

German Institution of Arbitration (DIS)

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

EQUAFILM CO.
Claimant

v.

MEDIPACK S.A.
Respondent

Procedural Order No. 3

As indicated in the message communicating Procedural Order No. 2 to the parties, a further period of four days was given in which to reiterate requests for clarification that had not been answered or to request clarification of the clarifications. All requests received that did not ask for information that was already given and that seemed to be relevant are hereby answered below. The period for requesting clarifications is now closed.

1. Is there any special law applicable to discounts in the domestic law of either Equatoriana or Mediterraneo?

No.

2. What other arbitral organizations exist in Germany and what are their names in English?

In Procedural Order, No. 2, no. 32 it is stated “DIS is the only institution currently existing in Germany that conducts international commercial arbitrations, other than in certain commodity trades.” To clarify the statement somewhat and to the extent it is relevant in this arbitration, reference may also be made to the German Maritime Arbitration Association, www.gmaa.de, and to the Arbitration Court at the Hamburg Chamber of Commerce, www.hk24.de.

3. In view of the fact that the letter from Mr. Storck to Mr. Black dated 7 December 2000 says that the order then being placed by Medipack was the first with Equafilm, is the statement in Procedural Order No. 2, no. 43 that there had been a previous order in 1996 correct?

Yes, it is. There had been one order placed in 1996, but Mr. Storck seems either to have overlooked it or to have been concentrating on the fact that this was expected to be the first order of many from Medipack.

4. Had any discount been given in the 1996 transaction?

No, the purchase had been at the list price.

5. To clarify the response in Procedural Order No. 2, no. 37, how many times had Equafilm granted an 8% discount on first orders?

In the five-year period 1997-2001 it gave an 8% discount on first orders five times, including the sale to Medipack. It is difficult to say just what percentage of “first orders” this represented, as is illustrated by the fact that the 1996 order was certainly a “first order” but one that was not expected to, and did not, lead to any further orders. In a more restricted sense where repeat business was expected, the five times that Equafilm granted an 8% discount from its then list price represented something like five to ten percent of “first orders”.

6. In the law of Equatoriana, Mediterraneo and Danubia is there an action for the price?

Yes, in all three countries there is an action for the price in appropriate circumstances. Such an action is not considered to be an action for specific performance in the sense of CISG Article 28.

7. Were the CIF charges to be calculated per delivery or in some other way?

They were to be calculated and paid per delivery.

(Signed)

President of the Tribunal

11 November 2002