation proceedings;
- d. Proposals made by the Conciliator; and
- e. The fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
- f. The Conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

ARTICLE X

Disclosure of Information

When the Conciliator receives factual information concerning the dispute from a party, he/she shall disclose the substance of that information to the other parties in order that the other party may have the opportunity to present any explanation which he/ she considers appropriate;

Provided that when a party gives any information to the Conciliator subject to a specific condition that such information is to be used only by the Conciliator subject to the conciliation proceedings, the Conciliator shall not disclose that information to the other party. Any disclosure during the process shall be made with the express oral consent of the disclosing party.

ARTICLE XI

Settlement Agreement and Conciliators Award

- a. When the parties reach and sign the settlement agreement, it shall be final and binding on the parties in the manner of a valid binding contract. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.
- b. When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he/ she shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the Conciliator may reformulate the terms of a possible settlement in the light of such observations.
- c. If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the Conciliator may draw up, or assist the parties in drawing up, the settlement agreement.
- d. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitrator under Section 30 of the Arbitration and Conciliation Act, 1996.

ARTICLE XII

Appointment of Experts

During the conciliation proceeding, the Conciliator and/or the parties are free to call upon any experts with technical or area specific knowledge. Any costs of appointing experts shall be borne equally by both parties or by the party appointing such an expert.

ARTICLE XIII

Conclusion, Suspension and Termination

- a. The conciliation shall be considered completed or concluded:
 - by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
 - by the option of the Conciliator if, further efforts at conciliation are unlikely to lead to a resolution of the dispute; or
 - by a written declaration of a party at any time after the discussion of the parties with the Conciliator.
- b. Upon the conclusion of the conciliation, the Conciliator shall promptly send to the Case Manager a notice in writing that the conciliation is terminated and shall indicate the date on which it has concluded, whether or not the conciliation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The Conciliator shall inform the parties regarding such a requirement and reinforce the confidentiality terms.
- c. Arbitration Court shall keep the said notice of the Conciliator confidential and shall not, without the written authorization of the parties, disclose either the existence or the result of the conciliation to any person.
- d. Arbitration Court may, however, include information concerning the conciliation in any aggregate statistical data that it publishes concerning its activities, provided that such

information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

- e. In the event that the conciliation is inconclusive owing to parties or the Conciliator being of the opinion that the process is not appropriate for the case, parties have a choice to refer the case to conciliation under the Arco Dispute Resolution Centre's Conciliation Rules. Unless otherwise agreed by the parties, the Conciliator shall not act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings.

ARTICLE XIV

Language

The conciliation process shall be conducted in English. At the option of the Conciliator and/or with the mutual consent of all parties to the conciliation process, a translator may be appointed as an expert to assist in the conciliation process. The parties shall bear equal costs of appointing an expert translator.

ARTICLE XV

Judicial Intervention

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings.

ARTICLE XVI

Representation and Support

- a. Each party must be represented at all conferences and conciliation sessions by a person with authority to make final and conclusive decisions.
- b. Parties may be represented at conciliation by any person, whether legally trained or not, provided that the engagement of a representative by a party does not threaten or bring into

question the integrity of the conciliation due to a past or present relationship with any party or the Conciliator, unless none of the party's object after proper disclosure.

- c. Parties must advise the Case Manager, the Conciliator and every other party of the names and relevant details of those persons who will be accompanying them at any conciliation session not less than 7 (seven) days prior to the session.
- d. All additional persons will be required to sign a confidentiality agreement that forms a part of the Arbitration Court's terms and conditions as a condition of their attendance at the conciliation.
- e. The Conciliator may withhold approval for an additional representative or support person to attend the conciliation where the Conciliator, in his or her sole discretion, considers their attendance could threaten or bring into question the integrity of the conciliation.

ARTICLE XVII

Fees

- a. The parties must pay Arbitration Court the relevant fees as informed and detailed at the Pre-Conciliation Call.
- b. Parties are jointly and severally liable for the fees and expenses of the conciliation, together with any additional costs however incurred by Arbitration Court in recovering any overdue monies, on a full indemnity basis.

ARTICLE XVIII

Costs

- a. Costs shall be borne equally by all parties unless the settlement agreement or a pre-existing arrangement informed to the Case Manager prior to the commencement of the conciliation agreement states otherwise.
- b. Upon termination of the conciliation proceedings, the Conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The fee of the Conciliator and

any assistance provided and fees and charges for any administrative assistance shall be fixed by the Conciliator in accordance with the Schedule.

- c. Provided that may, on request from the Conciliator, fix the fee of the Conciliator at a figure higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.
- d. For the purpose of Rule 18, “costs” means costs relating to-
 - the fee and expenses of the Conciliator and witnesses requested by the Conciliator with the consent of the parties;
 - any expert advice requested by the Conciliator with the consent of the parties;
 - any assistance provided pursuant to Rule 18 (b);
 - any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.
- e. Where more than 1 (one) Conciliator is appointed, each Conciliator shall be paid separately the fee set out in the Schedule.
- f. The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

ARTICLE XIX

Exclusion of Liability

- a. Parties, together and separately, release and discharge the conciliators, members of the DRP and Arbitration Court, its agents and employees, from any liability which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties or powers, whether under the procedural law of the conciliation, under these rules, or otherwise, unless the act or omission is the fraudulent act of the conciliator, Arbitration Court, its agents or its employees. Any DRP, Arbitration Court or any agent or employee of Arbitration Court who has not acted fraudulently and

is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided in these rules.

ARTICLE XX

Deposits

- a. The Arbitration Court may direct each party to deposit an equal amount as an advance for the costs referred to in Rule 18 which he/ she expects will be incurred.
- b. During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.
- c. If the required deposits are not paid in full by both the parties within 30 (thirty) days, the Arbitration Court through Conciliator or the Case Manager may suspend the conciliation proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.
- d. Upon termination of the conciliation proceedings, the Arbitration Court shall render an accounting to the parties of the deposits received and shall return any unexpected balance to the parties.

Conciliation Rules of Arco Dispute Resolution Private Limited

For more details:

Email: legal@arbitrationcourt.co.in

www.arbitrationcourt.co.in