

No. 7331

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
FEDERAL REPUBLIC OF GERMANY**

**Agreement on the settlement of disputes arising out of
direct procurement. Signed at Bonn, on 3 August 1959**

Official texts: English and German.

Registered by the United Kingdom of Great Britain and Northern Ireland on 2 July 1964.

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord relatif au règlement des différends découlant
d'achats directs. Signé à Bonn, le 3 août 1959**

Textes officiels anglais et allemand.

Enregistré par le Royaume-Uni de Grande Bretagne et d'Irlande du Nord le 2 juillet 1964.

No. 7331. AGREEMENT¹ BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY ON THE SETTLEMENT OF DISPUTES ARISING OUT OF DIRECT PROCUREMENT. SIGNED AT BONN, ON 3 AUGUST 1959

The United Kingdom of Great Britain and Northern Ireland and
The Federal Republic of Germany,

Pursuant to sub-paragraph (b) of paragraph 6 of Article 44 of the Agreement to supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany, signed at Bonn on 3rd August, 1959² (hereinafter referred to as the "Supplementary Agreement"),

Have agreed as follows :

Article 1

For the settlement of disputes arising out of contracts or other arrangements concerning goods and services directly procured in the Federal territory by the authorities of the Forces or of the civilian component of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the "British authorities") the following provisions shall apply.

Article 2

The German authorities shall at all times make available to the British authorities their good offices, particularly in a mediatory or advisory capacity, in the settlement of disputes.

Article 3

1. The dispute shall be referred for decision to a Court of Arbitration (Articles 4 to 7) or, if it so agreed before one of the parties asks for arbitration proceedings, to a

¹ In accordance with its article 11 (2), the Agreement came into force on 1 July 1963, the date of the entry into force of the Agreement of 3 August 1959 supplementing the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the status of their forces with respect to foreign forces stationed in the Federal Republic of Germany (see United Nations, *Treaty Series*, Vol. 481, p. 262). The instruments of ratification of the Agreement on the settlement of disputes arising out of direct procurement were exchanged at Bonn on 5 July 1962.

² United Nations, *Treaty Series*, Vol. 481, p. 262.

German Court (Articles 8 to 10). The dispute shall not, however, be referred to a German court if the Deutsche Bundesbahn or Deutsche Bundespost is a party.

2. Application for decision by the Court of Arbitration or the lodging of a plaint with a German court shall, however, be permissible only if an attempt has previously been made to settle the dispute by negotiations between the contractor and the British procurement authority. It shall be permissible for such application to be made or plaint to be lodged if the contractor has not received a decision within four months of his having in writing requested one from the British procurement authority.

3. The decision notified by the British procurement authority shall be deemed to have been accepted by the contractor if the latter does not within six weeks make application for decision of a Court of Arbitration or lodge a plaint.

4. The application for decision of a Court of Arbitration or a plaint shall be permissible only to the extent that the dispute has not been settled in negotiations between the contractor and the British procurement authority.

5. The Court of Arbitration or the German court shall taken its decision on the basis of the law that was agreed upon at the time that the goods and services were ordered. If at the time of the order no agreement was made concerning the law to be applied, German law shall be applied.

Article 4

1. Application for decision by a Court of Arbitration shall be made to the business office of the Deutscher Ausschuss für Schiedsgerichtswesen in Bonn (German Commission for Arbitral Adjudication).

2. If the British authorities make the application they shall at the same time nominate a member for the Court of Arbitration, or declare that the dispute is to be decided upon by a sole arbitrator.

3. If the contractor makes the application, the business office send it immediately to the British authorities with the request either to nominate a member for the Court of Arbitration or to declare that the dispute is to be decided upon by a sole arbitrator.

4. If the British authorities nominate a member for the Court of Arbitration, the Deutscher Ausschuss für Schiedsgerichtswesen shall immediately provide the other member for such Court.

5. If the British authorities declare that the dispute is to be decided upon by a sole arbitrator, such sole arbitrator shall be nominated by the President of the Oberlandesgericht in whose area the applicant has his seat or residence.

6. The members of the Court of Arbitration shall be completely independent in the exercise of their functions and shall not be bound by instructions. Membership shall be inadmissible for any person who has been previously concerned with the case in any other capacity or who has a direct interest in it.

7. All decisions of the Court of Arbitration consisting of two members shall be unanimous. Where the members are unable to reach agreement within a period of three months, they shall, at the request of one of the arbitrators, call upon the services of a third member who shall preside; in that event, the decisions of the court shall be by majority vote. If the members of the court are unable to agree upon a third member, such member shall, at the request of one of the arbitrators, be nominated by the President of the Oberlandesgericht in whose area the applicant has his seat or residence.

8. The decision of the Court of Arbitration shall be final and binding.

Article 5

1. The Court of Arbitration shall make its decisions in the light of the factual statements and legal pleadings of the parties concerned and, if necessary, in the light of evidence taken.

2. The procedure of the Court of Arbitration shall be in accordance with the German provisions concerning arbitral court procedure.

Article 6

The functions of the business office of the Court of Arbitration shall be exercised by the business office of the Deutscher Ausschuss für Schiedsgerichtswesen in Bonn.

Article 7

1. The procedure before the Court of Arbitration will involve costs, the amount of which will be fixed by the Court and recorded in its decision, taking into account the extent of its functions and the amount in dispute. The expenses of the Court (e.g. for the hearing of witnesses) will be separately fixed and recorded in the decision of the Court.

2. Costs and expenses shall be charged to the losing party in the arbitration; if there is divided loss in the action, the costs and expenses shall be shared appropriately.

3. The business office of the Deutscher Ausschuss für Schiedsgerichtswesen shall demand a deposit from the party which asks for arbitral decision. The deposit shall be calculated according to the probable extent of the total costs and expenses; it shall be at least DM.100. The business office shall specify a reasonable period of time for the payment of the deposit, after the expiry of which, if payment has not been made, the application shall be deemed to have been withdrawn.

4. Deposits, costs and expenses are to be paid to the business office of the Deutscher Ausschuss für Schiedsgerichtswesen.

5. The costs shall be divided as to $\frac{3}{8}$ in respect of each arbitrator, or $\frac{3}{4}$ in respect of a sole arbitrator and $\frac{1}{4}$ in respect of the business office. If a third member is brought in, the costs shall be divided as to $\frac{4}{10}$ for him, $\frac{2}{10}$ each for the arbitrators and for the business office.

Article 8

1. If the parties have agreed that the dispute shall be referred for decision to a German court (paragraph 1 of Article 3) the plaint shall be lodged against the Federal Republic of Germany. The Federal Republic of Germany shall conduct the case in its own name in the interest of the United Kingdom of Great Britain and Northern Ireland.

2. The plaint shall be lodged with the Court in whose area that German authority is situate which represents the Federal Republic of Germany in the case.

3. The United Kingdom of Great Britain and Northern Ireland shall meet all the obligations laid upon, and shall enjoy any benefits accruing to, the Federal Republic as a result of judgements, decisions, orders and settlements (*vollstreckbare Titel*) in court proceedings dealt with in accordance with this Article.

4. Costs arising in connection with court proceedings and which are not included in the costs established by the court shall be at the charge of the United Kingdom of Great Britain and Northern Ireland if, before such costs were incurred, the agreement of the British authorities was obtained.

Article 9

1. The German authorities shall claim in a German court against the contractor—also by way of counterclaim (*Widerklage*)—in respect of claims of the United Kingdom of Great Britain and Northern Ireland, if the British authorities on the basis of the special circumstances of the individual case so request, and have agreed with the contractor that the dispute is to be referred to a German court (paragraph 1 of Article 3).

2. The provisions of paragraphs 3 and 4 of Article 8 shall apply *mutatis mutandis*.

Article 10

So far as co-operation between the German and British authorities in connection with proceedings before German Courts is concerned, the provisions of paragraphs 1 to 4 of Article 44 of the Supplementary Agreement shall apply *mutatis mutandis*.

Article 11 .

1. The present Agreement shall be ratified. The instruments of ratification shall be exchanged at Bonn.

2. The present Agreement shall enter into force on the same date as the Supplementary Agreement.

IN WITNESS WHEREOF the undersigned Representatives duly authorised thereto have signed the present Agreement.

DONE at Bonn in duplicate, this third day of August 1959, in the English and German languages, each text being equally authentic.

For the United Kingdom of Great Britain and Northern Ireland :

Christopher STEEL

For the Federal Republic of Germany :

A. H. VAN SCHERPENBERG
