

## **B. Arbitration Rules**

### **Arbitration Rules of Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes )**

#### **General**

#### **1. Object**

The Board of Stichting Geschillenoplossing Automatisering, hereinafter called the 'Stichting', has laid down the following Rules for resolving, by arbitration, disputes relating to information and communication technology.

#### **2. Definitions**

In these Rules:

- a. 'Stichting' means Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes), having its office in Rijswijk;
- b. 'Board' means the Board of the Stichting;
- c. 'Bureau' means the Bureau of the Stichting as provided for by the latter's Articles of Association;
- d. 'Arbitration Agreement' means the Agreement by which the parties refer or have referred one or more disputes between them to arbitration;
- e. 'Arbitration Board' means an Arbitration Board composed in accordance with these Rules;
- f. 'Head of the Bureau' means the secretary of the Board or his deputy.

Wherever in these Rules words are importing the male gender, they shall include the female gender where necessary.

#### **3. Applicability**

- 3.1 These Rules shall apply if the parties have referred, by written agreement, to arbitration by the Stichting or arbitration in accordance with these Rules. In any cases not provided for by these Rules, the parties shall in the Netherlands proceed in accordance with the fourth Volume 'Arbitration' of the Code of Civil Procedure. Any cases neither provided for by these Rules nor by the law, shall be disposed of by the Arbitration Board or, if no Arbitration Board has yet been appointed, by the Board.
- 3.2 The Stichting shall not consider any disputes in which the principal claim of the plaintiff does not exceed € 2,500.--. This limit shall not apply to any counter-claim of the opposite party.

#### **4. Place of Arbitration**

The place of arbitration shall be The Hague.

#### **5. Notices**

Any notice referred to herein must be given in writing, if desired by an electronic means of communication.

## **Proceedings**

### **6. Institutions of Arbitration Proceedings; Initiatory Application**

6.1 Arbitration proceedings shall commence on the day of receipt by the Bureau of an Initiatory Application. The Initiatory Application must be made in writing or by sending it by e-mail to an e-mail address designated for that purpose by the Bureau.

6.2 The Initiatory Application shall contain the following information:

- a. Name, address, place of residence, telephone number, telefax number and e-mail address of the plaintiff;
- b. Name, address, place of residence, telephone number, telefax number and e-mail address of the opposite party;
- c. Short description of the dispute;
- d. Accurate description of the claim;
- e. A statement of the Arbitration Agreement, a copy whereof must be sent with the Initiatory Application, physically or by e-mail;
- f. The number of arbitrators if the parties have concluded with regard thereto such agreement as is referred to in Article 10; in which case a copy of such agreement must be sent with the Initiatory Application.

6.3 Immediately after receipt of the Initiatory Application the Bureau shall acknowledge its receipt to the plaintiff in writing, stating the date of receipt. The Bureau shall simultaneously send a copy of the Initiatory Application, with any appendices thereto, to the opposite party, stating the date of receipt of the Initiatory Application and stating that the opposite party may submit his Short Reply within fourteen calendar-days after he was sent the copy of the Initiatory Application.

### **7. Short Reply**

The Short Reply shall be sent to the Bureau in writing. It shall contain the information referred to in b, c and e of Article 6.2, as well as a short statement relating to the plaintiff's claim.

### **8. Purpose of Initiatory Application and Short Reply**

The Initiatory Application and the Short Reply shall only serve to inform the Bureau about the nature of the dispute and cannot prejudice the right of the parties to invoke any right they are entitled to. Sending the Short Reply shall not deprive the opposite party of the right later to raise the defence of incompetent jurisdiction of the Arbitration Board, provided he does so before setting up any other defence.

### **9. Arbitrators**

An arbitrator should be impartial and independent. He must not have or have had any close personal or business ties with either of the parties. He should not have any personal or business interest in the outcome of the proceedings. During the

proceedings the arbitrator shall not be permitted to have any contact with either party about any matters concerning the proceedings otherwise than in the presence of the other party, unless he has obtained the consent of the other party and of his fellow arbitrators. Without prejudice to the statutory possibilities of challenging arbitrators, the Board may at any time revoke the appointment of an arbitrator if he does not comply with the provisions of this Article.

## **10. Number of Arbitrators**

The Arbitration Board shall consist of three arbitrators, unless the parties have agreed in writing that the Arbitration Board shall be formed by one arbitrator.

## **11. List Procedure**

11.1 As soon as possible after receipt of the Short Reply mentioned in Article 7 or, in the absence thereof, after expiry of the term for submitting it, the Bureau shall send to each of the parties an identical list of names of persons eligible for appointment as an arbitrator. This list shall contain at least three names where a single arbitrator is to be appointed and at least six names where three arbitrators are to be appointed. The list shall be made up by the Bureau in consultation with the secretary. At the request of either of the parties the Bureau shall send them a short personal profile, drawn up by it, of the persons named in the list.

11.2 Each party may cross off from the list of names the person such party has strong objections to, and number the remaining names in order of its preference. The parties must return to the Bureau, within fourteen calendar-days, the list thus rewritten.

11.3 After comparing the parties' preferences, the Bureau shall appoint one or three arbitrators under Article 12, with due observance of the said preferences.

11.4 In the event that the parties are not found to have any identical preference for one or more arbitrators, or if the Bureau has not received the rewritten list of names within fourteen calendar-days, the Board may directly appoint one or more arbitrators from the list.

11.5 If a person is unwilling or unable to accept the invitation of the Bureau to act as an arbitrator or is found to be unable to act as an arbitrator for any other reasons, and if not enough persons acceptable to each of the parties remain on the lists returned, the Board itself shall appoint another arbitrator.

## **12. Appointment of the Arbitration Board**

12.1 The Board shall appoint the Arbitration Board within four weeks of the latest point in time when the Short Reply could be submitted. This term may be extended by the Board for weighty reasons, in which case the Bureau shall notify the parties of the extension and its reason.

12.2 If the Arbitration Board consists of three arbitrators, at least one of them must have a university degree in law. If the Arbitration Board consists of three arbitrators, they shall choose one from their number to be chairman.

- 12.3 The appointment of an arbitrator shall be confirmed by the Bureau in a letter of appointment addressed to the same. The arbitrator shall accept his engagement in writing. It shall be sufficient to sign a copy of the letter of appointment and return it to the Bureau.
- 12.4 Immediately after appointment of the Arbitration Board, the Bureau shall give the parties written notice thereof, stating the names of the arbitrators.

### **13. Proceedings in General**

- 13.1 With due observance of the provisions of these Rules, unless deviated by the parties by mutual agreement, and of the circumstances of the arbitration, the Arbitration Board shall determine the manner in which the proceedings will be prosecuted. The Arbitration Board shall see to the speedy progress of the proceedings. In special cases the Arbitration Board may extend the terms specified in these Rules.
- 13.2 Each party may have itself represented in the proceedings by an attorney-at-law or other attorney duly authorized in writing for that purpose.
- 13.3 The Arbitration Board shall be free to adjourn consideration of the case until a date to be determined by the same, if legal proceedings between the parties are at the same time pending in any State court in connection with the dispute referred to the Stichting and one of the parties takes the view in such legal proceedings that competent jurisdiction in respect of the dispute is reserved to the State court.

### **14. Statement of Claim and Statement of Defence**

- 14.1 The plaintiff shall submit his Statement of Claim to the Bureau within four weeks after the notice referred to in Article 12.4 was sent. Immediately after receipt of the Statement of Claim the Bureau shall send a copy thereof to the defendant and to each of the members of the Arbitration Board.
- 14.2 The defendant may submit a Statement of Defence to the Bureau within four weeks after the Statement of Claim was sent by the Bureau. Immediately after receipt of the Statement of Defence the Bureau shall send a copy thereof to the plaintiff and to each of the members of the Arbitration Board.
- 14.3 The Statement of Claim and Statement of Defence shall be accompanied as far as possible by the documentary evidence referred to by the parties.
- 14.4 If the defendant wishes to make the plea of incompetent jurisdiction of the Arbitration Board, he must do so in his Statement of Defence before making any other defence, unless the plea of incompetent jurisdiction of the Arbitration Board is already evident from the defendant's Short Reply.

### **15. Counter-claim**

- 15.1 In his Statement of Defence the defendant may raise a counter-claim, which shall then be dealt with in the same proceedings. A counter-claim shall be admissible if the same

Arbitration Agreement applies to it as that on which the Initiatory Application is based.

- 15.2 The Statement of Defence rising a counter-claim shall do so in clear terms and contain, in respect of the counter-claim, at least the particulars referred to in d and e of Article 6.2.
- 15.3 Within four weeks after the Bureau has sent a Statement of Defence in which the defendant raises a counter-claim, the plaintiff may submit to the Bureau a Statement of Reply concerning the counter-claim. Immediately after receipt of the Statement of Reply concerning the counter-claim the Bureau shall send a copy thereof to the defendant and each of the members of the Arbitration Board.
- 15.4 The Statement of Reply concerning the counter-claim must restrict itself to the counter-claim raised.  
If the plaintiff wishes to make the plea of incompetent jurisdiction of the Arbitration Board in respect of the counter-claim, he must do so before setting up any other defence in his Statement of Reply concerning the counter-claim.

## **16. Session**

- 16.1 The Arbitration Board shall give the parties the opportunity verbally to explain their standpoints in a session, unless both parties have decided not to.  
The Arbitration Board shall fix the time and place of the session within fourteen calendar-days of the latest point in time when the Statement of Defence (or, as the case may be, the Statement of Reply concerning the counter-claim) could be submitted. Previously the Bureau shall consult with the parties on the time of the session. After the time and place of the session have been fixed, the Bureau shall inform the parties in writing with due observance of a reasonable term of notice prior to the session. This shall also apply to any subsequent sessions that in the opinion of the Arbitration Board might be necessary.
- 16.2 In addition to the parties, their representatives, witnesses and experts, the Arbitration Board may admit others to the session, unless objection is made by either of the parties.

## **17. Further Investigation**

- 17.1 The Arbitration Board may, whether or not at the request of either of the parties:
- Direct that documents or other objects considered relevant to the dispute by the Arbitration Board be produced;
  - Hear witnesses;
  - Hear experts;
  - Make an on-site inspection;
  - Decree that the parties appear in person to give information or attempt to reach a settlement, all in conformity with the statutory provisions.
- 17.2 If the Arbitration Board has declared the investigation closed, the Arbitration Board shall in principle take no notice of any deeds and other documents submitted thereafter by one or more of the parties.

## **18. Summary Arbitral Proceedings**

- 18.1 In all cases requiring an immediate decision because of great urgency, even where arbitral proceedings have already been instituted, an application may be made for provisional disposition by summary arbitral proceedings.
- 18.2 All provisions hereof shall be correspondingly applicable to the summary arbitral proceedings, with the exception of Articles 6.3, 7, 8, 11, 12.1, 12.4 and 14.
- 18.3 Summary arbitral proceedings shall commence on the day of receipt by the Bureau of a written Initiatory Application, which must show clearly that a hearing in summary arbitral proceedings is required.  
Article 6.2 shall apply to this Initiatory Application. The Initiatory Application shall as far as possible be accompanied by the documentary evidence referred to by the parties. Simultaneously with sending the Initiatory Application to the Bureau, the plaintiff shall send a copy of the Initiatory Application to the defendant.
- 18.4 The Board shall appoint the Arbitration Board within one week following receipt by the Bureau of the Initiatory Application.  
This one-week period may be extended by the Bureau for weighty reasons, in which case the Bureau shall notify the parties of the extension and its reason.
- 18.5 If at that time any arbitral proceedings are already pending between the same parties, the Arbitration Board shall as far as possible consist of the arbitrators that are members of the Arbitration Board in the proceedings already pending, unless the parties have agreed with regard to the summary arbitral proceedings that the Arbitration Board is to be formed by one arbitrator.  
If in the opinion of the Board the dispute lends itself to it, the Board may decide, unless both parties are opposed to it, that the Arbitration Board in the summary arbitral proceedings shall be formed by one arbitrator.
- 18.6 Immediately after its appointment the Arbitration Board shall fix the time and place of the hearing, if possible after consultation between the Bureau and the parties.  
The hearing shall take place as soon as possible after the appointment of the Arbitration Board and in any case within two weeks of that appointment, unless a later date is fixed with the consent of both parties.
- 18.7 Immediately after the time and place of the hearing have been fixed, the Bureau shall inform both parties in writing of the appointment of the Arbitration Board, of the names of the Arbitrators and of the time and place of the hearing.
- 18.8 Each of the parties may submit to the Bureau a written exposition on the dispute not later than one workday before the hearing, simultaneously sending a copy thereof to the other party. Immediately after receipt of the written exposition the Bureau shall send a copy thereof to each of the members of the Arbitration Board.
- 18.9 A counter-claim in summary arbitral proceedings shall be raised by giving written notice of the counter-claim to the Bureau and the other party. The time limits of Article 18.8 shall be correspondingly applicable.

18.10 The Arbitration Board shall give its decision as soon as possible but in any case within two weeks following the hearing. The decision shall be considered to be an arbitration award. If the dispute does not lend itself to disposition by summary proceedings, the Arbitration Board shall refer the parties to the regular arbitration procedure.

## **19. Evidence**

The admissibility of the evidence, the assignment of the onus of proof and the valuation of the evidence shall entirely be in the discretion of the Arbitration Board.

## **Award**

### **20. General**

20.1 The Arbitration Board shall give its decision like good men and true, unless all parties have agreed in writing that the issue shall be decided by the rules of the law.

20.2 In all cases the Arbitration Board, in giving its decision, shall take account of the relevant usages of trade.

20.3 The award may also include:

- a. The mere determination of the quality or condition of goods;
- b. The mere determination of the amount of any damages or of any sum of money due.

20.4 The Arbitration Board shall give its award as soon as possible.

### **21. Form and Contents**

21.1 The award shall be put in writing at least in quadruplicate and signed by each of the arbitrators.

21.2 The award shall in any case contain the particulars referred to in Section 1057, subsection 4 of the Code of Civil Procedure, as well as the determination of and order to pay the costs of arbitration and legal advice referred to in Articles 30 and 31.

### **22. Sending, Filing and Binding Force of the Award**

22.1 Immediately after giving the award the Bureau shall send a copy thereof to each party.

22.2 Any full or partial final award shall be filed by the chairman of the Arbitration Board with the Clerk of the District Court of The Hague.  
Immediately thereafter the Bureau shall inform the parties and each of the members of the Arbitration Board in writing of the date of filing.

22.3 A copy of the award shall be kept in the records of the Stichting for ten years. During that period each party may request the Bureau to provide a copy of the award, certified by the latter, against payment of the costs.

22.4 An arbitral award shall be binding on the parties with effect from the day on which it is given. By agreeing to arbitration by the Stichting or in accordance with its Arbitration Rules, the parties shall be deemed to have undertaken the obligation forthwith to comply with the award.

### **23. Rectification of Award and Supplementary Award**

23.1 Each of the parties may request the Arbitration Board to correct any apparent arithmetical or writing error in the award until thirty calendar-days following the date of filing such award as is referred to in Article 22.

23.2 If the Arbitration Board has failed to give a decision on one or more matters referred to its judgment, either party may, but not later than thirty calendar-days following the date of filing such award as is referred to in Article 22, request the Arbitration Board to give a supplementary award.

23.3 The requests referred to in Article 23.1 and 23.2 must be made in writing to the head of the Bureau, in triplicate. A copy of such request shall be sent directly to the other party by the requester. Within thirty days of receipt of such request the other party shall have the opportunity to express in writing its views on such request. The other party shall send a copy of its reaction, if any, directly to the requester.

23.4 If the Arbitration Board makes the correction or rectification, such correction or rectification shall be stated in a separate document by the same, which shall be deemed to form part of the award.

23.5 Before the Arbitration Board decides on the request for a supplementary award, it shall give the parties the opportunity to be heard.

23.6 Any supplementary award shall be considered to be an arbitration award.

23.7 If the Arbitration Board rejects the request for the correction, rectification or supplementation of an award, the head of the Bureau shall inform the parties. A copy of this notice, signed by all arbitrators of the Arbitration Board, shall be filed with the Clerk of the District Court of The Hague in accordance with Article 22.

### **24. Arbitral Settlement Award**

24.1 If the parties reach a settlement during the proceedings, the contents thereof may be laid down in an arbitral settlement award at their joint request.

24.2 The arbitral settlement award shall be deemed to be an arbitration award.

Articles 21, 22 and 25 shall apply thereto, it being understood that:

- The award, in deviation from the provisions of Article 21, shall not be required to contain the grounds on which it is based; and
- The parties shall add their signatures to the award.

### **25. Publication**

If the parties do not object, the Stichting may publish or cause to be published the award without stating the names of the parties, and leaving out any further particulars which might reveal their identity. The parties shall be deemed not to object to publication if they have not informed the Bureau in writing, within two weeks after the award was sent, that they do.

## **Costs**

### **26. General**

By 'costs of arbitration' is understood the costs which in the opinion of the Arbitration Board were necessarily entailed by the arbitration, and the administrative expenses, registration fee and the fees and out-of-pocket expenses of the members of the Arbitration Board.

### **27. Administrative Expenses and Registration Fee**

- 27.1 On the institution of the arbitration proceedings, a fixed amount calculated in accordance with the provisions of the following paragraph shall be due by the plaintiff to the Stichting to cover administrative expenses, as well as a registration fee. The Bureau shall inform the plaintiff of this amount simultaneously with the acknowledgment of receipt referred to in Article 6.3 or, if summary arbitral proceedings have been instituted, with the information referred to in Article 18.7.
- 27.2 The administrative expenses shall be calculated on the basis of the scale fixed by the Board, contained in the Appendix hereto. The amount of the registration fee shall likewise be fixed in accordance with the relevant provisions of the Appendix hereto. The scale and the registration fee may between times be changed by the Board in accordance with Article 35. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau shall decide. All amounts stated in the Appendix hereto shall be exclusive of value added tax.
- 27.3 A registration fee shall likewise be due by the defendant unless the defendant's defence is exclusively aimed at pleading incompetent jurisdiction of the Arbitration Board and the defence to that effect is fully accepted by the latter. The registration fee shall likewise be fixed in accordance with the relevant provisions of the Appendix hereto.
- 27.4 If a counter-claim is raised, administrative expenses shall be due by the defendant as well, calculated in accordance with Article 27.2. The Bureau shall inform the defendant of the amount of the administrative expenses and the registration fee within one week following receipt of the Statement of Defence raising the counter-claim.
- 27.5 The Bureau shall see to the collection of the administrative expenses and registration fees due, plus the value added tax due. If after the second demand in writing by the Bureau either party has failed to pay within fourteen calendar-days the administrative expenses and registration fee due by it, plus value added tax, such party shall be deemed to have withdrawn its claim or counter-claim, as the case may be.

27.6 The Arbitration Board and the Bureau may at any time suspend their work with regard to the claim or counter-claim as long as the party concerned has failed to pay the administrative expenses and registration fees due, plus value added tax.

**28. Fees and Out-of pocket Expenses of the Arbitrators**

28.1 The fee and out-of-pocket expenses of each of the members of the Arbitration Board shall be fixed by the Bureau after consultation with the arbitrator concerned. In fixing the fee, the Bureau shall take into account the time spent on the case by the Arbitrator, its financial importance and its complexity.

28.2 The term 'out-of-pocket expenses of an arbitrator' shall include, among other things, any reasonable travelling and hotel expenses, cost of assistance, charges of experts, costs of meeting-rooms, postage, telephone and telefax charges and cost of photocopies.

**29. Advances**

29.1 The Bureau may require of the plaintiff an advance from which to pay the fees and out-of-pocket expenses of the Arbitration Board as far as possible. If the defendant has raised a counter-claim, he, too, may be required by the Bureau to pay an advance. Unless expressly otherwise stated in the Bureau's request to pay an advance, the amount stated therein in respect of the advance shall always be exclusive of value added tax. If a demand is made on the plaintiff or defendant to pay an advance, the advance demanded must be paid plus its value added tax.

29.2 The advance mentioned in the preceding paragraph shall also be used for paying the costs of filing the award with the Clerk of the District Court in the Netherlands. The costs of experts and of other technical assistance shall likewise be paid out of the advance if and insofar as they are incurred by the Stichting or the Arbitration Board.

29.3 At the request of the Bureau, the Arbitration Board shall consult with the Bureau about the amount of the work and costs expected by the Arbitration Board, in order to fix the sum of the advance.

29.4 The Bureau may at any time demand supplementation of the advance.

29.5 The Bureau shall inform the Arbitration Board of the advance.

29.6 The Arbitration Board and the Bureau may at any time suspend their work with regard to the claim or counter-claim as long as the party concerned has not paid the advance required of it. If after the second demand in writing by the Bureau either party has failed to pay the advance required of it within fourteen calendar-days, it shall be deemed to have withdrawn its claim or counter-claim, as the case may be.

29.7 The Stichting shall not be liable to pay any costs not secured by an advance. No interest shall be allowed on the amount of the advance paid. In case of withdrawal of the claim or counter-claim, all costs incurred by the Stichting and not covered by the advance shall be recovered by it from the plaintiff on withdrawal of the claim and from the defendant on withdrawal of the counter-claim. In that case the arbitrators may also decide to divide the costs between the parties in equal shares.

**30. Costs of Legal Advice**

If claimed by the other party, the Arbitration Board may order the party adjudged to be in error to make reasonable compensation for the costs of legal advice incurred by the party found to be in the right, if and insofar as in the opinion of the Arbitration Board such costs were necessary.

**31. Fixations and Order to Pay Costs**

31.1 The Arbitration Board shall fix the costs of the arbitration in the award. In its award the Arbitration Board shall also determine what amount has already been paid by each of the parties in respect of the administrative expenses and registration fee, and deposited in respect of the advance.

31.2 If the Arbitration Board orders a party to pay such costs of legal advice as are referred to in Article 30, the Arbitration Board shall also fix in the award the amount of the reasonable compensation referred to in Article 30.

31.3 The party adjudged to be in error shall be ordered to pay the costs of the arbitration, except in special cases discretionary with the Arbitration Board. If each of the parties has been adjudged partly to be in error, the Arbitration Board may divide all or any of the costs.

31.4 To the extent to which an advance paid by a party exceeds the share in the costs of arbitration to be paid by the same, such advance shall be used for paying that share in the costs of arbitration, which the other party is ordered to pay. In that case the last-mentioned party shall be ordered to make good to the first-mentioned party the amount concerned.

31.5 The costs of arbitration may also be awarded against a party where no express claim to that effect has been made by the other party.

**Final Provisions**

**32. Exclusion of Liability**

Neither the Foundation nor the members of the Board in person, the staff of the Bureau and/or any arbitrators shall be liable for any act or failure to act with regard to any arbitration governed by these Rules.

**33. Unforeseen Matters**

In all cases not provided for by these Rules, the Board of the Stichting shall decide. The Board may authorize the head of the Bureau to take such decisions. In the course of the proceedings the decisions shall be taken in consultation with the Arbitration Board.

**34. Depositing or Filing of the Rules**

34.1 The Bureau shall file a copy of these Rules at the Office of the Clerk of the District Court of The Hague.

34.2 Whenever these Rules are amended, the Bureau shall file a copy of the amended Rules with the Clerk of the said District Court.

The Bureau shall see to it that every copy of the Rules shall state the date on which the text laid down therein was filed with the Clerk of the said District Court.

**35. Amendments**

35.1 The Board may at any time make amendments to these Rules.

35.2 The amended Rules shall take effect on the day after they were filed in Court.

The amended Rules shall not apply to any arbitration already pending on the day on which the amended Rules took effect.

These Rules were laid down by the Board of Stichting Geschillenoplossing Automatisering in The Hague on December 17, 2002 and filed with the Clerk of the District Court of The Hague on March 18, 2003 under number 29/2003.