

## [Convenience Translation]

# Rules of Conciliation

Attorney and Business Mediator Dr. Andreas May

## Preamble

Attorney and Business Mediator Dr. Andreas May (hereinafter also referred to as "Conciliator") has been officially recognised by the Higher Regional Court Frankfurt am Main as a conciliation body ("*Gütestelle*") within the meaning of Section 794 Para. 1 No. 1 ZPO (*German Code of Civil Procedure*). It is the task of a conciliation body to encourage out-of-court dispute resolution and to make recourse to the courts dispensable in suitable cases (Section 7 HSchlichtG (*Hessian law pertaining to the regulation of extrajudicial dispute conciliation*)). By recourse to the conciliation body, the statute of limitations can be suspended according to Section 204 Para. 1 No. 4 BGB (*German Civil Code*). Based on the agreements recorded before the conciliation body, enforcement can be pursued according to Section 794 Para. 1 No. 1 ZPO (*German Code of Civil Procedure*).

The out-of-court dispute resolution reached with the Conciliator's support is based on these Rules of Conciliation, unless otherwise mutually agreed among all parties involved in the procedure.

## § 1

### Principles of Procedure

- (1) Conciliation is a non-public procedure for a mutually agreed dispute resolution. The Conciliator acts as a neutral and independent intermediary and supports the parties in developing future-oriented solutions for their conflicts. Within the scope of his conciliation activities, the Conciliator is not bound by instructions. Upon request of all parties, the Conciliator can also develop non-binding dispute resolution proposals and submit them to the parties jointly or individually. However, the Conciliator is not authorised to take any legally binding decisions.
- (2) The parties involved in the conciliation procedure are given the opportunity to submit facts and legal views either personally or through authorised agents, and to comment on the submissions of the respective other party (Section 9 Para. 2 No. 2 Hessian law pertaining to the regulation of extrajudicial dispute conciliation).
- (3) The provisions set forth in Sections 2 to 4 of the Mediation Act analogously apply to the conciliation procedure, provided they do not conflict with mandatory statutory regulations and no other arrangements have been expressly agreed with the parties.

## **§ 2**

### **Acting as Conciliator**

- (1) The Conciliator is prohibited from performing conciliatory activities in the following matters (cf. Section 9 Hessian law pertaining to the regulation of extrajudicial dispute conciliation):
- a) in matters in which he himself is a party or in which he is jointly entitled, jointly liable, or liable to recourse;
  - b) in matters of his spouse or fiancée, even if the marriage or engagement no longer exists;
  - c) in any matters of a person with whom he is related in straight line of descent or by marriage, related in collateral line up to the third degree or related by marriage up to the second degree, even if the marriage by which such affinity has been established no longer exists;
  - d) in matters in which he is/was appointed as counsel or lawyer of a party, or is/was entitled to act as legal representative of a party;
  - e) in matters of a person with whom he is/was employed with remuneration or for which he acts/acted as member of the board of directors, supervisory board or an equivalent corporate body.
- (2) In analogous application of Section 3 of the Mediation Act, the Conciliator is also prohibited from acting in this capacity if another person connected with him in joint professional practice or sharing joint office premises has acted for one of the parties in the same matter prior to the conciliation procedure; this shall not apply in individual cases where the parties involved, after having been given comprehensive information, grant their consent, and where this does not conflict with considerations relating to the administration of justice.

## **§ 3**

### **Initiation of Conciliation**

- (1) The conciliation procedure is initiated upon application, which has to be submitted in writing or by fax to the Conciliator at the following address:

Dr. Andreas May  
c/o May und Partner  
Bockenheimer Landstraße 31  
D-60325 Frankfurt am Main  
Fax +49 69 7140 239-99

The application has to contain the following information: Names and addresses of the parties, the subject matter of the dispute and the Applicant's signature.

- (2) The Conciliator does without undue delay provide the Applicant with a confirmation of receipt of the application for the performance of a conciliation procedure, stating the date of receipt.
- (3) The Conciliator serves the application on the other party/parties named in the application, asking whether there is common agreement with the performance of a conciliation procedure. If and (in case of several parties) to the extent that the other party/parties agree to conciliation, the Conciliator will invite the parties to a hearing. Individual discussions are possible if the parties agree.

#### **§ 4**

### **No Court or Arbitration Proceedings during Conciliation**

The Parties undertake to start neither court proceedings nor (if alternatively agreed) arbitration proceedings until the end of the conciliation procedure. This does not affect the right of the parties to initiate summary proceedings in court.

#### **§ 5**

### **Termination of Conciliation**

The conciliation procedure is terminated when

- (1) one of the parties declares the end of the conciliation procedure after the first hearing,
- (2) the parties by mutual consent declare the end of the conciliation procedure,
- (3) the Conciliator declares the end of the conciliation procedure because in his opinion an agreement between the parties cannot be expected, or
- (4) the dispute has not been resolved within three months of the receipt of the application for conciliation, or within a different period agreed between the parties in writing.

#### **§ 6**

### **Naming of Witnesses, Information and Evidence**

- (1) Insofar as any subject matter of conciliation is concerned, the parties agree not to name the Conciliator or any person involved by him as a witness in a later court action or arbitration proceeding.

- (2) If the parties wish that the participation in the conciliation shall neither improve nor impair their position with regard to information and evidence, it can be additionally regulated that information or evidence of which the parties have for the first time gained knowledge within the scope of the conciliation procedure and of which they would not have gained knowledge without their participation in the conciliation procedure may not be introduced in a court action or in arbitration proceedings. Furthermore, it can be agreed that with regard to these excluded facts none of the parties may name their representatives and employees as well as all other participants in the conciliation as witnesses, and that any applications for interrogation of a party are insofar also inadmissible. The foregoing restrictions, however, shall apply only if the parties expressly agree thereon.

## **§ 7 Costs**

- (1) The costs of the application for conciliation are borne by the Applicant.
- (2) The costs of the conciliation procedure are to be equally shared between the parties, unless a separate cost regulation is expressly agreed. With respect to the costs, the parties are jointly and severally liable to the Conciliator as joint and several debtors. Each Party shall bear the costs of its own legal advisers in connection with the conciliation procedure.
- (3) In case of a value of the matter in dispute of up to EUR 500,000.00, the costs of the application for conciliation amount to EUR 500.00 plus expenses, costs of service of documents and statutory value added tax. In case of a value of the matter in dispute exceeding EUR 500,000.00, the costs of the application for conciliation amount to EUR 1,000.00 plus expenses, costs of service of documents and statutory value added tax. If the application is to be served upon more than one party, the costs of the application for conciliation shall for each further party increase by EUR 250.00 plus expenses, costs of service of documents and statutory value added tax.
- (4) The conciliation procedure is charged on an hourly basis. The Conciliator's hourly rate amounts to EUR 300.00 plus statutory value added tax.
- (5) The foregoing costs shall apply as far as no deviating written fee agreement has been made in the individual case. The Conciliator is generally open to discuss alternative fee models (e.g. reduced hourly rates in combination with a settlement fee based on the RVG (German Act governing Lawyers' Fees)).
- (6) The Conciliator may request reasonable advance payments before commencing or continuing his activities.