

MODEL CONCILIATION CLAUSE

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Arbitration & Conciliation 1996 & the KCCI ADR Conciliation Rules as at present in force.

(The parties may agree on other conciliation clauses.)

REQUEST FOR CONCILIATION FORM

FORM NO KAC 401

DETAILS OF PARTIES

Name of the Submitting Party:

Address:

Telephone/Mobile/Email:

Name of the Opposite Party/ies:

Address:

Telephone/Mobile/Email:

Nature of Dispute

Contractual

Non -
Contractual

Domestic

International

Date of agreement (In case of contractual dispute):

Whether agreement provides Conciliation
clause (In case of contractual dispute)

Dispute

Agreement

KCCI ADR
Centre
Conciliation
Clause

Whether
Conciliation
Clause
exists in
Agreement

Nature of Agreement:

Approximate Quantum
of Dispute/ Agreement:

Brief Synopsis of Dispute /Agreement:

Whether fact sheets are filed with this form:

Yes

No

Whether any communication issued to opposite party:
(If issued, attach a copy of such communication)

Yes

No

Number of Conciliators Required

1

2

3

Is the matter pending in any Court/Forum

Yes

No

If yes, name of such Court/Forum:

Present status of the matter pending:

Furnish additional information that is deemed relevant:

Date:

Name & Signature:

--

--

- Submit Form with the appropriate registration/filing fee as provided in the KCCI ADR Centre Conciliation Fee Schedule
- Use additional sheets if space provided is insufficient

FOR OFFICE USE:

Form Received on:

Invitation to Opposite Party sent on:

Invitation received by Opposite Party on:

KAC File No. allotted

KAC CONCILIATION RULES

1. The KAC Conciliation Rules (hereinafter referred to as “Rules”) shall be the UNCITRAL Conciliation Rules modified in accordance with the rules set out below.
2. All communication made to KAC shall be addressed to the Administrator of KAC.
4. The costs and expenses of Conciliation will be governed by the KAC Conciliation Fee Schedule under the KAC Conciliation Rules, referred in Schedule-1.

Article 1

APPLICATION OF THE RULES

- (1) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the Arbitration & Conciliation Act 1996 and the KAC Conciliation Rules apply.
- (2) The parties may agree to exclude or vary any of these Rules at any time.
- (3) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

Article 2

COMMENCEMENT OF CONCILIATION PROCEEDINGS

(1) The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.

(2) Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it be confirmed in writing.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he informs the other party accordingly.

Article 3

NUMBER OF CONCILIATORS

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Article 4

APPOINTMENT OF CONCILIATORS

(1) (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator;

(b) In conciliation proceedings with two conciliators, each party appoints one conciliator; (c) In conciliation proceedings with three conciliators, each party appoints one conciliator.

The parties shall endeavour to reach agreement on the name of the third conciliator.

(2) Parties may enlist the assistance of KCCI ADR Centre in connection with the appointment of conciliators. In particular,

(a) A party may request KCCI ADR Centre to recommend the names of suitable individuals to act as conciliator; or

(b) The parties may agree that the appointment of one or more conciliators be made directly by KCCI ADR Centre.

In recommending or appointing individuals to act as conciliator, KCCI ADR Centre shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into

account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

Article 5

SUBMISSION OF STATEMENTS TO CONCILIATOR

(1) The conciliator,* upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of his statement to the other party.

(3) At any stage of the conciliation proceedings the conciliator may request a party to submit to him such additional information as he deems appropriate.

*In this and all following articles, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.

Article 6

REPRESENTATION AND ASSISTANCE

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

Article 7

ROLE OF CONCILIATOR

(1) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the

parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

Article 8

ADMINISTRATIVE ASSISTANCE

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Article 9

COMMUNICATION BETWEEN CONCILIATOR AND PARTIES

(1) The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

Article 10

DISCLOSURE OF INFORMATION

When the conciliator receives factual information concerning the dispute from a party, he discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate.

However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

Article 11

CO-OPERATION OF PARTIES WITH CONCILIATOR

The parties will in good faith co-operate with the conciliator and, in particular, will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Article 12

SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Article 13

SETTLEMENT AGREEMENT

(1) When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. ** If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.

(3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

**The parties may wish to consider including in the settlement agreement a clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.

Article 14

CONFIDENTIALITY

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Article 15

TERMINATION OF CONCILIATION PROCEEDINGS

The conciliation proceedings are terminated:

(a) By the signing of the settlement agreement by the parties, on the date of the agreement;
or

(b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated,

(e) The these Rules.

on the date of the declaration.

Article 16

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Article 17

COSTS

(1) Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term "costs" includes only:

(a) The fee of the conciliator;

(b) The travel and other expenses of the conciliator;

(c) The travel and other expenses of witnesses requested by the conciliator with the consent of the parties;

(d) The cost of any expert advice requested by the conciliator with the consent of the parties;

(e) The cost of any assistance provided pursuant to articles 4, paragraph (2)(b), and 8 of these rules.

(2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

Article 18

DEPOSITS

(1) The conciliator, upon his appointment, may request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph (1) which he expects will be incurred.

(2) During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party.

(3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

Article 19

ROLE OF CONCILIATOR IN OTHER PROCEEDINGS

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

Article 20

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings;

(a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) Admissions made by the other party in the course of the conciliation proceedings;

(c) Proposals made by the conciliator;

(d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

SCHEDULE - 1

CONCILIATION FEE SCHEDULE

DOMESTIC CONCILIATION

Registration Fee:

Filing Fee	Rs. 1,000
Consultation Fee (If availed from Member, ADR Sub-Committee of KCCI)	Rs. 750

Conciliator Fee (Per Conciliator):***(For Conciliators who follow KCCI ADR Centre Fee Schedule)***

Quantum of Claim (Rs.)	Conciliator Fee (Rs.)
If Dispute cannot be qualified	Rs. 2,000 per session
From 1,00,001 to 5,00,000	Rs. 1,750 per session
From 5,00,001 to 10,00,000	Rs. 2,500 per session
From 10,00,001 to 25,00,000	Rs. 3,500 per session
From 25,00,001 to 50,00,000	Rs. 4,000 per session
From 50,00,001 to 1,00,00,000	Rs. 5,000 per session
If quantum of claim is greater than 1,00,00,000	Rs. 7,000 per session

- One session – 3 hours or part thereof
- Session means Conciliation session & includes pre-Conciliation sessions if any
- If the Conciliation extends beyond 15 sessions, an additional fee of 25% per session is payable

Travel, Boarding & Lodging of Conciliators:

Local Sitting: Travelling allowance of INR 250.00 per sitting.

Outstation Sitting: Actuals by Air, Rail or Car, plus out-of-pocket expenses at actuals for boarding, lodging and local transport subject to maximum of Rs. 6,000.00 per day in Metropolitan cities and Rs. 3,500.00 per day in other cities. A Conciliator who makes his own arrangements for boarding, lodging, local transport etc. may be paid out of pocket expenses at the rate of INR 2000.00 per day, without production of vouchers.

For Conciliators not following the above schedule of fees, the fee will be based on the rates charged by the respective Conciliator

KCCI ADR Centre Administrative Fee for Domestic Conciliation

<u>Quantum of Claim</u> (Rs.)	<u>Administration Fee</u> (Rs.)
If Dispute cannot be qualified	Rs. 500 per session
From 1,00,001 to 5,00,000	Rs. 250 per session
From 5,00,001 to 10,00,000	Rs. 400 per session
From 10,00,001 to 25,00,000	Rs. 600 per session
From 25,00,001 to 50,00,000	Rs. 700 per session
From 50,00,001 to 1,00,00,000	Rs. 800 per session
If quantum of claim is greater than 1,00,00,000	Rs. 1,000 per session

- One session – 3 hours or part thereof
- Session means Conciliation session & includes pre-Conciliation sessions if any
- If the Conciliation extends beyond 15 sessions, an additional fee of 25% per session is payable

Note:

- Registration fee is to be paid by the party initiating the Conciliation at the time of filing the Conciliation Submission Form.
- Upon the appointment of the Conciliator, the initiating party shall make a deposit for 2 sessions of Conciliator fee and administrative fee. If the Conciliation is abandoned due to the absence of the opposite party or due to non-agreement in the first session itself, the balance amount will be refunded to the initiating party.
- After the first session, both parties shall always keep a deposit of Conciliator and administrative fee of 2 sessions in advance. After the conclusion of the Conciliation, the amount will be settled.
- The fee shall be payable in equal shares by the parties, provided that where one party fails to pay his share, the other party may pay that share, provided further that where the other party also does not pay the aforesaid share, the Conciliation proceedings may be suspended or terminated.

INTERNATIONAL CONCILIATION

Registration Fee:

Filing Fee	US\$ 100
------------	----------

Conciliator Fee (Per Conciliator):
(For Conciliators who follow KCCI ADR Centre Fee Schedule)

<u>Quantum of Claim</u> (US\$)	<u>Conciliator Fee</u> (US\$)
If Dispute cannot be qualified	300 per session
Upto 50,000	100 per session
From 50,000 to 250,000	200 per session
From 250,001 to 1000,000	400 per session
From 1000,001 to 5000,000	500 per session
If quantum of claim is greater than 5000,000	700 per session

- One session – 3 hours or part thereof
- Session means Conciliation session & includes pre-Conciliation sessions if any
- If the Conciliation extends beyond 15 sessions, an additional fee of 25% per session is payable

Travel, Boarding & Lodging of Conciliators:

Local Sitting: Travelling allowance of IUS\$ 20.00 per sitting.
 Outstation Sitting: Actuals Air and out of pocket expenses at actuals for boarding, lodging & local transport subject to a maximum of US\$ 350 per day

For Conciliators not following the above schedule of fees, the fee will be based on the rates charged by the respective Conciliator

KCCI ADR Centre Administrative Fee for International Conciliation

<u>Quantum of Claim</u> (US\$)	<u>Conciliator Fee</u> (US\$)
If Dispute cannot be qualified	50 per session
Upto 50,000	25 per session
From 50,000 to 250,000	40 per session
From 250,001 to 1000,000	60 per session
From 1000,001 to 5000,000	75 per session

If quantum of claim is greater than 5000,000	100 per session

- One session – 3 hours or part thereof
- Session means Conciliation session & includes pre-Conciliation sessions if any
- If the Conciliation extends beyond 15 sessions, an additional fee of 25% per session is payable

Note:

- Registration fee is to be paid by the party initiating the Conciliation at the time of filing of the Conciliation Submission Form
- Upon the appointment of the Conciliator, the initiating party shall make a deposit for 2 sessions of Conciliator fee and administrative fee. If the Conciliation is abandoned due the absence of the opposite party or due to non-agreement in the first session itself, the balance amount will be refunded to the initiating party.
- After the first session, both parties shall always keep a deposit of Conciliator and administrative fee of 2 sessions in advance. After the conclusion of the Conciliation, the amount will be settled.
- The fee shall be payable in equal shares by the parties, provided that where one party fails to pay his share, the other party may pay that share, provided further that where the other party also does not pay the aforesaid share, the Conciliation proceedings may be suspended or terminated.

Rent for KCCI ADR Centre Conference Rooms

Board Room (1st Floor – 10 persons – Air Conditioned)

Rs. 500 upto 1 hour

Rs. 1000 upto 3 hours

Rs. 300 for every additional hour or part thereof

Meeting Room (Ground Floor – 15 persons – Air Conditioned)

Rs. 750 upto 1 hour

Rs. 1,500 upto 3 hours

Rs. 500 for every additional hour or part thereof

Meeting Hall (1st Floor – 75 persons – Air Conditioned)

Rs. 1,500 upto 1 hour
Rs. 3,000 upto 3 hours
Rs. 1,000 for every additional hour or part thereof

Photocopy: Rs. 1 per page

Printout: Rs. 3 per page

Coffee/Tea/Snacks/Executive Lunch: Rates on actuals

Staff Over-time:

(Beyond 5.30 p.m. Monday to Friday/ Beyond 1.30 p.m. Saturdays/Sundays & Public Holidays)

Rs. 75 upto 1 hour
Rs. 150 up to 3 hours
Rs. 50 for every additional hour or part thereof.

TERMS

- In case a counterclaim is made, the fee will be fixed based on the claim or counter claim, whichever is higher.
- The fee shall be payable in equal shares by the parties, provided that where one party fails to pay his share, the other party may pay that share, provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the Conciliation proceedings may be suspended or terminated.
- If the amount referred in Conciliation is in a currency other than Indian Rupees, it shall be converted into Indian Rupees at the current official rate of exchange.
- Additional 18% GST will be levied on all amounts
- All payments shall be made by cheque payable to 'KCCI ADR Centre'. Alternatively, the amounts can be paid into the KCCI ADR Centre's Bank account via Bank Transfer.

SMALL CAUSES CONCILIATION* FEE SCHEDULE

*Small Causes Conciliation shall be applicable to commercial disputes below the value of INR 1 lakh.

Registration Fee:

Filing Fee	Rs. 100
------------	---------

Conciliator Fee (Per Conciliator):

(For Conciliators who follow KCCI ADR Centre Fee Schedule)

	Conciliation Fee (Per Session)
Conciliation of commercial disputes	Rs. 500

- One session - 3 hours or part thereof
- If the Conciliation extends to more than 15 sessions, an additional fee of 25% is payable.
- People above 70 years are entitled to 50% discount in the above rates

Fee Payment Schedule

Registration Fee:

By the Party initiating Conciliation on filing of Dispute Submission Form.

Conciliator Fee:

Once the Conciliator is appointed, the initiating party shall make a deposit for 2 sessions of Conciliator fee. If the Conciliation is abandoned due the absence of the opposite party or due to non-agreement in the first session itself, the balance amount will be refunded to the initiating party.

After the first session, both parties shall always keep a deposit of Conciliator fee of 2 sessions in advance. After the conclusion of the Conciliation, the amount will be settled.

The fee shall be payable in equal shares by the parties, provided that where one party fails to pay his share, the other party may pay that share, provided further that where the other party also does not pay the aforesaid share, the Conciliation proceedings may be suspended or terminated.

Rentals of Conference Rooms

In case of Conciliations through the KCCI ADR Centre, the parties shall also pay rentals for the conference rooms and costs of coffee and snacks, as fixed by the centre.