



SWISS EXPERTS

Chambre suisse des experts judiciaires techniques et scientifiques
Schweizerische Kammer technischer und wissenschaftlicher Gerichtsexperten
Camera svizzera degli esperti giudiziari tecnici e scientifici
Swiss Chamber of Technical and Scientific Forensic Experts

EXPERT-ARBITRATOR DETERMINATION AGREEMENT

between

[Redacted]

and

[Redacted]

hereinafter, «the Parties»

and

[Redacted]

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Member of the Swiss Chamber of Technical and Scientific Forensic Experts hereinafter, «the Expert-Arbitrator»²

1. PREAMBLE

The Parties affirm that there is a dispute between them in the following matter:

[Redacted]

They have agreed to request a response from the Expert to the questions submitted to him. They do so in the expectation that the Expert-Arbitrator Determination will allow them to resolve their dispute; failing this, said Expert-Arbitrator Determination may be produced in evidence in any future judicial or arbitral proceedings.

The Expert-Arbitrator warrants that he² is able to perform his function with complete impartiality.

He represents that he has verified that there exist no grounds for his recusal. In particular:

- a. he has no personal interest in the matter;
- b. he has not acted in the same matter in any other capacity, including, in particular, as a member of a public authority, as legal counsel to any of the Parties, as an expert, as a witness, as an expert-arbitrator or as a mediator;
- c. he is not the spouse, former spouse, registered partner, or former registered partner, of any of the Parties or of any individual who acted in the same matter as a member of the lower authority, nor is he the de facto partner or former de facto partner of any such individual;
- d. he is not related, by blood or by marriage, lineally, or collaterally up to the third degree, to any of the Parties;
- e. he is not related, by blood or by marriage, lineally, or collaterally up to the second degree, to any representative of any of the Parties, or to any person who has acted in the same matter as a member of the lower authority;
- f. he may not be deemed partial for any other reason, including, in particular, a relationship of friendship or enmity with any of the Parties or their representatives.

¹ Where the Expert is a legal person (e.g., a limited liability company), the name of the individual employee to be placed in charge of the procedure is also to be indicated.

² All masculine pronouns in this document are used generically, and are understood to refer to both men and women.

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SUBJECT-MATTER OF THE EXPERT-ARBITRATOR DETERMINATION

The Parties appoint the Expert-Arbitrator to the task of preparing an Expert-Arbitrator Determination. The Expert-Arbitrator accepts this appointment.

The Expert-Arbitrator Determination will bear upon questions of which the definitive List shall be drawn up with the accord of the Parties and which will be contained in a separate document annexed to the present Agreement. The annexed List of Questions shall constitute an integral part of the Agreement (see sect. 4). In the course of preparing the Expert-Arbitrator Determination, and with the accord of the Parties, the Expert-Arbitrator may make modifications to said List; the document attached in annex shall be amended accordingly.

The final report by the Expert-Arbitrator on his Determination shall be submitted to the Parties no later than [REDACTED]. That report shall be used by the Parties solely in their dealings with each other; it may be transmitted to third Parties or published only with the prior consent of the Expert-Arbitrator and accompanied by a statement indicating the precise circumstances under which it was prepared.

2. SCOPE OF THE EXPERT-ARBITRATOR DETERMINATION

The Expert-Arbitrator shall make a final determination on the questions submitted to him, and his findings shall be binding upon the Parties, subject to the condition that they may freely dispose in matter in dispute, that the rules on recusal have been respected, and that the Expert-Arbitrator Determination was prepared with impartiality and is not manifestly erroneous.

In the event that, notwithstanding the Expert-Arbitrator Determination, the Parties fail to resolve their dispute:

- the Expert-Arbitrator Determination may be used by the Parties in connection with the litigation pending between them (court or arbitral tribunal – docket number: [REDACTED]).
- the Expert-Arbitrator Determination may be used by the Parties in subsequent litigation between them, in both judicial and arbitral proceedings.

In either event, the deciding (public or arbitral) instance shall be bound by the facts established in the Expert-Arbitrator Determination, subject to the conditions set forth in Art. 189 of the Swiss Code of Civil Procedure.

3. COOPERATION OF THE PARTIES

The Parties undertake to cooperate in good faith, to respond accurately and truthfully to questions from the Expert-Arbitrator, to permit on-site visits and the taking of measurements (including in cases where the object in question is in the hands of a third party), and to produce, of their own accord or at the request of the Expert-Arbitrator, all documents in their possession and to solicit the necessary documents from third Parties.

In the event that any of the Parties violate their duty to cooperate, the Expert-Arbitrator may take this into account, as appropriate, in the preparation of his Expert-Arbitrator Determination.

4. PROCEDURE

Barring exceptions, the Parties shall submit a draft version of their questions to the Expert-Arbitrator prior to the signing of the Expert-Arbitrator Determination Agreement.

In order to ensure transparency, equal treatment of the Parties, and the independence and objectivity of the Expert-Arbitrator, the Parties agree that the Expert-Arbitrator is to apply the following procedure:

- a. Definitive version of the List of Questions: the Expert-Arbitrator shall convoke a working meeting with the Parties, at which their draft versions shall be consolidated; the Expert-Arbitrator may also pose questions of his own and establish thereupon the definitive version of the List of Questions (to be attached in annex to the present agreement). The Expert-Arbitrator shall request the documents he requires and decide upon the conduct of any on-site visits or hearings of third Parties.
- b. The Expert-Arbitrator shall grant the Parties access to any documents they (or third Parties) may submit to him; he shall inform simultaneously each of the Parties as to any actions taken by him; in the event that he conducts any on-site visits or hearings of third Parties, he shall inform the Parties of the possibility of their being in attendance; he shall maintain a written record of all actions he takes.
- c. The Expert-Arbitrator shall prepare a draft report of the Expert-Arbitrator Determination, which he shall submit to the Parties for comment, fixing a time limit for the submission of their responses,
- d. The Expert-Arbitrator shall then prepare his final report and deliver it to the Parties.
- e. Subject to a time limit of 10 days from the date of receipt of the report, the Parties may submit to the Expert-Arbitrator a grounded request seeking his response to additional questions. Barring exceptions, the preparation of such response shall be subject to an additional fee.

The Expert-Arbitrator may, in the course of the procedure, decide that additional arrangements are required for the proper accomplishment of his task; he shall inform the Parties thereof in writing.

5. USE OF OUTSIDE EXPERTS

The Expert-Arbitrator may call upon the services of outside experts. He may choose them at his own discretion after having verified in advance that there do not exist any grounds for the recusal of the outside experts in question (see Preamble). The Expert-Arbitrator shall inform the Parties thereof as expeditiously as possible.

In the event that the Expert-Arbitrator wishes to call upon the services of a legal expert, he shall seek from the Parties their prior consent thereto.

Under all circumstances, the final report is to be drafted and signed solely by the Expert-Arbitrator; that report alone shall be validly considered as the Expert-Arbitrator Determination.

6. FEES

Fees for services performed by the Expert-Arbitrator shall be paid at the following hourly rate (excl. VAT):

Expert-Arbitrator:	CHF	<input type="text"/>
Assistant:	CHF	<input type="text"/>
Secretarial staff:	CHF	<input type="text"/>
Outside experts (sect. 5):	CHF	<input type="text"/>

The estimated total cost for the Expert-Arbitrator Determination will be in the amount of CHF (excl. VAT).

The Parties shall make instalment payments on account, in equal amounts, to the Expert-Arbitrator at the various stages in the expert-determination procedure; the amount of the instalments shall be determined by the Expert-Arbitrator in such manner that his total fee for services performed is paid in full.

Upon concluding the Expert-Arbitrator Determination, the Expert-Arbitrator shall prepare a final invoice, in which the charges are to be divided as follows:

- equal division between the Parties.
- division based on the findings of the Expert-Arbitrator Determination.
- equitable division.

The Parties undertake to arrange directly between themselves the settlement, by payment or by compensation, of the amount set forth in the final invoice, in keeping with the division of charges determined by the Expert-Arbitrator. In no event may the Expert-Arbitrator be constrained to make any payments or reimbursements.

Further, any legal representation fees incurred by the Parties shall be borne by the Parties themselves.

7. APPLICABLE LAW AND JURISDICTION

The present Agreement is subject to Swiss law.

In the event that the present Agreement gives rise to any dispute to which the Expert-Arbitrator is a party, jurisdiction shall lie with the courts of the place where the Expert-Arbitrator has his domicile.

Executed in , on , in original copies.

Signatures:

Annex: List of Questions submitted to the Expert-Arbitrator