

## **MPC-ARBITRATION**

Arbitrators: Messrs. J.A. Vreugdenhil, P. van Pinxteren and J. Kramer

Secretary: Mr. R.W. La Gro, Master of Law

Arbitration ruling: 2009

### **Interpretation of the MPC-conditions, article 7 Cycle**

Claimant in the main action: X

Respondent in the main action: Y

#### **5. Assessment of the facts in dispute**

##### *In the main action*

- 5.1. The parties do not dispute that they entered into an agreement for a cycle between X, Y and Z. There is also no dispute between the parties that the MPC-conditions apply to the agreement. However, the parties disagree on whether the agreement between the parties should be invoiced according to article 7, paragraph 1 of the MPC-Conditions, for the cycle .
- 5.2. X demands a declaratory judgment that her interpretation of article 7 of the MPC-Conditions, based on which, according to her, the difference in price should be invoiced, is the correct interpretation. This interpretation has not been disputed by Y, and, in the opinion of the arbitrators, is correct and not unlawful.
- 5.3. However, the arbitrators find that the parties have reached consensus, in deviation of the stipulations in article 7 of the MPC-Conditions, on invoicing the entire amount of the transaction. The arbitrators reach their ruling on the following grounds.
- 5.4. Y motivated, and this was acknowledged by X during the hearing, that in the past the parties always, during earlier cycles, mutually, in deviation of article 7 paragraph 1 of the MPC-Conditions, invoiced the entire amount. X never protested about this to Y before. In the hearing, X stated that this had evolved historically between the parties, that this was dealt with differently and that it is common practice that the entire amount is invoiced fully. X also stated that she cannot just change the practice between the parties and the practice in the market. On entering the agreement, both parties assumed that the entire amount would be invoiced. Apparently there was consensus between the parties on the manner of invoicing for the cycle for the entire amount, in deviation of the MPC-Conditions.
- 5.5. Y stated during the hearing that it is common in the industry to invoice, for a cycle, the complete value of the delivery. Y also wants to settle cycles, administratively and financially, in this manner. X stated in the hearing that she wants to settle cycles according to the MPC-Conditions, but, because it is common practice in the market to invoice the entire amount of the invoice, they have to adapt to the large group that invoices the entire amount of the invoice. X stated that only when Y informed her that he could not pay the invoice, she informed Y that she wanted to settle the cycle according to the MPC-Conditions as yet. According to the arbitrators, this is also untimely.

- 5.6. Based on the aforementioned, the arbitrators find that there was consensus between the parties on the manner of invoicing for cycles, i.e. for the entire amount of the delivery. This means that the parties deviated from article 7 paragraph 1 of the MPC-Conditions, and therefore X cannot appeal to this article and Y's invoice to X should not be altered.

*In counterclaim proceedings*

- 5.7. Taking into account the statements in the main action, the arbitrators find that the parties have agreed to invoice the cycle for the entire amount of the delivery. This means that the claim instituted by Y in the counterclaim proceedings, to order X to pay her invoice, should be granted.
- 5.8. The arbitrators find that X owes legal interest over the amount of the invoice from....., being the day after the due date of the invoice.

*In main action and in counterclaim proceedings*

- 5.9. As X was the party ruled against, for the most part, X shall have to pay the costs of these proceedings in the main action and in the counterclaim proceedings. The arbitrators shall limit the costs of arbitration to the extent that these costs are limited to the € 3,500.-- deposited by X for the cost of arbitration, including the arbitrators' compensation. The amount of the ruling is settled with the deposit already paid by X, so X does not owe anything for the cost award.

**THE ARBITRATORS, RULING in the main action and counterclaim proceedings  
judging in all reasonableness and fairness:**

1. Issue the declaratory judgment that the interpretation of article 7 paragraph 1 of the MPC-Conditions concerning cycles by X is correct;
2. Order X to pay Y the invoice with invoice number....., to the amount of € 16,500.- as well as the payment of legal interest from.....until the day of payment in full.
3. Order X to pay the costs of these proceedings to the amount of € 3,500.-.
4. Dismiss all further or other claims;

(deze tekst is eveneens in het Nederlands beschikbaar)