

InvestInternational

Tender: European tender for the implementation, maintenance and support of a KYC solution

Date: 25 April 2024

Nr.	Subject	Question	Response
1	Appendix 06 ARBIT 2022, article 17.5	<p>Penalty. Article 17.5 ARBIT-2022 contains a fine of EUR 50,000 in the event of breach of the duty of confidentiality. Agreeing penalty provisions with clients is very difficult for us. In our opinion, agreeing a penalty is not necessary because the contract terms and conditions include a safety net with regard to our liability and the ensuing obligation to compensate damage in the event of breach of (confidentiality) obligations under the contract. The Contracting Authority has sufficient other sanctioning measures at its disposal in relation to a breach of such obligations. In our opinion, the provision in question is unreasonably formulated because it is immediately due and payable, without it being established by a court that there has indeed been a breach of the confidentiality obligation by the Counterparty. In view of the above, we request you to declare Article 17.5 ARBIT-2022 in the contract inapplicable.</p> <p>If you are not prepared to do so, we request that you include in the contract that the penalty in accordance with Article 17.5 ARBIT-2022 will only be payable if it has been established beyond doubt by a court that there has been a breach of confidentiality by Counterparty and that a penalty paid will be deducted from the amount of compensation to be determined by the court in good court. Can you agree to this?</p> <p>Proposed amendment: "The penalty of article 17.5 ARBIT-2022 will only be payable if it has been established beyond doubt by a court that there has been a breach of confidentiality by Counterparty. The penalty paid will be deducted from the amount of compensation to be determined by the court in good faith."</p>	<p>We can agree to the following amendment: "The penalty of article 17.5 ARBIT-2022 will only be payable if it has been established by a court (rechtbank) that there has been a breach of confidentiality by Counterparty. This penalty will be deducted from the amount of compensation if the court (rechtbank) determines that such compensation amount is due."</p>
2	Terms & Conditions	<p>It is important for us that our terms and conditions can be part of the contract. We propose that they can be entered, otherwise we can't submit our proposal. After the preliminary award, our terms and ARBIT 2022 can be aligned. Can you agree to that?</p>	<p>We understand and appreciate your proposal, but unfortunately can not agree to this. We have chosen to incorporate the suggested amendments into our conditions as much as possible and we choose not to rectify the tender. Should we need to revisit this decision at a later stage, we will inform all participating parties accordingly.</p>