



Common Provisions in International Arbitration Agreements

Most, if not all, international conventions and national arbitration laws require that an arbitration agreement be in writing to be valid. A lawyer experienced in handling international arbitration cases and related litigation proceedings should be consulted about the specific circumstances of any transaction before the arbitration terms for it are finalized. These are common provisions.

1. **Required Negotiations or Mediation Before Commencement of Arbitration** – The parties agree to attempt to settle amicably any controversy or claim [*related to OR arising out of*] this contract, or the breach thereof, within [*number of days*] of written notification by a party of the claim, controversy or dispute (“Dispute Notice”).
2. **Scope of the Dispute Committed to Arbitration** – Any such controversy or claim not amicably resolved within [*number of days*] of the Dispute Notice shall be [*fully and finally*] determined by arbitration.
Any [*specify type of dispute with precise language*] not amicably resolved within [*number of days*] of the Dispute Notice shall be [*fully and finally*] determined by arbitration.
Notwithstanding the foregoing, the jurisdiction of the Arbitration Tribunal shall not include [*specify type of dispute with very precise language*].
3. **Number of Arbitrators** – The number of arbitrators shall be [*one, three or another uneven number*].
4. **Appointing Authority** – The Arbitration Tribunal shall be appointed in accordance with the [*name of rules*] (“Rules”). The Arbitration Tribunal shall consist of [*uneven total number*] arbitrators, [*number*] appointed by each party and a Presiding Arbitrator appointed by [*agreement of the parties OR agreement of the party-appointed arbitrators OR title of neutral official*]. In the absence of agreement on the appointment of the Presiding Arbitrator or if either party fails to appoint its own arbitrator[s] within [*number of days from specified event*], such appointment[s] shall be made by [*title of neutral official*].
5. **Special Skills/Qualities of One or More Arbitrators** – The Sole Arbitrator shall be a [*profession*] in [*jurisdiction*].
The Presiding Arbitrator shall be qualified to practice law in [*jurisdiction*].
Each of the arbitrators shall be fluent in [*language*].
None of the arbitrators shall have performed paid services for any party during the [*number*] years prior to his/her appointment.
6. **Choice of Law** – The Arbitration Tribunal shall render the award based on [*jurisdiction*] law.
The Arbitration Tribunal shall have the power to decide a dispute [*applying general principles of international law relating to international trade and investment OR as amiable compositeurs OR ex aequo et bono*].
The Arbitration Tribunal shall be bound by strict rules of law in making its decision, and may not pronounce judgment on equitable principles or the basis of *ex aequo et bono*.
7. **Choice of Location** – The place of the arbitration shall be [*location*].
8. **Choice of Language** – The language of the arbitration shall be [*language*].
9. **Choice of Administering Institution** – The arbitration shall be administered by [*administering institution*].
10. **Choice of Arbitration Rules** – The arbitration shall be administered in accordance with the arbitration rules of [*name rules – note the ad hoc UNCITRAL Rules can be used in an arbitration administered by several of the arbitral institutions*] in effect on the date [*of this agreement OR on which the proceeding is instituted*], [*except that the following provisions shall be substituted for the rules indicated below . . .*].
11. **Interim Relief** – As soon as it is constituted, the Arbitration Tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The Arbitration Tribunal may also require the party

requesting such relief to furnish such security as the Arbitration Tribunal may deem appropriate. Both before and after the Arbitration Tribunal is constituted, a party may also apply to any competent judicial authority for interim or conservatory measures.

12. **The Award** – The award must be made by majority decision. The Arbitration Tribunal shall state the reasons for its decision in writing in the award it issues.
13. **Currency** – The award shall provide for payment of damages, if any, in *[type of currency]*.
14. **Damages and Interest** – The Arbitration Tribunal shall not be permitted to award *[punitive, exemplary, consequential or other type of]* damages. Interest shall be calculated at *[percent]* in the following way: *[state method]*.
15. **Waiver of Sovereign Immunity** – *[Party]* hereby waives sovereign immunity as to it and its property in respect to the recognition, enforcement and execution of any award rendered by an Arbitration Tribunal constituted pursuant to this agreement.
16. **Requirement for “Continued Performance” During the Arbitration** – The occurrence of a claim, controversy or dispute shall not release any party from its duty to perform its obligations hereunder unless the Arbitration Tribunal shall so order.
17. **Discovery** – The parties adopt *[for example, the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration]*.
18. **Fees and Costs** – The fees and expenses of administration and of the members of the Arbitration Tribunal *[and the parties’ expenses for attorneys’ fees, witness costs and other party expenses]* shall be *[borne equally by the parties (note: only applicable to fees and expenses of administration and arbitrators) OR divided between/among the parties as follows (add method) OR paid by such party or parties as the Arbitration Tribunal shall fix in the final award]*.
19. **Confidentiality** – The parties agree to use all possible measures to keep the existence of any dispute hereunder and any and all information concerning any arbitration proceedings and any award strictly confidential except (a) to the extent necessary to enable a party to properly exercise or enforce its rights under this agreement or under any award rendered by the Arbitration Tribunal or (b) to the extent required by applicable law or by regulations of any stock exchange or regulatory authority or pursuant to any order of court or any other competent authority or tribunal.
20. **Time Period for Concluding Arbitration** – The award shall be rendered within *[number of days]* of the date on which the Presiding Arbitrator is appointed.

Note that the various national laws governing arbitration agreements and the arbitration rules you select may contain provisions that affect your agreed terms. The validity and effectiveness of your arbitration terms must be analyzed in the context of the particular transaction and for consistency with:

- The arbitration law of the place of the arbitration
- The rules chosen for administration of arbitration
- The law on enforcement in places of likely enforcement

Squire Sanders’ international dispute resolution practice group works with clients in negotiating and drafting arbitration agreements for all types of transactions, based on our extensive worldwide experience representing clients in international arbitration and litigation proceedings.