

## **Vertragsrecht für die Wirtschaftspraxis**

10. Mai 2010

### **1. Notification Clause**

#### **1.1 Beispiel 1**

All notices or other communications to be given under or in connection with the Agreement shall be made in writing and in English, and shall be delivered by hand, by registered mail (return receipt requested), by an internationally recognized courier or by telefax to the following addresses:

or any substitute address or fax number as a party may notify to the other in accordance with the above by not less than five days' notice.

Any notice to be given hereunder shall be given prior to the expiry of a term or deadline set forth in this Agreement or by applicable law. All notices, communications, documents or other information shall be effective only if received by the party to whom it is addressed irrespective of whether received prior to or after the expiry of such term or deadline (provided that the notice was timely and duly given in accordance with this Article).

#### **1.2 Beispiel 2**

[...] All notices shall be effective upon receipt (provided that any notice received by facsimile transmission or otherwise at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day), ...

#### **1.3 Beispiel 3**

If sent by registered mail, such notice or communication shall conclusively be deemed to have been received two Business Days from the time of posting, in the case of inland mail in Switzerland, or four Business Days from the time of posting, in the case of international mail.

### **2. Entire Agreement Clause | Merger Clause**

This Agreement, including the Annexes and any other documents referred to herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and shall supersede all prior oral and

written agreements or understandings of the parties relating hereto. All references to this Agreement shall be deemed to include the Annexes hereto.

### **3. Amendments**

#### **3.1 Beispiel 1**

This Agreement may only be modified or amended by a document signed by all parties. Any provision contained in this Agreement may only be waived by a document signed by the party waiving such provision.

#### **3.2 Beispiel 2**

This Agreement may only be modified or amended by a document signed by all parties. This applies also with respect to the cancellation of the requirement of the written form.

### **4. Severability**

#### **4.1 Beispiel 1**

Should any part or provision of this Agreement be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of this Agreement shall nonetheless remain valid. [In this case, the parties shall negotiate in good faith a substitute provision that best reflects the economic intentions of the parties without being unenforceable, and shall execute all agreements and documents required in this connection.][For the avoidance of doubt, this provision is not intended to modify the authority of the arbitrators to replace an invalid provision of this Agreement consistent with Swiss law.]

#### **4.2 Beispiel 2**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by applicable Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect *so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party*. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner

in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

## **5. Applicable Law**

### **5.1 Beispiel 1**

This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland.

### **5.2 Beispiel 2**

This Agreement shall be governed by, and construed in accordance with, the substantive laws of Switzerland, with the exclusion of the Vienna Convention on the International Sale of Goods dated April 11, 1980.

### **5.3 Beispiel 3**

This Agreement shall be governed by Swiss or American Law.

## **6. Dispute Resolution**

### **6.1 Arbitration**

All disputes arising out of or in connection with this Agreement, including disputes on its conclusion, binding effect, amendment and termination, shall be resolved, to the exclusion of the ordinary courts, by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the notice of arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. The seat of the arbitration shall be in Zurich. The arbitral proceedings shall be conducted in English.

### **6.2 Amicable Resolution**

It is the objective of the parties to resolve any disputes arising out of or in connection with this Agreement in an expedient manner by mutual cooperation without resort to litigation by referral of such dispute to the chairpersons of Company 1 and Company 2 for amicable resolution.

If the chairpersons of Company 1 and Company 2 cannot resolve a dispute arising out of or in connection this Agreement within thirty Business Days after refer-

ral, such dispute shall be exclusively and finally resolved by a panel of three arbitrators in accordance with the Rules of Arbitration of the International ....

### **6.3 Jurisdiction**

#### **6.3.1 Beispiel 1**

All disputes arising out of or in connection with this agreement, including disputes on its conclusion, binding effect, amendment and termination, shall be resolved exclusively by the Commercial Court of Zurich (*Handelsgericht des Kantons Zürich*).

#### **6.3.2 Beispiel 2**

The parties irrevocably agree that the courts of Zurich | Zug, Switzerland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

#### **6.3.3 Beispiel 3**

The place of jurisdiction is the place of fulfilment.