



## MEDIATION & CONFLICTMANAGEMENT

### **ACB RULES OF MEDIATION**

#### SECTION ONE - GENERAL

##### **Article 1 - Definitions**

In these Rules the following terms shall have the meaning below.

- (a) ADR: Alternative Dispute Resolution.
- (b) Mediation: the dispute resolution process in the broadest sense pursuant to these Rules.
- (c) ACB: ACB –Toolkit Company
- (d) Dispute: any dispute whereby at least one of the parties involved is engaged in business activities in the broadest sense of the word.
- (e) Referral Agreement: the (written) agreement between the parties providing that (an) existing or future dispute(s) will be resolved through mediation.
- (f) Mediation Agreement: the written agreement between the parties and the mediator, in which the parties instruct the mediator to act as mediator with respect to the handling of a dispute.
- (g) Mediator: the person who leads the mediation.

##### **Article 2 - Applicability**

- 1. These Rules shall apply in the event of a dispute which
  - (a) the parties have agreed to submit to dispute resolution pursuant to these Rules, or
  - (b) is the subject of a request pursuant to Article 3.
- 2. The Rules shall be applied in the form existing at the time the request for mediation as referred to in the previous paragraph is submitted.

#### SECTION TWO - REQUEST FOR MEDIATION

##### **Article 3 - Request for mediation**

- 1. Parties to a dispute can submit a request for mediation with ACB.
- 2. The requesting parties will provide, preferably using the request form available from ACB:
  - (a) the names, addresses, telephone and fax numbers of the parties to the dispute;
  - (b) a brief description of the dispute.
- 3. A copy of the request form signed by all parties will qualify as a Referral Agreement.

#### SECTION THREE - MEDIATOR

##### **Article 4 - Appointment of mediator**

ACB will propose a mediator, unless the parties indicate their wish to receive a list of three mediators. ACB shall in that case provide each of the parties with an identical list of names and short profiles of one or more mediators who, given the description of the dispute, are suitable for appointment. Each party may strike out from the list the names of those against whom that party has major objections and number the remaining names in order of preference. ACB shall subsequently appoint a mediator, taking into account the preference of the parties.

##### **Article 5 - Appointment specific mediator**

The parties may request the appointment of a specific person as mediator. Persons not included in the database of mediators maintained by ACB cannot be appointed as mediator unless ACB, at the request of the parties, decides otherwise in exceptional cases.

##### **Article 6 - Code of Conduct**

The Mediator shall be bound by the ACB Code of Conduct for Mediators as well as the disciplinary law pursuant to the Regulations of the 'Tuchtrecht Mediators' Foundation (Disciplinary Law for Mediators).

## SECTION FOUR - MEDIATION

### **Article 7 - Mediation Agreement**

Mediation commences upon the signing of the Mediation Agreement. The mediator shall send a copy of the Mediation Agreement to ACB.

### **Article 8 - General Procedure**

1. The mediator shall, in consultation with the parties, determine the manner in which the Mediation shall be conducted.
2. Unless otherwise agreed in writing, the parties cannot be bound by positions they have adopted or proposals they have made during mediation, nor to any statements they have made to the mediator or to any other party.
3. The Mediator may obtain information separately from any party through discussions, correspondence or otherwise.
4. ACB shall see to it that the mediation progresses expeditiously. To this end, the mediator shall inform ACB on how the mediation is proceeding.

### **Article 9 - Representation, assistants**

1. Each party shall be represented in the mediation by at least one person who has the authority to settle the dispute.
2. Parties may be assisted by their advisors. Subject to the consent of the parties, the mediator may involve other persons in the mediation.
3. Persons other than the mediator and the parties themselves may only be involved in the mediation if they have committed in advance to maintaining confidentiality pursuant to Article 12.

### **Article 10 - Replacement of mediator**

1. During Mediation, the parties may revoke the appointment of the mediator by means of a joint written notification to ACB. ACB shall inform the mediator of such notification forthwith.
2. All costs of the mediation incurred up to the point when the mediator has received written notification of termination of his appointment shall be chargeable in full to the parties.
3. Appointment of a different mediator may occur as described in Article 4.

### **Article 11 - Non-ADR Proceedings**

If a party has instituted judicial or other proceedings in relation to the Dispute described in the Mediation Agreement, or parts thereof, or does so during mediation, that party shall be obliged to advise the mediator and the other party (or parties) of the fact, either at the start of Mediation or immediately after the initiation of any such proceedings.

### **Article 12 - Confidentiality**

1. The Mediator shall respect the confidentiality of any information provided to him by any of the parties, in correspondence, discussions or otherwise, unless agreed otherwise.
2. All persons involved in the mediation shall commit to keeping confidential any and all information supplied and/or recorded in any form during or in connection with the mediation, including the positions adopted or proposals made therein by the parties and the progress of the mediation, all the foregoing to be taken in the broadest sense of the word, unless agreed otherwise.
3. The duty of confidentiality shall also specifically apply vis-à-vis judges, arbitrators or other adjudicators.
4. The parties are deemed to have waived the right to use as evidence against one another, in legal proceedings or otherwise, anything that was disclosed during the mediation, and/or to take testimony from (or cause testimony to be taken from), as a witness or otherwise, ACB, employees of ACB or persons otherwise related to ACB, the mediator or any other persons involved in the mediation, concerning information provided and/or recorded in any form during or in connection with the mediation, or concerning the content of the agreement, as referred to in Article 13, all the foregoing to be taken in the broadest sense of the word. The parties shall be deemed to have entered into an agreement as to the inadmissibility of evidence in this regard.

5. Unless the parties have agreed to a further detailed arrangement in writing, the duty of confidentiality shall not apply to the extent it would frustrate the implementation of the agreement referred to under Article 13.
6. The contents of this article shall remain in force after the mediation has been concluded.

#### **Article 13 - Settlement Agreement**

The Mediator shall arrange that what the parties have agreed upon is laid down in an agreement.

#### **Article 14 - Conclusion of Mediation**

1. Mediation shall conclude:
  - (a) by both parties signing a agreement as referred to in Article 13;
  - (b) by a written notification to the parties by the mediator that he does not consider the continuation of the mediation useful;
  - (c) by a written declaration by one party to the other party (or parties) and to the mediator that it withdraws from mediation;
  - (d) by failure to timely pay the costs referred to in Section Five of these Rules, following a written reminder from ACB.
2. The Mediator shall inform ACB without delay if any of the events specified in paragraph 1 under (a), (b) or (c) occurs.

### SECTION FIVE - COSTS

#### **Article 15 - Costs**

1. Each party shall bear its own costs. Any other costs shall be borne in equal shares by all the parties, unless the parties agree to a different division.
2. ACB will send a monthly invoice. The payment term is 14 days from the invoice date.

#### **Article 16 - Advance payments**

Following the appointment of the mediator, ACB may require the parties to pay an advance, from which - insofar as possible - the further costs (e.g. meeting expenses, etc.) will be paid.

### SECTION SIX - FINAL PROVISIONS

#### **Article 17 - Unforeseen cases**

In cases for which these Rules do not make any specific provision, the spirit of these Rules shall be followed.

#### **Article 18 - Exclusion of liability**

Neither ACB itself, nor individual current and former board members of ACB, persons employed by or otherwise related to ACB, nor mediators and their assistants shall be liable for any acts or omissions in relation to any Dispute to which these Rules apply.

#### **Article 19 - Applicable law**

These Rules shall be governed by Dutch law. The agreement referred to in Article 13 shall be governed by Dutch law, unless the parties agree otherwise. Any Dispute that arises pursuant to the present Rules shall be settled in accordance with these ACB mediation rules.

#### **Article 20 - Changes to the Rules**

The Board of Directors of ACB may amend these Rules at any time.