

MfN-MEDIATION RULES 2008

Article 1 - Definitions

In these Rules the following terms have the following meaning:

- a. Issue: the issue described in the Mediation Agreement.
- b. Certifying institution: the institution which issues certificates of professional competence to Mediators on the basis of a certification schedule recognized or accepted by the MfN.
- c. Mediation: procedure in which the Parties make an effort to resolve their Issue under the supervision of a Mediator in accordance with the Rules.
- d. Mediation Agreement: the written agreement in which the Parties agree to endeavour to resolve the Issue through Mediation, and instruct the Mediator to act as Mediator in respect of the Issue and the Mediator accepts this instruction.
- e. Mediator: the person who conducts the Mediation and who is listed in the Register.
- f. The SKM: the Quality Foundation for Mediators (*Stichting Kwaliteit Mediators*), having its registered office in Rotterdam.
- g. MfN: Netherlands Federation of Mediators (*Mediatorsfederatie Nederland*).
- h. Party/Parties: the parties who wish to resolve the Issue through Mediation.
- i. Register: the Register of Mediators kept by the SKM.
- j. The Rules: these Rules.
- k. Secretariat: the Secretariat of the SKM.

Article 2 – Appointment of the Mediator

- 2.1. The Parties shall themselves appoint a mediator.
- 2.2. If the Parties wish to be assisted by the SKM in selecting a Mediator, they must file a written request thereto with the Secretariat. This request must contain the names, (e-mail) addresses, telephone and fax numbers of the Parties and their representatives, if any, as well as a general description of the Issue.
- 2.3. Upon receipt of the request, the Secretariat will send to the Parties:
 - a. a list with the names of the Mediators who, on the basis of the description of the Issue and/or the relevant criteria stated by the Parties, are considered eligible;
 - b. a copy of the Rules and a copy of the Code of Conduct for MfN-registered Mediators;
 - c. an invoice for administrative charges.
- 2.4. The Parties will together select a Mediator from the aforementioned list. The Parties may then contact the Mediator directly. If the Parties do not wish to contact the Mediator directly, they must inform the Secretariat in writing which Mediator they have selected. Upon receipt of this letter the Secretariat will inform the Mediator concerned of the request and of his having been selected, so that the Mediator may then contact the Parties.

- 2.5 If the Parties fail to jointly agree on the selection of a Mediator, they (or either one of them) may request the Secretariat to make a written proposal for a Mediator who may be appointed by the Parties.
- 2.6. On acceptance of the instruction the Mediator will draw up a Mediation Agreement. The Parties and the Mediator will then sign the Mediation Agreement.

Article 3 – Commencement of Mediation

- 3.1 The Mediation will commence as soon as the Mediation Agreement has been signed by the Parties and the Mediator, unless a different time is agreed in the Mediation Agreement.

Article 4 – Activities of the Mediator and process supervision

- 4.1. The activities of the Mediator relate to the Mediation sessions, but may also comprise other activities such as reporting, contacts with the Parties (either electronically, in writing or by telephone), studying papers, contacts with third parties, and drawing up agreements, all this from the commencement of the Mediation onwards.
- 4.2. The Mediator shall decide, after having consulted the Parties, on the manner in which the Mediation will be conducted.
- 4.3. The Mediator may communicate with the Parties separately and confidentially.
- 4.4. The Parties and the Mediator shall do their best to ensure that the Mediation proceeds in an expeditious manner.

Article 5 - Voluntariness

- 5.1. The Mediation shall take place on the basis of voluntariness of the Parties. Each Party, as well as the Mediator, may put an end to the Mediation at any time.
- 5.2. Agreements in the interim shall bind the Parties only insofar as the Parties explicitly lay down the binding nature of these agreements in a signed agreement. They shall not be bound by the positions adopted or proposals made by them or by the Mediator during the Mediation. The Parties shall be bound only by what has been laid down in the agreement referred to in article 10.1 and signed by them.

Article 6 – Privacy

- 6.1. No person shall be present at the Mediation other than the Mediator and the Parties, or their representatives and/or advisers, if any. For the involvement of other persons in the Mediation, the consent of the Parties shall be required. If the Mediator wishes, he may cause himself to be assisted clerically at the Mediation by a person designated by him for that purpose. In such event the Mediator shall ensure that all persons involved in the Mediation sign a declaration of confidentiality.
- 6.2. If either Party causes himself to be represented during the Mediation, his representative must be authorized to perform all (legal) acts that are necessary for the Mediation,

including the entering into an agreement as referred to in article 10.1. If the Mediator so requests, a written power of attorney must be produced showing the authority of the representative.

Article 7 - Confidentiality

- 7.1 The Parties undertake not to disclose to any third party – including courts and arbitrators – any information concerning the progress of the Mediation, the positions adopted, proposals made or the information supplied thereat by those present at the Mediation, either verbally or in writing, and either directly or indirectly.
- 7.2 The Parties undertake not to reveal, quote from, refer to, paraphrase or in any other way invoke as against any third party – including judges and arbitrators – any documents, if such documents have been revealed, shown or otherwise made public, shown or otherwise disclosed during or in connection with the Mediation by any person involved in the Mediation. This obligation shall not apply if and insofar as the person in question already himself had or could have had this information at his disposal independently of the Mediation. By documents as referred to in this article shall also be meant: the Mediation Agreement, notes or minutes drawn up by the Parties or by the Mediator within the framework of the Mediation, the agreement referred to in article 10.1 insofar as the Parties have agreed in accordance with article 10.3 that this agreement shall remain confidential, as well as other data carriers, such as audiotapes, videotapes, photographs and digital files in whatever form.
- 7.3 The provisions of articles 7.1 and 7.2 shall also apply in respect of the Mediator.
- 7.4 The Parties herewith waive the right to, at law or otherwise, use anything that has transpired during the Mediation in evidence against each other and/or against the SKM/ MfN, (former) board members of the SKM/ MfN or persons employed with or otherwise involved with the SKM/ MfN, examine or cause each other, the Mediator or other persons involved in the Mediation to be examined as a witness or otherwise regarding information supplied and/or recorded during or in connection with the Mediation, or regarding the contents of the agreement as referred to in article 10.1, all this to be construed in the widest sense of the word. The Parties shall be deemed to have concluded an agreement as to burden of proof for that purpose.
- 7.5 All information supplied to the Mediator by either Party in the absence of the other Party, shall be treated by the Mediator as confidential, unless and insofar as the Party in question has explicitly given its consent to the disclosure of that information during the Mediation.
- 7.6 The provisions of articles 7.1 to 7.5 shall not apply in the case of:
- a. information concerning criminal acts in respect of which there exists a statutory obligation to report or a statutory right to report,
 - b. information concerning the threat of a crime,
 - c. complaints, disciplinary or liability proceedings against the Mediator. In such event the Mediator shall be released from his obligation to observe confidentiality insofar as

- may be necessary in order to defend himself against the claims and/or make a claim under his professional liability insurance,
- d. a request from the Certifying Institution to the Mediator to produce anonymized information evidencing conduct of practice if the Certifying Institution undertakes to observe confidentiality.
 - e. a request from the SKM-Reviewer to produce information evidencing conduct of practice if the Reviewer undertakes to observe confidentiality.

Article 8 – End of the Mediation

- 8.1. The Mediation shall end:
 - a. by the signing by the Parties of the agreement referred to in article 10.1;
 - b. by a written statement from the Mediator to the Parties stating that the Mediation has ended;
 - c. by a written statement from either Party to the other Party or Parties and to the Mediator stating that it withdraws from the Mediation.
- 8.2. Termination of the Mediation shall leave the obligations of confidentiality and payment of the Parties under the Mediation Agreement intact.

Article 9 – Other proceedings

- 9.1. Any legal or similar proceedings already pending on commencement of the Mediation regarding the Issue or parts thereof – with the exception of steps to safeguard rights – shall be stayed by the Parties for the duration of the Mediation.
- 9.2. The Parties undertake for the duration of the Mediation not to institute any proceedings as referred to in article 9.1 against each other, with the exception of steps to safeguard rights.
- 9.3. If a Party takes steps to safeguard rights, or institutes proceedings other than those referred to in article 9.1, that Party shall be obliged to notify this to the Mediator and to the other Party or Parties within 24 hours after having taken such steps or after having instituted such proceedings.

Article 10 - Recording of the outcome of the Mediation

- 10.1. The Mediator shall see to it that the agreements made by the Parties are properly recorded in an agreement, by or with the aid of an expert third party. The Parties themselves, with the exception of the Mediator, shall remain responsible for the contents of the agreement. The Parties shall have the right to call in the advice of an external expert.
- 10.2. The Mediator shall not be liable for the contents of the agreement concluded by the Parties nor for any damage that may arise from the same.
- 10.3. The Parties shall jointly decide and record in writing to what extent the contents of the agreement to be concluded shall remain confidential. The contents of the concluded agreement may in any case be submitted to a court if this is necessary in order to claim compliance with the agreement.

Article 11 – Limitation of liability

Any liability of the Mediator in case of damage caused by any act or omission of the Mediator in the Mediation, shall be limited to at most the amount that in the case in question is paid by his professional liability insurer, plus the amount of the excess which under the contract of insurance is for the account of the Mediator in the case in question. Except for intentional act or gross negligence on the part of the Mediator, the Parties undertake to hold the Mediator harmless and indemnify him in respect of all claims that a third party may institute as against the Mediator at any time and which are related to acts or omissions of the Mediator during the Mediation.

Article 12 – Rules of conduct and complaints

The Mediator shall be bound by the Rules of Conduct for MfN-registered Mediators (*MfN-registermediator*) adopted by the Board of the MfN and shall be subject to the SKM complaints scheme and disciplinary rules in accordance with the Rules of the foundation “Stichting Tuchtrechtspraak Mediators”. A Party may lodge a complaint with the SKM within twelve months from the termination of the Mediation in accordance with the SKM Complaints Scheme at that time in force.

Article 13 – Cases not provided for by these Rules

In all cases not provided for by these Rules the Mediator shall decide. In doing so the Mediator shall act in accordance with the purport of these Rules.

Article 14 – Amendments to the Rules and/or deviations from the Rules

- 14.1 If and insofar as the Parties wish to deviate from the MfN-Mediation Rules, this shall be possible only by means of an agreement in writing with the explicit consent of the Mediator.
- 14.2 The MfN shall have the power to amend the Rules at any time. Such amendments shall not affect Mediations that are already ongoing at that time. The version of the Rules in force at the time of the commencement of such ongoing Mediations shall apply to such Mediations.

Article 15 – Applicable law

These Rules shall be governed by Dutch law.

The same shall apply in respect of the agreement referred to in article 10.1.

**Code of Conduct for MfN-registered mediators (MfN-
registermediator)**

This Code of Conduct forms a guideline for the conduct of MfN-registered mediators. It also serves as information provision for the parties involved and as criterion for the disciplinary tribunal when reviewing the actions of a Mediator¹.

1 – Professional ethics and integrity

The Mediator shall behave as may be expected of a Mediator.

Explanation

This rule is the basis for the actions of the mediator and the foundation for all other rules of conduct, which are derived therefrom. Integrity is a core value for the mediator. The mediator may be expected to comply with and enforce his professional code and general social and ethical norms and values, even in the event of outside pressure to deviate therefrom. The mediator shall at least act as a reasonably competent and reasonably acting mediator.

2 – Transparency

The Mediator shall explain the mediation process to the Parties.

Explanation

Transparency means that the mediator gives the parties clarity about the mediation process, including his own role therein. The mediator will make it possible to discuss issues with or between the parties and will be clear about his approach and what the parties may expect of him. Openness and clarity are essential for building up confidence and a good working relationship with the parties. This helps the mediator to avoid difficulties at a later stage.

3 – Autonomy of the parties

- 3.1 The Mediator shall see to it that the autonomy of the Parties is guaranteed.
- 3.2 The Mediator shall not make any pronouncement about the Issue.

Explanation

The mediator safeguards the autonomy of the parties and monitors their commitment and voluntary participation in the mediation. The parties make their own choices and will bear the responsibility therefore. The mediator stands in between the parties and supports them in making their choices and looking for a solution. Where necessary the mediator can furnish

¹ The terms written with a capital in this Code of Conduct refer to the definitions of the MfN-Mediation Rules 2008 (*MfN-Mediation Reglement 2008*), article 1.

the parties with information, so that they can form a considered picture and determine their position.

The mediator will not make any determination regarding the issue or a part thereof. He will thus not make a decision on the content of the conflict between the parties. The mediator will also be reserved in giving his opinion or giving advice on what a party should or should not do. An opinion or advice is

generally not free of free of norms and values and unbiased and is difficult to reconcile with the autonomy of the parties and the neutral role of the mediator. If necessary the mediator will inform the parties of the option of consulting external advisers or experts during the mediation.

In the event the mediator, on the explicit request of all parties, does make a determination, binding or otherwise, he will have to clearly distance himself from his role as mediator. It must be clear for the parties in what capacity he is acting. If possible the mediator will lay down this change in roles in writing.

4 – Independence

- 4.1 The Mediator shall take an independent position. He has no interest which could affect his impartiality.
- 4.2 If the Mediator cannot supervise the Issue in an independent manner, he shall not accept the assignment or he shall withdraw.

Explanation

A mediator who has an interest in the mediation which affects or could affect his independence, will not accept his appointment. This interest could be a personal or commercial relationship which the mediator or one of his colleagues has or has had with the parties or with one of them, or in the outcome of the mediation. He must also be aware of the possible appearance of dependence and act accordingly. The mediator will clarify his position to the parties if his independence is or could be a matter of discussion. He will then ask the parties whether they wish to continue with him on this basis. The mediator will see to it that he safeguards his independence both during and after the mediation. He will withdraw, if necessary.

5 – Impartiality

- 5.1 The Mediator represents the interests of all the Parties. He is impartial and acts without prejudice.
- 5.2 If the Mediator cannot supervise the Issue in an impartial manner, he shall not accept the assignment or he shall withdraw.

Explanation

A mediator is characterised by his neutral, impartial role. The mediator is there for all the parties. He has a confidential position with regard to each of them. In neither word nor deed shall a mediator indicate a preference for or disapproval of (one of) the parties and he will act without prejudice with regard to the parties. The confidence of the parties that the mediator is impartial, is essential for the quality of the mediation process.

The mediator will only act in respect of issues in which he can retain his impartiality. He will endeavour to ensure that his impartiality is not affected by prejudice based on such things as personal characteristics, position, religion or background or by an opinion on positions or interests introduced by the parties.

The mediator may be expected to critically review his own actions and continually monitor his neutral, impartial position. If it is impossible for the mediator to monitor the mediation in an impartial manner, he will withdraw.

6 – Confidentiality

- 6.1 The Mediator shall safeguard the confidentiality of the Mediation.
- 6.2 The Mediator has a duty of confidentiality.
- 6.3 The duty of confidentiality continues after the termination of the Mediation.

Explanation

The basic principle is that all verbal and written exchanges during mediation are confidential. This information may not be used outside of the mediation during or after the end of the mediation, unless the parties have made explicit deviating agreements with each other and the mediator in this respect, for example if feedback is necessary for the progress of the mediation. Information which was already public or known before the mediation is not covered by the duty of confidentiality. The duty of confidentiality applies to all parties involved in the mediation process and to the mediator in particular as the party with primary responsibility for guaranteeing confidentiality.

The mediator has a duty of confidentiality with regard to everything that comes to his attention in his capacity as mediator with the parties and their advisers, both in a plenary session and individually. His duty of confidentiality also applies to exploratory discussions with the parties before a mediation agreement has been made with them. Feedback of information by the mediator to referring parties or principals which goes further than notice of termination of the mediation, will only be effected in consultation with and with the consent of all parties.

The mediator's duty of confidentiality lapses insofar as the mediator must do so to defend himself in legal proceedings, including complaint or disciplinary procedures.

There are a few exceptions to the mediator's duty of confidentiality which can be found in the MfN-Mediation Rules 2008.

7 – Competency

The Mediator shall only accept a Mediation if he possesses the necessary qualities for the Mediation to run smoothly.

Explanation

A mediator may be expected to possess the knowledge, skills, professional attitude and the personal qualities which are necessary to safeguard the smooth progress of the mediation. If this is not the case or it is not sufficiently the case, he will not accept the mediation. Should the mediator already have accepted the mediation, he will withdraw.

The mediator is expected to have knowledge of communication and conflict resolution, negotiating concepts and intervention techniques. The expected knowledge can also encompass substantive expertise in the area of the conflict if the parties have precisely appointed the mediator with that in mind. The skills which may be expected of the mediator are, for example, intervention techniques geared to improving the communication between the parties, clarifying the problem and the related emotions and interests and supervising the negotiations between the parties. The mediator possesses more technical skills, such as discussing and making a mediation agreement and recording agreements in a settlement agreement.

The essence of the professional attitude is that the mediator has integrity and is reliable, carries out his work to the best of his ability and is willing to follow continual schooling and to develop further as mediator. Personal qualities are essential for the mediator. The mediator may be expected to be balanced, flexible, empathic and decisive and that he operates well in a context in which pressure and conflicting interests play an undeniable role.

8 – Working method

- 8.1 The Mediator is responsible for the mediation process and shall monitor the course thereof.
- 8.2 Prior to the Mediation, the Mediator shall make a written Mediation Agreement with all Parties which shall at least lay down the duty of confidentiality and the fact that the Mediation is voluntary.
- 8.3 The Mediator shall not involve any third parties in the Mediation, subject to consent of the Parties.

Explanation

The essence of the mediator's task is to monitor the mediation process. The mediator will handle the mediation with the necessary expedience and will make sufficient time available for the mediation. He will explain the mediation process, the contents of the mediation agreement and the Rules. The mediator verifies whether the parties understand what conditions and consequences are attached to the signing of the mediation agreement. The mediator will see to a balanced handling of the issue and will promote as much as possible that each party gets its turn in equal measure, has sufficient access to the necessary information and has the scope to consult financial, legal, psychological or other advisers if necessary.

The mediator is responsible for the contractual recording in the mediation agreement of the duty of confidentiality of the parties and the mediator himself. The parties have no statutory duty of confidentiality. The duty of confidentiality of the parties is primarily intended to promote that they can speak freely during the mediation discussions and that confidence can be built. The parties shall jointly determine the scope of the duty of confidentiality. They will evaluate whether it is necessary for the progress of the mediation which has taken place with certain persons outside of the mediation table consultation. The mediator will see to it that the scope of the duty of confidentiality is recorded.

The mediator will see to it that third parties engaged in the mediation sign a confidentiality agreement. The consent of the parties is not necessary for secretarial support of the mediator referred to in article 6.1 of the Rules.

9 – Rates and costs

- 9.1 The Mediator shall agree his rates and the additional costs with the Parties in advance and shall record this agreement in the Mediation Agreement.
- 9.2 The Mediator is permitted to agree a fixed amount for the Mediation.
- 9.3 The Mediator shall provide a clear, orderly invoice.

Explanation

At the start of the mediation the mediator will make a clear agreement on his rates (or a fixed amount for the mediation) and possible additional costs. The mediator will agree with the parties who is to bear the costs of the mediation. The mediator will itemise his invoice in a clear manner. He will keep a record of his activities and present these if so requested, so that it becomes clear for the parties for which activities the party is being charged and what the costs are.

10 – Disciplinary procedure

The Mediator is subject to the disciplinary procedure in accordance with the Rules of Stichting Tuchtrechtspraak Mediators.

Explanation

Every mediator who is registered in the MfN-Register at the start of a mediation, is subject to this disciplinary procedure.