

Model Contract Clauses

In force as from 1 June 2020

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Achieving fast, innovative and cost-effective dispute resolution for businesses.

Overview

This document provides model contract clauses for parties who would like future disputes referred to arbitration, expedited arbitration or mediation under the London Chamber of Arbitration and Mediation (LCAM).

The following model contract clauses are for use in commercial contracts. When drafting clauses, care must be taken to avoid ambiguity. The model clauses provide that, should the parties to a contract become involved in a dispute, they should endeavour to resolve it through ADR. An effective clause will clearly identify the set of rules or procedures to be followed, the trigger for the process, the dispute resolution process itself, and when appropriate, the timetable. Below is a note on different options and some issues to consider in selecting the appropriate process together with our model clauses.

Selecting an ADR clause

Set out below are the following model clauses for use in commercial contracts:

- Escalation Clause
- Arbitration Clause
- Expedited Arbitration Clause
- Arb-Med-Arb Clause
- Mediation Clause
- Notice Clause

Here are some issues to consider when deciding which ADR clause to put in your contract:

- How complex is any potential dispute likely to be? If your contractual arrangements are complex then any potential dispute is likely to be too. The converse is also true.
- Is there likely to be any urgent supply chain or other issue which requires the potential dispute to be resolved as quickly as possible?
- Is it important to have a full airing of the issues in dispute with a written decision e.g. to show shareholders, a parent company, a regulator?
- Is confidentiality important?
- Do you want to reach a financial settlement and agree a commercial way forward?
- Is your dispute international?
- Is language an issue?
- What are the characteristics of your counter party – size, business experience, management, level of sophistication, combative, cooperative or commercial?

This note is not a substitute for legal advice. There are many factors to consider when deciding which dispute resolution method is best for your commercial agreements and some aspects of them may be better resolved through different dispute resolution mechanisms. There are also questions such as which law should govern the contract, what the seat of any arbitration should be, the best venue for any hearings and, most importantly, the question of enforcement. We recommend you take legal advice in relation to which clause is most appropriate and which would make most sense for your business. You may use different clauses for different agreements or even for different elements of the same agreement. The clauses may also need to be tailored so that they "fit" with the language and structure of

your agreements.

Information about each clause

Below are some key things you may find helpful to know about each of the clauses.

1. Model Escalation Clause

This clause provides that the parties will try a series of measures to resolve their dispute: discussions between senior executives, mediation in accordance with LCAM Model Mediation Procedures and then, in the event settlement is not achieved, arbitration in accordance with LCAM Arbitration Rules as a means of final determination. The parties must attempt each step before moving on to the next one. The clause provides for you to insert a timeframe within which each step is to be completed, and, if the dispute is not resolved within that timeframe, then the parties move to the next step. This clause provides the parties the best opportunity to settle the dispute among themselves. This clause is useful where the parties wish to preserve an ongoing commercial relationship.

2. Model Arbitration Clause

This clause provides that the parties will try to resolve their dispute by way of arbitration pursuant to LCAM's Arbitration Rules. Arbitration is a confidential process in which a neutral third party or parties (the tribunal), is appointed by the parties, or absent agreement by LCAM. The tribunal reviews written and oral submissions and then issue a written decision known as an award. Unlike court, the parties have a greater degree of control and flexibility over the process. They can agree certain procedural issues such as if, how and when documents are to be exchanged, what the steps leading up to the hearing will be, where and how the hearing will take place, live or virtual. This clause may be appropriate where mediation is unlikely to resolve the dispute, or where speedy resolution is important. The clause provides for you to insert how many arbitrators will determine the dispute – three is not uncommon but one is more cost-effective. You can also choose the seat of the arbitration – the law of the country you choose as the seat will be the law of the arbitration and the courts of that country will have a supervisory jurisdiction.

3. **Model Expedited Arbitration Clause**

This is similar to the clause above but provides for the arbitration to be resolved within a tight timetable of up to six months under LCAM's Expedited Arbitration Rules. These rules contain a 'documents-only' procedure for the resolution of disputes through arbitration by a sole arbitrator appointed by LCAM. The procedure is intended to be straightforward, expedited and cost effective. This clause can be used where it is of utmost importance to have a dispute resolved as quickly as possible. This might be the case where the parties are part of a chain of suppliers or involved in a large project when a dispute might hold up other business or give rise to claims from third parties. The Expedited Arbitration Rules might also be appropriate where the amount in dispute does not justify too much time being spent resolving the dispute. Expert evidence is only permitted if the arbitrator allows it so this procedure would probably not be appropriate for complex disputes requiring expert opinions. Nor would it be appropriate for multiparty disputes or for disputes involving complex issues of fact or law.

4. **Arb-Med-Arb Model Clause**

This provides that the parties try to resolve their dispute by a form of ADR called Arb-Med-Arb. Essentially, this means the parties start an arbitration, then attempt to resolve the dispute by way of mediation and, if a settlement is reached, the arbitral tribunal may issue an award giving effect to the settlement. This may be useful if you require more flexibility than arbitration alone and believe mediation might resolve the dispute. Having the settlement incorporated into an arbitral award can be useful if you have to take steps to enforce the award in UK or in another country.

5. **Model Mediation Clause**

This provides that the parties try to resolve their dispute by way of mediation pursuant to the LCAM Model Mediation Procedures. Mediation is a consensual and confidential process where a neutral third party assists the parties to reach an agreement to resolve their dispute. Even though the mediator does not issue an award or have the power to force the parties to do anything, an experienced mediator can often help parties in dispute to reach a compromise without litigation or arbitration. This can save the parties much time and cost and may have the advantage of preserving a commercial relationship. This clause should be used together with an effective dispute resolution

clause.

6. Model Notice Clause

In order to ensure that an arbitration or mediation gets started promptly and that notice of it reaches the other party quickly, it is useful to set out in the contract the email addresses which the parties agree shall be used for those purposes. This clause can be added to any of the above clauses as an additional paragraph.

LCAM Model Clauses

1. Model Escalation Clause

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute), then the parties shall follow the procedure set out in this clause: Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. The parties will attempt, in good faith, to resolve the Dispute promptly through negotiation between the respective senior executives of the parties who have authority to settle. If those senior executives are, for any reason, unable to resolve the Dispute as a result of negotiation within [30] days, the dispute shall be referred to mediation in accordance with the London Chamber of Arbitration and Mediation ("LCAM") Model Mediation Procedures. Unless otherwise agreed between the parties, the mediation will start not later than [30] days after the date of the Dispute Notice. If the dispute is not resolved within [30] days of the Dispute Notice, the Dispute shall be finally resolved by arbitration in accordance with the LCAM Arbitration Rules [or Expedited Arbitration Rules]. The arbitral tribunal shall be composed of [...] arbitrator(s). The language of any arbitration or mediation shall be [English]. Any hearings will take place in [London]. The seat of any arbitration shall be [London].

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of [England and Wales].

2. Model Arbitration Clause

Any dispute, controversy or claim arising out of or in connection with this agreement, or the existence, breach, termination or invalidity thereof, shall be determined by arbitration in accordance with the London Chamber of Arbitration and Mediation (“LCAM”) Arbitration Rules for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitral tribunal shall be composed of [..] arbitrator(s). The seat of the arbitration shall be [London] and the language of the arbitration shall be [English]. Any hearings will take place in [London]. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of [England and Wales].

3. Model Expedited Arbitration Clause

Any dispute, controversy or claim arising out of or in connection with this agreement, or the existence, breach, termination or invalidity thereof [and a claim value of no more than [£]] shall be finally settled by arbitration in accordance with the Expedited Arbitration Rules of the London Chamber of Arbitration and Mediation (“LCAM”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be London. The Tribunal shall consist of one arbitrator and the language of the arbitration shall be English. This contract is governed by the laws of England and Wales.

4. Arb-Med-Arb Model Clause

Any dispute, controversy or claim arising out of or in connection with this agreement, or the existence, breach, termination or invalidity thereof shall be finally determined by arbitration in accordance with the London Chamber of Arbitration and Mediation (“LCAM”) Arbitration Rules for the time being in force, which rules are deemed to be incorporated by reference in this clause. The parties further agree that following the service of a Request for Arbitration, they will attempt in good faith to resolve the Dispute through Mediation in accordance with LCAM Model Mediation Procedures. Any settlement reached will be referred to the arbitral tribunal and may be made a consent award on agreed terms. The arbitral tribunal shall be composed of [...] arbitrator(s). The language of the mediation shall be [English]. The seat of the arbitration shall be [London]

and the language of the arbitration shall be [English]. Any hearings will take place in [London]. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of [England and Wales].

5. Mediation Clause

Any dispute, controversy or claim arising out of or in connection with this agreement, or the existence, breach, termination or invalidity thereof shall be determined by mediation in accordance with the London Chamber of Arbitration and Mediation ("LCAM") Model Mediation Procedures. The language of the mediation shall be [English]. The mediation shall take place in [London]. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of [England and Wales].

6. Model Notice Clause

All notices in relation to any arbitration [and/or mediation] commenced in a dispute arising out of or in connection with this contract, including a request for arbitration, shall be treated as effectively delivered or served if sent by email to the following email addresses:

- *for party A: [name/info@companyname.com]*
- *for party B: [name/info@companyname.com]*

Contact Us

For further information, please contact the London Chamber of Arbitration and Mediation.

Address: LCAM, 33 Queen Street, London, EC4R 1AP

Email: info@lcam.org.uk

Tel: 02072031946