

(Mediation Centre of the Chamber of Commerce and Industry for Munich and Upper Bavaria)

## Mediation Procedure

### Preamble

Mediation is a confidential and structured process through which parties, with the aid of one or more mediators<sup>1</sup>, voluntarily and independently seek an amicable resolution of their dispute.

The IHK-MediationsZentrum (Mediation Centre of the Chamber of Commerce and Industry for Munich and Upper Bavaria) was established in 2006. The Centre:

- provides comprehensive advice on mediation and other methods of alternative dispute resolution,
- provides model clauses for alternative dispute resolution,
- supports the initiation of the mediation process,
- provides information on the selection of mediators and can recommend and appoint qualified mediators,
- administers mediation,
- provides suitable rooms with facilities for negotiation,
- issues enforceable settlement agreements as a recognised conciliation office.

The negotiations may be conducted either in the presence of a mediator or by way of telephone through a mediator.

The IHK-MediationsZentrum is located at Max-Joseph-Straße 2, 80333 München.

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<sup>1</sup> The term 'mediator' used in this Procedure refers to a male or female mediator, and, so far as the context requires, means the singular or plural (co-mediators).

## **§ 1 Jurisdiction**

1. This Mediation Procedure applies to business disputes of all types where the parties have agreed to use a mediation process according to this Procedure. Such an agreement can be concluded in writing at any time. If required, the MediationsZentrum can assist the parties with the agreement.
2. The MediationsZentrum has competence when at least one of the parties is a member of a German Chamber of Commerce. In this case the MediationsZentrum also has competence concerning disputes relating to a company's internal matters, relevant succession matters, or corporate law matters.
3. Unless the parties have otherwise agreed, the valid Mediation Procedure applies at the time the mediation process begins.
4. The MediationsZentrum also has competence when it has been agreed that the Conciliation Rules of the Joint Conciliation Office of the IHK München and the Munich Bar Association for the settlement of business disputes dated of 01.07.1998 (Verfahrens- und Schlichtungsordnung vom 01.07.1998 der gemeinsamen Schlichtungsstelle der IHK München und des Münchener Anwaltvereins e.V. zur Beilegung kaufmännischer Streitigkeiten) applies, or the former Rules of Procedure (Verfahrensordnung des MediationsZentrums) of the MediationsZentrum dated December 2005 apply.

## **§ 2 Initiation and Commencement of the Procedure**

1. The procedure is initiated by an application to the MediationsZentrum for the administration of the mediation process by at least one of the parties. The application must be in writing, sent by fax or electronically pursuant to § 126 a German Civil Code (BGB) and delivered to the following address:

IHK-MediationsZentrum

Max-Joseph-Straße 2      Telephone: +49 (0)89 5116-1490 or 5116-1254

80333 München                      Fax: +49 (0)89 5116-81490 or 5116-81254

2. The application should contain:
  - a) the name, address, telephone number and any other contact details of the parties and any legal representative;

- b) a short, clear statement of the facts;
  - c) so far as is possible, information on the amount of the claim;
  - d) the mediation agreement, if any;
  - e) a statement as to why the Mediation Procedure should apply, to the extent that this is not apparent from the existing mediation agreement;
  - f) a statement whether the parties themselves will appoint the (one or more) mediator(s), or if the MediationsZentrum shall select and appoint the mediator(s);
  - g) information on the required profile of the mediator(s).
3. The MediationsZentrum shall send the application with all submitted documents to the other parties, to the extent that these have not been specifically marked as only for the mediator. The other parties have the opportunity to present brief facts and circumstances from their perspective to the MediationsZentrum.

The mediation process can only be progressed when all parties have agreed with the process; this must occur within the time period specified by the MediationsZentrum, which is normally 2 weeks.

4. The mediation process begins when requirements of §§ 1 and 2 Nr. 1-3 are met and the process fee has been paid. The MediationsZentrum shall inform the parties of the beginning of the process, and, where applicable, the designated mediator. At the same time, it shall send all received documents to the mediator and call on the mediator to implement the process.
5. On the basis of this Mediation Procedure a mediator contract shall be entered into between the parties and the mediator. On request, the mediator sends a copy signed by all the parties to the MediationsZentrum.
6. If the process fee is not paid pursuant to § 2 Nr. 4 Sentence 1 despite a reminder, the MediationsZentrum informs the parties that the mediation will not be conducted.

### **§ 3 The Mediator**

1. The role of the mediator is limited to the management and conduct of the mediation process. The mediator is obliged to treat all parties equally.

2. The parties may themselves select one or more mediators. In this regard, the MediationsZentrum can advise the parties. The mediator must fulfil the requirements of the Mediator Regulations.
3. At the request of the parties, the MediationsZentrum proposes suitable mediators from the mediator pool for selection.
4. When the parties wish a direct appointment, or within 3 weeks from the beginning of the process (§ 2 Nr. 4) are unable to agree, the mediator shall be appointed by the MediationsZentrum taking into account the views of the parties.
5. The mediator must declare in writing to the MediationsZentrum that he or she accepts this Mediation Procedure.
6. The parties may change a mediator at any time by mutual agreement. This is to be communicated to the MediationsZentrum.
7. The mediator shall disclose to the parties all circumstances which may impair his or her independence and neutrality. He or she may only act as a mediator in such circumstances if the parties expressly agree. In this case, the further provisions of § 3 Abs. 2 - 5 of the Mediation Law (Mediationsgesetz) apply to the mediator. A mediator is obliged to consider if such circumstances exist. In case of doubt, the mediator has to immediately notify the MediationsZentrum.

#### **§ 4 Conduct of the Process**

1. The mediation process is not public.
2. The mediator is responsible for the conduct of the mediation. He or she promotes the settlement of the dispute in any appropriate manner. All parties are to take heed of an expedited conduct of the process.
3. The mediator invites one or more hearing date(s) in which the parties personally, or their representative with full authority, participate. The time and place of the hearing shall be fixed by the mediator after consultation with the parties.
4. Third parties can only be involved in the mediation with the consent of all parties.

5. The mediator shall satisfy him or herself that the parties have understood the principles and conduct of the mediation process and are voluntarily participating in the mediation.
6. As a basic principle, the entire mediation process takes place in the presence of all involved parties. Provided that all parties agree, the mediator may hold a confidential discussion with one party at a time (one-on-one discussion). Information thereby disclosed to the mediator may only be disclosed by the mediator to another party with the express consent of the party disclosing that information.
7. At the request of all parties, the MediationsZentrum can introduce another form of alternative dispute resolution.
8. The mediator is not required to keep records, provided that this is not otherwise stipulated in the mediation contract.

## **§ 5 Termination of the Process**

1. The process ends:
  - a) by the written statement by a party or the mediators to the MediationsZentrum, notifying that the mediation is terminated with immediate effect,
  - b) when the parties have entered into a dispute settlement agreement,
  - c) when the parties have entered into a partial dispute settlement agreement and declare in writing that they do not want to continue the process in relation to the remaining part(s) of the dispute.
2. The MediationsZentrum gives written notice to all parties and the mediator of the termination of the process. Failing an agreement, the MediationsZentrum issues upon request written certification of the unsuccessful mediation attempt.

## **§ 6 Final Agreement**

1. The mediator will ensure in the case of an indicated settlement, that the parties make the agreement in the knowledge of the facts and understand its contents. He or she shall inform the parties who participate in the mediation

without professional advice of the opportunity to have the agreement reviewed by external advisers if required.

2. To the extent that a final agreement is concluded by the parties, this shall be recorded in writing. The original of the final agreement will be kept by the MediationsZentrum; the parties to the proceedings will each receive a copy.
3. The MediationsZentrum issues upon the request of a party an enforceable instrument concerning the final agreement, in so far as it is a recognised conciliation office pursuant to § 794 Abs. 1 Nr. 1 of the German Code of Civil Procedure (ZPO) and the legal requirements have been met. The requesting party shall bear the cost of enforcement.

### **§ 7 Duty of Secrecy and Confidentiality**

1. The mediator and staff involved in the conduct of the mediation process are obligated to secrecy pursuant to § 4 of the Mediation Act (Mediationsgesetz).
2. The parties and the mediator can specify further confidentiality or secrecy obligations in the contract.

### **§ 8 Suspension of the Limitation Period and other Proceedings**

1. The limitation period for claims covered by the mediation is paused pursuant § 203 of the German Civil Code (BGB), to the extent that the legal requirements are met. As the MediationsZentrum is a recognised conciliation office pursuant to § 794 Abs. 1 Nr. 6 of the German Code of Civil Procedure (ZPO), the extension of the limitation period shall be governed pursuant to § 204 Abs. 1 Nr. 4 i.V. mit Abs. 2 of the German Civil Code (BGB).
2. The parties shall ensure that ongoing litigation or arbitration proceedings, upon which the same facts of the mediation process is based, is stayed for the duration of the mediation process and will also not be reinitiated.

This does not apply to emergency judicial procedure / injunctive proceedings.

### **§ 9 Liability**

1. The MediationsZentrum is not liable for the activities of the mediator, unless the mediator is an employee of the MediationsZentrum.

2. The liability of the mediator is governed by the statutory provisions and the mediator contract.

## **§ 10 Costs**

1. The costs of the procedure include:
  - a) any unique technology package developed by the MediationsZentrum for the mediation process in addition to expenses (typing costs, postage, room hire, drinks, etc.);
  - b) the fees of the mediator in addition to his or her expenses.
2. The MediationsZentrum will charge a one-time lump sum in accordance with the procedure set out in the attached stipulated Cost Structure. This is payable upon application. This can be refunded in whole or in part in the event of early termination of the process prior to the opening of negotiations between the parties.
3. The mediator receives a time-based fee, which depends on the Cost Structure (Attachment), and reimbursement of expenses. For this purpose an advance may be requested.
4. The parties shall bear their own costs and the costs of the proceedings in equal parts, unless the parties agree to a different apportionment of costs thereof. § 91 Abs. 3 of the German Code of Civil Procedure (ZPO) remains unaffected.
5. The parties involved in the process are responsible jointly and severally for the costs of the Mediation Centre and the mediator.

## **§ 11 Entry into Force**

This Procedure enters into force on 07.01.2013.

Attachments 1 - 2:

Cost Structure of the IHK-MediationsZentrum

Mediation clause in German and English

As of:        December 2012

## **Cost Structure of the IHK MediationsZentrum**

### **1. Schedule of Fees**

| <b>Amount in Dispute</b> | <b>Process Fees</b> |
|--------------------------|---------------------|
| up to 100.000 EUR        | 100 to 250 EUR      |
| more than 100.000 EUR    | 251 to 500 EUR      |
| more than 1.000.000 EUR  | 501 to 2.500 EUR    |

### **2. Mediators' Fees**

| <b>Amount in Dispute</b> | <b>Mediator</b> | <b>Co-Mediator</b> |
|--------------------------|-----------------|--------------------|
| up to 5.000 EUR          | 100 EUR         | -----              |
| up to 100.000 EUR        | 175 EUR         | 125 EUR            |
| more than 100.000 EUR    | 225 EUR         | 175 EUR            |

### **3. Charges for the Appointment of Mediators outside of Proceedings before the Mediation Centre (ad hoc procedure)**

For the appointment of one or more mediators outside the administration of the MediationsZentrum process, the Centre Office charges a flat rate of 75-175 EUR.

### **4. Other Costs**

The IHK München can provide rooms as required for the conduct of the mediation process. The hire of rooms located at Orleansstraße 10 – 12 (Munich) costs 50 EUR for a half day and 100 EUR for the whole day.

The fees for the issuance of an enforceable title are set according to the statutory regulations.

All amounts are exclusive of VAT if applicable.



## **Mediation Clause in German and English**

### **Mediationsklausel**

Die Parteien verpflichten sich, im Falle einer sich aus diesem Vertrag ergebenden oder sich darauf beziehenden Streitigkeit vor Klageerhebung bei einem ordentlichen Gericht (oder Schiedsgericht) eine Mediation nach den Bestimmungen des IHK-MediationsZentrums der IHK für München und Oberbayern durchzuführen.

### **Mediation Clause**

Any dispute arising out of or in connection with this contract, before suit is filed in a regular court (or court of arbitration), shall be submitted to a mediation procedure in accordance with the regulations of the IHK-MediationsZentrum of the Chamber of Industry and Commerce for Munich and Upper Bavaria.