ARBITRATION RULES

1. Obedience to this Regulation

1.1 – Parties wishing to submit any dispute, based on an arbitration agreement, to the São Paulo Mediation and Arbitration Chamber, hereinafter referred to as **Chamber**, either through an arbitration clause or otherwise, commit to be bound by this Regulation and by the **Chamber's** Operation Rules.

1.2 – Any amendment to this Regulation agreed upon between the parties shall be valid solely for such specific case.

1.3 – The **Chamber** itself does not settle the disputes submitted to it. It has the function of managing and ensuring the due development of the arbitration proceedings, by nominating and appointing arbitrator(s), unless otherwise agreed upon between the parties.

2. Preliminary Acts

2.1 – The party, in a separate document in which an arbitration agreement is undertaken, establishing the competence of the **Chamber** to settle contractual disputes involving matters that may be the object of arbitration, shall provide for the notification of the **Chamber** of such intent by mentioning, at the outset, the matter to be submitted to arbitration, the amount involved, the name and full identification of the other party(ies), and by attaching a copy of the agreement and other documents related to the dispute.

2.2 – The **Chamber** shall send a copy of the notice to the other party(ies), inviting it (them) to, within fifteen (15) days, appoint an arbitrator and his or her substitute, according to the terms of the arbitration clause, and forward the list of names making up the list of arbitrators eligible for appointment, together with a counterpart of this Regulation. The litigant commencing the arbitration proceedings shall be granted an identical time limit to appoint an arbitrator and his or her substitute.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

2.3 – The **Chamber** shall, within two (2) days from expiration of the time limit set out in Article 2.2, inform the parties on the appointment of arbitrators for the opposing party.

2.4 – The chairman of the Arbitral Tribunal shall be chosen by mutual agreement of the arbitrators appointed by the parties, preferably from among the members of the **Chamber**'s list of arbitrators, within no more than ten (10) days following the acts provided for by Article 2.3. All of the names shall be subject to the approval of the President of the **Chamber**. Once approved, the arbitrators shall be called to express their acceptance by signing the Declaration of Independence, thereby commencing and opening the arbitration proceedings, and by causing the parties to be served notice in order to draw up the Arbitration Term within ten (10) days.

2.5 – Should either party fail to appoint the arbitrator and his or her respective substitute within the abovementioned time limit, the President of the **Chamber** shall conduct such appointment. The President of the **Chamber** shall also appoint, preferably from among the members of the **Chamber's** list of arbitrators, the arbitrator who shall act in the capacity of Chairman of the Arbitral Tribunal, in the absence of such appointment, as provided by Article 2.4.

2.6 – The Arbitral Tribunal shall be composed of three (3) arbitrators, and the parties may agree that the dispute shall be settled by a sole arbitrator, appointed by mutual agreement of the parties, including a substitute, within fifteen (15) days. Upon expiration of said time limit, if the parties have failed to appoint the sole arbitrator, this latter shall be designated by the President of the **Chamber**, preferably from among the members of the **Chamber**'s list of Arbitrators.

2.7 – The inception of the arbitration by a sole arbitrator shall follow the same procedures as stated in this Regulation for arbitrations with three arbitrators (Arbitral Tribunal).

2.8 – In those cases involving several claimants or respondents (multiple-party arbitration), each side shall appoint, by mutual agreement, one arbitrator and his or her substitute, upon observance of the terms stated in Articles 2.1 to 2.4. In the absence of agreement on the appointment, the President of the **Chamber** shall conduct it, as per Article 2.5, including the

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

appointment of the Chairman of the Arbitral Tribunal.

3. Arbitration Term

3.1 – The parties and the arbitrators shall draw up the Arbitration Term, for which they shall count on assistance to be rendered by the **Chamber**. The Arbitration Term shall mention the names and identification of the parties and arbitrators appointed by them, as well as their substitutes, the name and identification of the arbitrator who shall act in the capacity of Chairman of the Arbitral Tribunal, the place where the award is to be handed down, authorization or non-authorization for the arbitrators to base their decision on equity principles when deciding on the object of the dispute, its approximate amount and the liability for the payment of procedural expenses, experts' and arbitrators' fees. The Arbitration Term shall also bring a declaration that the Arbitral Tribunal shall duly observe the deadlines and procedures stated herein.

3.2 – The parties shall execute the Arbitration Term together with the appointed arbitrators and their substitutes, the representative of the **Chamber** and two witnesses. The Arbitration Term shall remain filed with the **Chamber**. The absence of either party's signature shall not hinder the regular processing of the arbitration.

4. Submission to Arbitration

4.1 – If no arbitration clause is in place, and even so the parties demonstrate their intent to refer the dispute to arbitration, a document providing for their submission to arbitration shall be drawn up and signed by the parties and two witnesses, under Article 3.1.

5. Arbitrators

5.1 – The arbitrators shall be appointed from among the **Chamber's** list of Arbitrators or otherwise, provided that they are not impeded to perform their duties, under Article 5.2.

5.2 – The persons below are not allowed to be appointed to act in the

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

capacity of arbitrator:

a) a party to the dispute;

b) a party who has intervened in the dispute as attorney or representative for either party, any witness or expert witness;

c) a party who is a spouse or a relative until the third degree of either party, the representative or the counsel;

d) anyone participating in the managing body or in the executive board of a legal entity that is a party to the dispute, or that holds interest in its capital;

e) a close friend or enemy of either party or their attorney;

f) a person otherwise interested, directly or indirectly, in the judgment of the case in favor of either party, or who has previously expressed his or her view on the case, or who has advised either party on the matter;

g) a person who has acted as mediator before inception of the arbitration, except as otherwise agreed on between the parties.

5.3 – Upon occurrence of any of the situations mentioned in the previous article, the arbitrator shall declare, at any time, his or her own impediment or disqualification because of suspicion, and withdraw from the office, or submit his or her withdrawal, even if appointed by both parties, thus being individually liable for the damages resulting from non-observance of this provision.

5.4 – If, in the course of the arbitration proceeding, one learns of any of the situations implying disqualification or suspicion of an arbitrator, or if an arbitrator dies or is declared incapable of performing his or her duties, he or she shall be replaced by the arbitrator designated in the Arbitration Agreement or Arbitration Term.

5.5 – In the event the substitute cannot take over for any reason and at

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

any time, the President of the **Chamber** shall appoint an arbitrator, preferably from among the members of the list of Arbitrators.

5.6 – The arbitrator, in the performance of his or her duties, shall be independent, impartial, discreet, diligent and competent, and shall comply with the Code of Ethics drawn up by **Chamber**.

5.7 – The arbitrators appointed to act in the arbitration proceedings, under Paragraph 6 of Article 13, of Brazilian Law n. 9,307/96, shall complete the following questionnaire, within two days:

1. Have you ever acted, in any manner or capacity, in the defense of either party's interests in the case you are appointed to act as arbitrator?

2. Have you ever been an employee, external advisor or acted as court expert or as expert witness for either party to this case? And the company where you exercise or have exercised professional activities?

3. Do you know the parties to the dispute? What is the level of your relationship?

4. Do you have time available to dedicate to the arbitration proceeding?

5. If you have already worked for either party, have you ever expressed your view on the matter submitted to arbitration?

6. Do you maintain any business relations with either party or potential witness to the case?

7. Does any member of your family or company maintain, or has any member of your family or company maintained commercial relations with either party to the arbitral proceeding?

8. Have you ever acted as arbitrator or court expert? If possible, please mention the matters involved.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

9. Do you want to add anything to this questionnaire?

6. Parties and Attorneys

6.1 – The parties may be represented by an attorney, as well as by a retained counsel.

6.2 – Unless otherwise expressly provided, all the communications, notices or notifications involving procedural acts shall be made to the attorney appointed by the party.

6.3 – The retained counsels shall enjoy all the rights and powers granted to them by law, the Legal Profession Act and the Brazilian Bar Association, and commit to exercise their duties in strict compliance with said rules and through a highly ethical professional behavior.

7. Notices, Time Limits and Submission of Documents

7.1 – For all purposes set out in this Regulation, notices shall be made by registered mail or through a notary office, and whenever feasible, by fax, telex, e-mail or equivalent means, upon receipt through original documents or copies through registered mail or courier.

7.2 – The notice shall stipulate the time limit for performance of the requested act, such period being counted as subsequent days. The date of the effective delivery of the notice shall be taken into consideration when starting to count the time limit.

7.3 – Any and all document addressed to the Arbitral Tribunal shall be delivered and filed with the **Chamber's** Secretariat, in the number of copies equivalent to the number of arbitrators, parties, in addition to a copy, which shall be kept filed with the **Chamber**.

7.4 – The time limits set out herein may be extended, as strictly necessary, at the discretion of the Chairman of the Arbitral Tribunal, or the President of the **Chamber**, in respect of Article 2.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

7.5 – In the absence of deadline set out for a specific act to be performed, the time limit of five (5) days shall be deemed applicable, without prejudice to the provision contained in Article 7.4.

7.6 – Documents in foreign language shall be translated into Portuguese through free translation, as needed.

8. Procedure

8.1 – Upon commencement of the arbitration, the Chairman of the Arbitral Tribunal may convene the parties and other arbitrators to attend a preliminary hearing, where a secretary shall be appointed, if necessary. The parties shall be informed of the procedure, and the relevant acts for proper development of the arbitration shall be taken.

8.2 – The parties shall be granted a period of ten (10) days to submit their written pleadings, by indicating the evidence they intend to produce, such period being counted from the hearing, if any, or from the notice sent to them for such purpose.

8.3 – The **Chamber**, within the five (5) days following the receipt of the pleadings of the parties, shall send the respective copies to the arbitrators and to the parties, which shall submit their respective briefs within ten (10) days.

8.4 – Within five (5) days from the receipt of the briefs, the Arbitral Tribunal shall examine the status of the case and determine, as the case may be, the production of expert evidence. The parties may appoint expert witnesses within five (5) days following the notice of approval of the evidence.

8.5 – The parties may produce all the evidence they deem useful to support their case and provide the arbitrators with clarification. The parties shall also produce other available evidence that any member of the Arbitral Tribunal deems necessary for purposes of clarification and settlement of the dispute. The Arbitral Tribunal shall grant all the useful, necessary and relevant evidence.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

8.6 – All the evidence shall be produced before the Arbitral Tribunal, which shall give notice thereof to the other party, which shall manifest thereon.

8.7 – The **Chamber** shall arrange for, at the instance of one or more parties, a stenographic copy of the testimonies, as well as interpreters or translators. The party or parties requesting such acts shall pay the amount of the estimated cost thereof in advance, with the **Chamber**, under Article 16.

8.8 – The members of the **Chamber**, the arbitrators and parties are not authorized to disclose any information to which they have had access as a result of their office or participation in the arbitration proceedings.

8.9 – The proceedings shall proceed even by default of either party, provided that such party, being duly notified, fails to appear at the hearing or to obtain a postponement of the hearing. The arbitral award may not, under no circumstance whatsoever, be grounded on either party's default.

9. Acts to be Performed Outside the Place of Arbitration

9.1 – If the Arbitral Tribunal deems necessary, for its convincement, that a given act be performed outside the place of arbitration, the Chairman of the Arbitral shall communicate the parties of the date, time and place of performance of the act, for them to be present at it, if they so wish.

9.2 – Once the act is duly performed, the Chairman of the Arbitral Tribunal shall cause a report thereon to be drafted within three (3) days, by mentioning the facts and findings of the Arbitral Tribunal, and communicating the parties thereon, for them to speak on the records.

10. Hearing for the Production of Proof

10.1 – Should there be the need for producing oral evidence, the Chairman of the Arbitral Tribunal shall convene the parties and arbitrators to attend the hearing for the production of proof at the day, time and place as previously designated**.**

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

10.2 – The parties shall be convened at least ten (10) days in advance.

10.3 – Should expert evidence be produced, the hearing for the production of such proof shall be held within no more than thirty (30) days from the delivery of the expert report. Should no expert evidence be produced, the hearing for the production of proof, if necessary, shall be held within thirty (30) days from the end of the time limit set out in Article 8.3.

10.4 – Upon conclusion of the evidentiary stage, the Arbitral Tribunal shall grant the period of no more than ten (10) days for the parties to submit their closing arguments.

11. Adjournment or Suspension of the Hearing

11.1 – The Arbitral Tribunal, if circumstances so demand, may determine the adjournment or suspension of the hearing. Adjournment or suspension shall be mandatory if requested by all parties, in that one shall forthwith designate a date for it to be held or continued.

12. Interim and Coercive Measures

12.1 – The Arbitral Tribunal shall take the necessary and feasible measures for the proper development of the arbitral proceedings and, as the case may be, it shall request the competent judicial authority to take interim or coercive measures.

12.2 – In the event a witness refuses to attend the hearing for the production of proof or, if such witness attends the hearing but refuses to testimony without legal justification, the Arbitral Tribunal may request the competent Court to take the applicable judicial measures for the taking of such testimony of the defaulting witness.

13. Arbitral Award

13.1 – The Arbitral Tribunal shall render the award within twenty (20) days.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

13.2 – The time limit referred to by Article 13.1 shall be counted:

a) if no hearing is to be held, from the elapsing of the time limit referred to in Article 8.3;

b) if a hearing is to be held, from the elapsing of the time limit for submitting the closing arguments.

13.3 – The time limit referred to in Article 13.1. may be extended for up to sixty (60) days, at the discretion of the Chairman of the Arbitral Tribunal.

13.4 – The arbitral award shall be rendered by a majority vote, in that each arbitrator, including the Chairman of the Arbitral Tribunal, shall cast one vote. If no majority agreement is reached, the vote cast by the Chairman of the Arbitral Tribunal shall prevail. The award shall be put in writing by the Chairman of the Arbitral Tribunal and executed by all of the arbitrators. The Chairman of the Arbitral Tribunal shall certify the absence or the dissent in respect of the execution of the arbitral award by the arbitrators.

13.5 – The arbitrator dissenting from the majority may provide grounds for his dissenting opinion, which shall be included in the arbitral award.

13.6 – The arbitral award shall necessarily contain:

a) a report, with the name of the parties and a summary of the dispute;

b) the grounds for the decision, which shall provide for the findings of fact and of law, upon express clarification, as the case might be, that it has been rendered based on equity principles;

c) the decision, with all of its specifications and the deadline for compliance therewith, as the case might be; and

d) the day, month, year and place where it was rendered.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

13.7 – The arbitral award shall also mention the procedural costs and expenses, as well as the respective pro rata division, upon due observance of the agreement of the parties, expressed in the arbitration agreement or in the Arbitration Term.

13.8 – Once the award is rendered, the arbitration is deemed to be concluded and the Chairman of the Arbitral Tribunal shall send the decision to the **Chamber** in order that this latter sends it to the parties, by mail or any other means of communication, upon acknowledgement of receipt or, still, by delivering it directly to the parties, upon receipt.

13.9 – The **Chamber** shall comply with Article 13.8, following effective proof of full payment of the costs and arbitrators' fees by one or both Parties, under ANNEX I – Table of Costs and Arbitrators' Fees.

13.10 – Within five (5) days from the receipt of the notice on the rendering of the award, or from the personal knowledge of the award, the interested party, upon communication to the other, may request that the Arbitral Tribunal clarify any doubt, omission or contradiction found in the arbitral award.

13.11 – The Arbitral Tribunal shall decide within ten (ten) days, by amending the award and notifying the parties under Article 13.8.

14 – Amicable Agreement

14.1 – If, in the course of the arbitral proceedings, the parties reach an agreement and put an end to the dispute, the Arbitral Tribunal may, at the request of the parties, state such fact in an award, upon due observance of Article 13.6 above, as needed.

15 – Performance of the Award

15.1 – The arbitral award is final and the parties are bound by its terms and committed to comply with it in the manner and within the time limit therein stated.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

16 – Arbitration Costs

16.1 – The **Chamber** shall prepare a table of costs and arbitrators' fees and other expenses, by establishing the means and form of the deposits.

16.2 – The abovementioned table may be reviewed by the **Chamber** from time to time.

17 – Final Provisions

17.1 – As regards international arbitration, the parties shall choose the law that shall apply to the merits of the dispute and the language of the arbitration. Should no provision or consensus in this respect be in place, the arbitral tribunal shall indicate the rules it deems fit, as well as the language, taking into consideration the terms of the agreement, the usual practices, custom and international commercial rules. The arbitrators may only decide based on equity principles or act in the capacity of amicable advisor if so authorized by the parties.

17.2 – The arbitrators shall interpret and apply this present Regulation to specific cases, including the existing loopholes, in respect of everything concerning their powers and duties.

17.3 – Any controversy between the arbitrators as regards the interpretation or adoption of this Regulation shall be settled by the Chairman of the Arbitral Tribunal, whose decision shall be final.

17.4 – The arbitral proceedings are strictly secret, wherefor the members of the **Chamber**, the arbitrators and the parties are not allowed to disclose any information related to the case and to which they have had access as a result of their office or participation in said proceedings.

17.5 – The **Chamber** may publish some excerpts of the award on Syllabuses, always preserving the identity of the parties.

17.6 – Whenever the interest of the parties so justifies, and upon prior

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br

authorization, the **Chamber** shall disclose the arbitral award.

17.7 – The **Chamber** may provide the parties, upon written request, with certified copies of documents related to the arbitration, which are needed for purposes of a judicial action connected with the arbitration and/or its respective object.

17.8 – The São Paulo Mediation and Arbitration **Chamber** may exercise the function of appointing authority for purposes of appointing arbitrators at "ad hoc" arbitrations, through its Presidency, whenever so agreed between the parties through arbitration agreement.

17.9 – This present Regulation is approved as a private set of rules on April 22nd 2010 and becomes effective from this present date. This Regulation replaces the prior Regulation, approved on May 22nd 1995 and amended on August 20th 1998.

17.10 – Except as otherwise agreed between the parties, this Regulation applies to proceedings already in course before the **Chamber**, as well as to those coming as of this date.

Av. Paulista, 1313 – 12º andar | CEP 01311 - 923 | São Paulo | Tel.: 11 3549 3240 3264 | Fax: 11 3284 5721 | www.ciesp.org.br