

DIS

SUPPLEMENTARY RULES FOR THIRD-PARTY NOTICES

Effective as of 15 March 2024

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Content

Preliminary Remarks	6
Article 1 Scope of Application	8
Article 2 Admissibility of the Third-Party Notice	8
Article 3 Form of the Third-Party Notice	8
Article 4 Time Limits for a Third-Party Notice	9
Article 5 Follow-on Third-Party Notice by the Third-Party Notice Recipient	9
Article 6 Transmission of the Statement of Third-Party Notice, Intervention of a Third-Party Notice Recipient	10
Article 7 Sole Arbitrator	11
Article 8 Three-Member Arbitral Tribunal	11
Article 9 Impartiality and Independence of Arbitrators and Experts Appointed by the Arbitral Tribunal	12
Article 10 Objections to the Validity of the Third-Party Notice	12
Article 11 Effects of the Third-Party Notice	13
Article 12 Transmission of the Award	14
Article 13 Costs	14
Article 14 Transmission of Documents, Time Limits	15
Article 15 Confidentiality	15

Preliminary Remarks

The Supplementary Rules for Third-Party Notices (“DIS-TPNR”) contractually bind a third party to an award rendered in an arbitration conducted pursuant to the DIS-TPNR (“Initial Arbitration”) and take effect (the “Effects of the Third-Party Notice” being defined in Article 11 DIS-TPNR) in a subsequent dispute between a party to the Initial Arbitration and a third party (“Subsequent Dispute”). The DIS-TPNR are based on the model for third-party notices in the German Code of Civil Procedure. The Subsequent Dispute may be brought before state courts or arbitral tribunals.

For the Effects of the Third-Party Notice to arise, corresponding agreements are required in the relationship between the parties to the Initial Arbitration on the one hand and the parties to the Subsequent Dispute on the other hand. Only by way of linking the contractual agreements in these different legal relationships, the DIS-TPNR create the Effects of the Third-Party Notice for the Subsequent Dispute. This link can be achieved by agreeing on an arbitration under the DIS Rules in both legal relationships in accordance with the DIS-TPNR.

The following standard model clause can be used both in the relationship between the parties to the Initial Arbitration and in the relationship between one of these parties and a third party:¹

- (1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (“DIS”) without recourse to the ordinary courts of law.
- (2) The Supplementary Rules for Third-Party Notices (“DIS-TPNR”) shall apply. [Optional: “A third-party notice shall be admissible only in respect of the third parties specified subsequently:”]
- (3) The arbitral tribunal shall be comprised of [please enter “a sole arbitrator” or “three arbitrators”].
- (4) The seat of the arbitration shall be [please enter city and country].
- (5) The language of the arbitration shall be [please enter language of the arbitration].
- (6) The law applicable to the merits shall be [please enter law or rules of law].

The binding effect for the Subsequent Dispute may also be agreed upon independently of an agreement on a DIS arbitration for the Subsequent Dispute. In this case, the following alternative model clause can be used in the relationship between a party to the Initial Arbitration and a third party:

Each contracting party agrees that another contracting party, in an arbitration conducted by that party with a third party, may issue a third-party notice to it in accordance with the Supplementary Rules for Third-Party Notices of the German Arbitration Institute (“DIS-TPNR”). The effects of the third-party notice for a subsequent dispute between the parties to this contract shall be governed by the DIS-TPNR.

[Optional: “The third-party notice shall be admissible only when made by [designation of the contracting party or parties] in an arbitration conducted between the latter and a third party.”]

¹ In case of involvement of a consumer within the meaning of Section 13 of the German Civil Code, the form requirements pursuant to Section 1031 para. 5 of the German Code of Civil Procedure must be fulfilled.

Article 1 Scope of Application

1.1

¹The DIS-TPNR shall apply if the parties have agreed on their applicability. ²In this case, the Arbitration Rules of the German Arbitration Institute (DIS) (the “Rules”) shall apply with the amendments resulting from the DIS-TPNR.

1.2

The version of the DIS-TPNR in force at the date of the commencement of the arbitration (Article 6.1 of the Rules) shall apply.

Article 2 Admissibility of the Third-Party Notice

A party believing that, in case of an outcome of the dispute not in its favour, it will be able to assert a claim for warranty or indemnification against a third party, or is concerned that such a claim may be brought against it by a third party, may issue a third-party notice to that third party in accordance with the DIS-TPNR, provided that the third party has agreed to a third-party notice in accordance with the DIS-TPNR.

Article 3 Form of the Third-Party Notice

3.1

¹To issue a third-party notice, the party issuing the third-party notice (“Main Party”) shall submit a written statement to the DIS (“Statement of Third-Party Notice”). ²This statement shall contain

- (i) the name and address of the third-party notice recipient,
- (ii) the reasons for the third-party notice,
- (iii) information on the status of the dispute,
- (iv) the agreement on the DIS-TPNR between the Main Party and the other parties to the arbitration,

and

- (v) the agreement by which the third-party notice recipient agrees to a third-party notice in accordance with the DIS-TPNR.

³The Main Party shall attach to the Statement of Third-Party Notice copies of Submissions in its possession from the parties, from the DIS and from the arbitral tribunal.

3.2

¹The Statement of Third-Party Notice shall be sent to the DIS in paper form as well as in electronic form (Article 4.1 of the Rules). ²The following number of copies shall be filed:

- (i) paper form: one copy of the Statement of Third-Party Notice for the third-party notice recipient, as well as any attachments thereto, and one copy of the Statement of Third-Party Notice for the DIS without attachments

and

- (ii) electronic form: one copy of the Statement of Third-Party Notice as well as any attachments thereto for each party, each third-party notice recipient and the DIS.

³The DIS may at any time request further copies of a Statement of Third-Party Notice as well as any attachments thereto from the Main Party.

3.3

¹If the Main Party fails to submit the required number of copies of the Statement of Third-Party Notice and any attachments thereto as stipulated in Article 3.2, or if the DIS considers that the Statement of Third-Party Notice does not sufficiently comply with the requirements of Article 3.1, the DIS may set a time limit for the Main Party to supplement the filing. ²If the filing is not supplemented within such time limit, the third-party notice shall be deemed not to have been issued.

Article 4 Time Limits for a Third-Party Notice

4.1

A Claimant may issue a third-party notice in the Request, which shall then also be deemed to be a Statement of Third-Party Notice.

4.2

A Respondent may issue a third-party notice within 21 days following the date of the transmission of the Request.

4.3

A Claimant may also issue a third-party notice within 14 days following the date of the transmission of the Answer if no arbitrator has been appointed at that time.

4.4

In all other cases, the arbitral tribunal may admit a third-party notice if the third-party notice recipient agrees thereto and declares that it does not raise objections to the composition of the arbitral tribunal and accepts the arbitration as it stands at the time its intervention following the third-party notice was possible.

Article 5 Follow-on Third-Party Notice by the Third-Party Notice Recipient

5.1

¹A follow-on third-party notice by the third-party notice recipient is only admissible if

- (i) the requirements of Article 2 are complied with between it (“Follow-on Issuer”) and the follow-on third-party notice recipient (“Follow-on Third Party”),
- (ii) the Follow-on Third Party and the parties agree to the follow-on third-party notice and
- (iii) the requirements of Article 4.4 are complied with.

²The Follow-on Third Party does not participate in the constitution of the arbitral tribunal.

5.2

¹The effects of the follow-on third-party notice shall be limited to the relationship between the Follow-on Issuer and the Follow-on Third Party. ²If the follow-on third-party notice is deemed to be withdrawn pursuant to Article 7.4 or Article 8.4 in conjunction with Article 7.4, these effects shall cease with the transmission of the notice of withdrawal to the DIS. ³The Follow-on Third Party shall bear its own costs.

5.3

In all other cases, the provisions of the DIS-TPNR shall apply, *mutatis mutandis*, to the follow-on third-party notice.

Article 6 Transmission of the Statement of Third-Party Notice, Intervention of a Third-Party Notice Recipient

6.1

¹The DIS shall transmit the Statement of Third-Party Notice to the third-party notice recipient as well as to the other parties and third-party notice recipients. ²If the requirements of Articles 3.1, 3.2 and 13.1 are not complied with, the DIS may withhold the transmission.

6.2

¹A third-party notice recipient may join the arbitration as an intervener in support of the Main Party within 21 days following the date of the transmission of the Statement of Third-Party Notice (“Intervention Period”). ²For the purpose of intervention, the third-party notice recipient shall make a declaration of intervention to the Main Party and the DIS in the form set out in Article 3.2 sentence 2 (i) and to all parties, third-party notice recipients and the DIS in the form set out in Article 3.2 sentence 2 (ii). ³The DIS may set a time limit for the third-party notice recipient to supplement its declaration under sentence 2. ⁴The DIS shall determine with binding effect *vis-à-vis* the parties and the third-party notice recipients whether or not the intervention has been validly made for the purposes of appointing the arbitral tribunal in accordance with Articles 7 and 8, and shall notify the parties and the third-party notice recipients thereof. ⁵If a party or a third-party notice recipient that has intervened in the arbitration (“Intervener”) disputes the validity of the intervention within the time limit stipulated in Article 10.1 sentence 1, the Arbitration Council shall determine whether or not the intervention has been validly made.

6.3

¹If a third-party notice recipient does not intervene in time, the arbitration shall be continued without it. ²The third-party notice recipient may intervene in the arbitration even after the expiry of the Intervention Period at any stage of the dispute until the final award is made in accordance with Article 6.2 sentences 2 and 3 under the additional requirement that it does not raise objections to the composition of the arbitral tribunal.

6.4

¹The Intervener shall accept the arbitration as it stands at the time of its intervention. ²The Intervener shall have the right to raise challenges or defences and to validly perform all procedural actions to the extent that its declarations and actions do not contradict the declarations and actions of the Main Party. ³A right of the Intervener to participate in the constitution of the arbitral tribunal shall remain unaffected by this.

Article 7 Sole Arbitrator

7.1

If the arbitral tribunal is comprised of a sole arbitrator, the parties and Interveners may jointly nominate the sole arbitrator within 21 days following the date of

- (i) transmission of the Request to all Respondents,
- (ii) transmission of the Statements of Third-Party Notice to all third-party notice recipients to whom the third-party notice has been issued in time pursuant to Article 4.1 or 4.2 and
- (iii) transmission of all binding determinations in accordance with Article 6.2 sentence 4.

7.2

¹If a third-party notice is issued pursuant to the requirements of Article 4.3, the DIS shall refrain from appointing an arbitrator until the expiry of the Intervention Period and, in case of intervention, until transmission of the binding determination in accordance with Article 6.2 sentence 4. ²In this case, the time limit stipulated in Article 7.1 shall recommence with the transmission of the binding confirmation of the validity of the intervention of the third-party notice recipient.

7.3

¹If the parties and Interveners do not agree on a sole arbitrator within the time limits stipulated in Articles 7.1 and 7.2, the sole arbitrator shall be selected and appointed by the Appointing Committee in accordance with Articles 11 and 13.2 of the Rules. ²Article 11 sentence 3 of the Rules shall apply with the provision that Interveners shall be treated as parties.

7.4

¹Until the constitution of the arbitral tribunal, the Main Party may withdraw its third-party notice by notice of withdrawal to the DIS. ²A third-party notice recipient that has joined the arbitration as an Intervener upon the third-party notice is released from the arbitration; a follow-on third-party notice issued by the released third-party notice recipient shall be deemed to be withdrawn. ³Upon submission of the notice of withdrawal to the DIS, the time limits stipulated in Articles 7.1 and 7.2 shall recommence and the effects of Article 11 shall cease with respect to the released third-party notice recipient.

Article 8 Three-Member Arbitral Tribunal

8.1

¹If the arbitral tribunal is comprised of three arbitrators and the Claimant issues a third-party notice pursuant to Article 4.1, the Request, in deviation from Article 5.2 (*vii*) of the Rules, does not need to contain the nomination of an arbitrator. ²Any nomination made shall be deemed to be a mere proposal.

8.2

¹Within 21 days following the date of

- (i) transmission of the Request to all Respondents,
- (ii) transmission of the Statements of Third-Party Notice to all third-party notice recipients to whom the third-party notice has been issued in time pursuant to Article 4.1 or 4.2

and

- (iii) transmission of all binding determinations in accordance with Article 6.2 sentence 4, the parties and Interveners on the Claimant's side and the parties and Interveners on the Respondent's side shall each jointly nominate a co-arbitrator to the DIS. ²Article 7.2 shall apply, *mutatis mutandis*.

8.3

¹If a joint nomination is not made within the time limit stipulated in Article 8.2, the arbitral tribunal shall be constituted in accordance with Article 20.3 of the Rules. ²For the nomination and appointment of the president of the arbitral tribunal, Articles 12.2 and 12.3 of the Rules shall apply with the provision that Interveners shall be treated as parties.

8.4

Article 7.4 shall apply, *mutatis mutandis*.

Article 9 Impartiality and Independence of Arbitrators and Experts Appointed by the Arbitral Tribunal

When applying Articles 9, 13.3, 15 and 28.3 of the Rules, Interveners shall be treated as parties.

Article 10 Objections to the Validity of the Third-Party Notice

10.1

¹A party or Intervener may raise objections to the validity of the third-party notice within 21 days following the date of the transmission of the declaration of intervention of the third-party notice recipient. ²In deviation from Article 6.2 sentence 1, a third-party notice recipient may intervene in the arbitration for the sole purpose of raising objections to the validity of the third-party notice. ³If objections are raised, the arbitral tribunal shall decide by way of an order on the validity of the third-party notice.

10.2

¹If the arbitral tribunal determines the invalidity of the third-party notice, the effects pursuant to Article 11.1 and Article 11.2 shall cease with respect to the third-party notice recipient. ²If it intervened in the arbitration, it shall be released from the arbitration. ³In this case, it shall have a claim against the Main Party for reimbursement of the costs of the arbitration incurred by it pursuant to Article 32 (*iii*) of the Rules. ⁴The decision determining the invalidity of the third-party notice shall be binding in the Subsequent Dispute and may not be reviewed.

10.3

¹If the arbitral tribunal confirms the validity of the third-party notice, the arbitration shall be continued with a third-party notice recipient that intervened in the arbitration. ²The decision confirming the validity of the third-party notice shall not be binding in the Subsequent Dispute. ³However, the third-party notice recipient may only raise objections to the validity of the third-party notice in the Subsequent Dispute

- (i) which it has already raised in the arbitration in which the third-party notice was issued to it or
- (ii) which are based on circumstances which it neither knew nor had to know at the end of the time limit stipulated in Article 10.1.

Article 11 Effects of the Third-Party Notice

11.1

¹The third-party notice recipient shall not be heard, in its relationship to the Main Party, with the allegation that the dispute has been decided incorrectly; it shall be heard with the allegation that the Main Party has conducted the proceedings inadequately only insofar as it was prevented by the status of the dispute at the time the intervention following the third-party notice was possible, or by declarations made and actions taken by the Main Party, from raising challenges or defences, or insofar as challenges or defences which it was unaware of were not raised by the Main Party either intentionally or through gross negligence. ²In case of an award by consent, this only applies if and to the extent the third-party notice recipient has joined the settlement between the parties.

11.2

The third-party notice recipient is obliged *vis-à-vis* the Main Party to recognize the effects of a third-party notice in a Subsequent Dispute as set out in Article 11.1.

11.3

¹The Main Party and the third-party notice recipient agree that upon intervention of the third-party notice recipient the jurisdiction of the arbitral tribunal to render decisions pursuant to Article 10.2 sentence 3 and Article 13.5 is established in their relationship as well ("Intervention Arbitration Agreement"). ²By its declaration of intervention, the third-party notice recipient accepts the offer to conclude the Intervention Arbitration Agreement. ³No express reference to the Intervention Arbitration Agreement in the Statement of Third-Party Notice or in the declaration of intervention is required.

11.4

¹Receipt by the DIS of the third-party notice with the requirements of Article 3.1 in at least one of the forms for transmission pursuant to Article 3.2 shall suspend the limitation period with respect to the third-party notice recipient. ²For the purposes of suspending the limitation period, a third-party notice transmitted to the third-party notice recipient in accordance with Article 6.1 shall be deemed valid until its invalidity is determined. ³The suspension shall end six months

- (i) following the date of the withdrawal of the third-party notice pursuant to Article 7.4 or Article 8.4 in conjunction with Article 7.4,
- (ii) following the date of the determination of invalidity of the third-party notice; or otherwise six months
- (iii) following the date of the termination of the arbitration.

⁴Insofar as a third-party notice is deemed not to have been issued pursuant to Articles 3.3 sentence 2, 13.1 sentence 3 or 13.2 sentence 3, the suspension is deemed not to have occurred *ab initio*.

Article 12 Transmission of the Award

¹The arbitral tribunal shall transmit to the DIS, in addition to the number referred to in Article 39.5 of the Rules, as many originals of the signed award as are needed to provide a copy to each third-party notice recipient. ²The DIS shall transmit these copies to the third-party notice recipients, provided that all Deposits and Administrative Fees of the DIS have been paid in full.

Article 13 Costs

13.1

¹The Administrative Fees of the DIS caused by the third-party notice shall be paid and borne by the Main Party, even if the third-party notice is deemed not to have been issued. ²A third-party notice recipient shall be treated as a party pursuant to Paragraph 3.4 of the Schedule of Costs (Annex 2 of the Rules). ³If the Administrative Fees caused by the third-party notice are not paid within a time limit set by the DIS, the third-party notice shall be deemed not to have been issued.

13.2

¹The share of the initial deposit and the Deposit for fees and expenses of the arbitrators caused by the third-party notice shall be paid by the Main Party. ²A third-party notice recipient shall be treated as an additional party pursuant to Paragraph 2.4 of the Schedule of Costs only if it has intervened in the arbitration. ³If the initial deposit and the Deposit under sentence 1 are not paid within a time limit set by the DIS, the third-party notice shall be deemed not to have been issued.

13.3

Its costs and expenses within the meaning of Article 32 (iii) of the Rules shall be borne by the third-party notice recipient that does not intervene in the arbitration or withdraws from the arbitration pursuant to Article 7.4 or Article 8.4 in conjunction with Article 7.4.

13.4

The costs and expenses incurred by the parties as a result of the intervention (Article 32 (iii) of the Rules) as well as fees and expenses of any expert appointed by the arbitral tribunal (Article 32 (ii) of the Rules) shall be costs of the arbitration.

13.5

¹The arbitral tribunal shall decide on the allocation of the arbitrators' fees and expenses caused by the intervention as well as the Intervener's costs and expenses in an award between the Main Party and the Intervener in accordance with Articles 32 and 33 of the Rules and Article 10.2. ²The Intervener shall not be obliged to reimburse any further costs of the arbitration (Article 32 of the Rules).

Article 14 Transmission of Documents, Time Limits

14.1

Unless otherwise provided for in the DIS-TPNR, Article 4 of the Rules shall apply, *mutatis mutandis*, to third-party notice recipients.

14.2

The DIS may extend the time limits provided for in the DIS-TPNR at its discretion.

Article 15 Confidentiality

Article 44 of the Rules shall apply, *mutatis mutandis*, to the third-party notice recipient.

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These Supplementary Rules are drafted in a single original, of which the German and English texts are equally authoritative.