DIS Mediation/Conciliation Rules

in force as from January 1, 2002

(Schedule of Costs effective as from October 1, 2004)

Section 1 Scope of application

1." The Mediation/Conciliation Rules set forth herein apply when the parties involved in a dispute seek an amicable settlement and have agreed or agree to do so pursuant to the Mediation/Conciliation Rules of the German Institution of Arbitration.

2." There is no required form for the agreement between the parties to apply the DIS Mediation/Conciliation Rules. The agreement should, however, be in writing.

Section 2 Application for mediation/conciliation

1." The party wishing to commence mediation/conciliation proceedings ("the applicant") shall apply to the other party in writing, requesting that the dispute to be settled pursuant to the DIS Mediation/Conciliation Rules. Particulars of the dispute shall be laid out in the application.

2." A copy of this application shall be forwarded to the DIS Secretariat. At the same time a registration fee in accordance with Item 1 of the schedule of costs shall be paid.

Section 3 Commencement of the mediation/conciliation proceedings

1." Mediation/conciliation proceedings commence when the other party advises the DIS Secretariat of its willingness to participate in the proceedings. The acceptance shall be communicated in writing. Fax or e-mail communications shall suffice. The DIS Secretariat informs the parties of the commencement of proceedings without delay.
2." If the other party turns down the application of the applicant or fails to reply within 30 days or any other time-limit set by the applicant, mediation/conciliation proceedings shall not commence.

3." Mediation/conciliation proceedings pursuant to the DIS Mediation/Conciliation Rules shall likewise not commence, if the registration fee according to section 2 sub. 2 has not been paid to the DIS before expiry of the above mentioned time-limit.

4." If the DIS does not receive a reply within 30 days of delivery of the application or within any other time-limit mentioned in the application, it shall inform the applicant without delay that the proceedings will not commence.

Section 4 Number of mediators/conciliators

The mediation/conciliation shall be conducted by a sole mediator/conciliator, unless the parties have agreed to the appointment of several mediators/conciliators. The parties are free to agree on the number of mediators/conciliators.

Section 5 Qualifications required of the mediator/conciliator

1." Each mediator/conciliator must be impartial and independent.

2." Each appointed mediator/conciliator shall notify the other party and the DIS Secretariat of all circumstances which are likely to give rise to doubts as to his impartiality or independence.

Section 6 Mediation/conciliation proceedings involving more than two parties

1." If the application for DIS mediation/conciliation indicates that more than one other party is involved in the proceedings, the application shall be delivered to each of the parties as well as copy of each to the DIS Secretariat.

2." If the parties thus indicated do not all agree to the mediation/conciliation proceedings, the mediation/conciliation proceedings only involve those parties which have expressed their agreement.

Section 7 Appointment and selection of mediators/conciliators

1." In proceedings to be conducted by a sole mediator/conciliator, the mediator/conciliator is appointed jointly by the parties.

2." If the parties have agreed on proceedings being conducted by two mediators/conciliators, the applicant shall appoint one mediator/conciliator and the other party the second. Multiple parties on either or both sides shall appoint their respective mediator/conciliator jointly.

3." If the parties have agreed on proceedings being conducted by three mediators/conciliators, the applicant shall appoint one mediator/conciliator and the other party the second. Multiple parties on either or both sides shall appoint their respective mediator/conciliator jointly. The two mediators/conciliators so appointed shall designate the third mediator/conciliator.

4." Upon request, the DIS-Secretariat will make suggestions for the selection of mediators/conciliators.

Section 8 Appointment of mediators/conciliators by the DIS Secretariat

1." The parties may provide that the DIS Secretariat appoints all or individual mediators/conciliators. In such an event, the request for appointment shall be made jointly by all parties in the mediation/conciliation proceedings.

2." If a party fails to appoint a mediator/conciliator and if there has been no joint request by the parties for the DIS to appoint a mediator/conciliator, the mediation/conciliation proceedings shall terminate upon expiry of the time-limit set for the appointment respectively for the submission of a request. The DIS shall inform the parties without undue delay about the termination of the proceedings.

Section 9 Time-limits for designation of mediators/conciliators
Unless otherwise agreed by the parties, the time-limit for appointing mediators/conciliators shall be 30 days from commencement of the mediation/conciliation proceedings.

Section 10 Request for appointment of a mediator/conciliator by the DIS Secretariat

1." The request for appointment of a mediator/conciliator shall contain:
   - the names, addresses and, as far as available, telephone and telefax numbers and e-mail addresses of the parties and
   - a copy of the application for mediation/conciliation pursuant to section 2 of the DIS Mediation/Conciliation Rules.

2." Simultaneously with the request for appointment of a mediator/conciliator, the parties shall pay the fee pursuant to Item 2 of the schedule of costs.

3." The fee shall be paid jointly by the parties to the dispute. When requesting payment of the respective shares of the fee due by the parties, the DIS Secretariat shall take account of the registration fee paid by the applicant.

4." The DIS-Secretariat can make the appointment of mediators/conciliators contingent on receipt of the fees according to Item 2 of the schedule of costs.

Section 11 Proceedings

1." The mediators/conciliators shall support the parties in an impartial and independent manner in their attempt to settle the dispute amicably.

2." The particulars of the proceedings will be fixed by the mediators/conciliators in consultation with the parties.

3." If the parties so wish, the mediators/conciliators can make suggestions towards settling the dispute at every stage of the proceedings. Grounds for the suggestions must not be stated.

Section 12 Termination of the proceedings

1." Each of the parties involved may terminate the mediation/conciliation proceedings at any time without stating grounds. Notice of termination shall be given to the mediators/conciliators and to the other party.

2." Termination of mediation/conciliation proceedings does not prevent agreement on commencing new mediation/conciliation proceedings.

3." If the mediation/conciliation proceedings do not succeed in resolving the dispute, the proceedings shall be terminated.

4." The mediators/conciliators shall, at the request of a party, provide a written record of the termination. The record shall be signed by all the mediators/conciliators.

5." If the mediation/conciliation proceedings end in agreement between the parties, a record of the agreement shall be made which shall be signed by all mediators and parties involved.

6." The DIS Secretariat shall be informed of the termination of the proceedings.

Section 13 Confidentiality

1." The mediators/conciliators have an obligation to the parties to respect the unrestricted confidentiality of the mediation/conciliation and shall, upon accepting their mandate, declare to the parties their acknowledgement of the duty of confidentiality.

2." Upon request of a party, the mediators/conciliators shall make suggestions for an agreement on the confidential treatment of statements and documents presented, in particular regarding their non-disclosure in proceedings before
state courts or arbitral tribunals in the case of failure to reach an amicable settlement.

**Section 14 Follow-on arbitration**

1. The parties in mediation/conciliation proceedings may, at any stage in the proceedings, agree in writing that the mediators/conciliators continue with their mandate in the function of arbitrators. In such case, the duty of confidentiality does not apply vis-à-vis participants in that arbitration (including possible witnesses, consultants etc.).

2. Unless otherwise agreed by the parties, the arbitration proceedings will be conducted pursuant to the DIS Arbitration Rules.

**Section 15 Costs**

1. The costs involved in conducting DIS mediation/conciliation proceedings and the fees for mediators/conciliators appointed pursuant to the DIS Mediation/Conciliation Rules are in accordance with the schedule of costs appended to the DIS Mediation/Conciliation Rules.

2. The mediators/conciliators may modify their fees in agreement with the parties.

3. The parties shall be jointly and severally liable for the costs of the proceedings.

**Section 16 Advance Fees**

The mediators/conciliators may make the commencement or continuation of the proceedings contingent on the payment of an advance equivalent to the total fees of the mediators/conciliators and the anticipated reimbursements

**Referring Principles:**

XII.5 - Settlement privilege